

# R. v. Wyler

## Mock Trial Kit



# Credits

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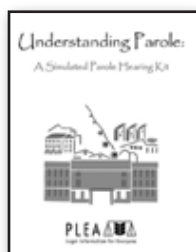
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# Introduction

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From Perry Mason to Atticus Finch, the high drama of the courtroom is a favourite setting for playing out human conflict and illuminating social issues of the day. However, fictional court settings often skew the reality of the work of courts and the process of administering justice. With this in mind, PLEA has created *R. v. Wylers: A Mock Trial Kit*. This five-lesson unit provides the tools to conduct a mock criminal trial by Jury. It is suitable for upper-middle-years and high school students in the Social Sciences and even has cross-curricular application with Arts Education.

In addition to the student engagement that takes place through role-playing, *R. v. Wylers* provides a first-hand understanding of how trial procedures and courtroom personnel work to ensure a fair trial. Such learning will help students achieve the Interactions and Interdependence and Power and Authority aims and goals of Saskatchewan's Social Studies curricula. As well, the role-playing aspect of *R. v. Wylers* can fulfill many drama-related outcomes of Saskatchewan's Arts Education curriculum.

As with all learning resources from PLEA, *R. v. Wylers* was developed with the understanding that teachers are the professionals best-suited to facilitate student learning. While it can function well as a singular resource for implementing a mock trial, its lessons are meant to be a foundational framework for approaching trials and the justice system. Teachers are encouraged to adapt this resource and integrate other resources as they see best fit to meet the needs of their students.

Teacher feedback is what enables PLEA to create and improve our learning resources so that they continue to meet the needs of Saskatchewan's classrooms. Feel free to contact us at [plea@plea.org](mailto:plea@plea.org) with any comments and suggestions regarding this or any other of our learning resources.





# Lesson One

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## Trials and the Principles of the Criminal Justice System

### Rationale

This lesson is designed to provide background information on fundamental principles of criminal justice, the purpose of criminal trials, and the roles of court officials.

### Procedure

1. As a class, brainstorm what is known about courts and trials. Portrayals in fiction, the news, and/or personal experience may be some sources to draw upon. This list will be returned to at the lesson's close.
2. As a class, lead group reading of *The Criminal Justice System*.

#### KEY QUESTIONS

- Why must a Judge be impartial?
- Why do Judges and Juries only make their decisions after all the evidence is heard?
- Why is the Accused presumed innocent?
- Why is it important that if an Accused is convicted, Judges have some discretion in what their sentence will be?

Teachers may wish to distribute copies of the *Glossary* to students. It will be useful for this and subsequent readings and activities.

3. To understand the roles of court officials, break students into groups to review *People in the Courtroom*. As a summary, students can play "Who Am I?" to identify each official.
4. Review original brainstorming session as a class, using the following questions:
  - What did you know about courts and trials that was true?
  - Were any misconceptions about courts and trials cleared up?
  - What do you still want to learn about courts and trials?

#### FURTHER EXPLORATION

5. Teachers wishing to build better understandings of the origins and creation of laws may be interested in *The PLEA*, Vol. 33 No. 1, *The Rule of Law*. Find it at [plea.org](http://plea.org).



# The Criminal Justice System

Some behaviours are considered so wrong or harmful that laws must be passed to make such conduct criminal. Murder, robbery, assault, theft, and forgery are just a few examples of crimes. These acts are prohibited by criminal law.

The responsibility for defining crimes belongs to the federal government. This makes criminal law the same across the country. Most criminal offences are found in the *Criminal Code*. However, criminal offences may be found in other federal laws, such as the *Controlled Drugs and Substances Act*.

Provincial governments may also create laws that prohibit certain acts. For example, it is against the law to exceed the posted speed limit on highways. However, provincial offences are not criminal offences. Only the federal government can create a criminal offence.

When a crime is believed to be committed, the police investigate. The police will collect evidence in the hopes of determining if a crime took place and finding a suspect. If it appears that a suspect has committed a crime, charges will be laid. The lawyer for the state, or Crown, will put the evidence before the court so that the truth about the crime may be established. This is usually in the form of a trial.

Once all the evidence has been heard in a trial, a decision is made on whether or not the Accused is guilty of the offence. Trials can be heard by a Judge, or heard by a Judge and Jury.

## ***TRIAL BY JUDGE AND JURY***

When a trial is heard by a Judge and Jury, the Judge will instruct the Jurors about the applicable law. The Jury will examine the facts of the case. If the Jury is convinced that the Accused committed the crime and that the Accused intended to commit the crime, they will be found guilty. The Judge will then determine the punishment for the crime, within the parameters of the law.

## ***TRIAL BY JUDGE***

If a trial is heard by a Judge alone, the Judge has two tasks. First, the Judge determines what law applies to the crime. Second, the Judge decides whether the facts prove the guilt of the Accused. Just like a trial by Jury, to find a person guilty the Judge must be convinced that the Accused committed the crime, and be convinced that the Accused intended to commit the crime. If the person is found guilty, the Judge will also determine the punishment for the crime within the parameters of the law.

## **Trial Rules and Procedures**

While it is important that people who break the law are brought to justice, our society considers it even more important that an innocent person is not wrongfully convicted and punished. Because of this, several basic principles of our justice system help prevent this type of mistake. These principles include:

- the Accused has a right to a fair hearing by a court; and
- the Accused is presumed innocent until proven guilty.

These principles form the basis of many of the rules that protect the rights of the Accused and that ensure justice is served. Some of these rules are outlined below:

**RULE 1.** The Judge and members of the Jury must remain impartial. The Jurors must not make up their minds about the guilt or innocence of the Accused until all the evidence has

# The Criminal Justice System ...continued



been heard and the law has been explained to them by a Judge. The decision must be based on the evidence before them.

**RULE 2.** The Crown has the burden of proof. This means that the Crown is responsible for proving the guilt of the Accused. The Accused does not have to prove anything, and, in fact, does not even have to say anything.

**RULE 3.** The Crown must prove all the elements of the crime beyond a reasonable doubt. This means that the evidence and that the facts establish the guilt of the Accused and do not show any other sensible explanation of the events.

**RULE 4.** The Accused has the right to be represented by a lawyer. The Defence Lawyer will see that the Accused's rights and interests are protected.

**RULE 5.** Rules cover the types of questions which lawyers may ask witnesses and the kinds of answers that witnesses may give:

- *Leading Questions* - A leading question is a question that tells the witness how to answer or puts words in the witness's mouth. For example, "Was it then that you saw the Accused run from the building with the television?" is an improper question. Instead, it is best to let the witness tell their own story by asking general questions such as "What happened next?"

Although a lawyer cannot ask their own witnesses leading questions, leading questions are acceptable when witnesses are being cross-examined by the opposing side's lawyer.

- *Opinions* - Usually, witnesses cannot give their opinions. Instead, they are only asked to tell what they saw. For example:

"He's bonkers!" is an opinion.

"He was wearing a dog costume and barking at the neighbours!" is a fact.

There are two exceptions to this rule. The first exception is if a question is being asked about a general area of knowledge. In this case, witnesses are allowed to give opinions. For example, a witness could be asked to give an opinion about the weather because it is something that almost everyone will have some general knowledge about.

The second exception is if a witness is an expert in their field. As long as the opinions relate to their field of expertise, the witness is allowed to give opinions. For example, a medical expert could give an opinion about the extent of a person's injuries. However, a medical expert could not give opinions about the rules of accounting.

- *Irrelevant and/or Prejudicial* - Generally, only questions that are relevant to the case may be asked. This is especially true if the question could create prejudice against a witness. For example, asking a witness about an ancestor who was a horse thief would be of no relevance to charges of vandalism.
- *Hearsay* - Witnesses can only testify about things that they have direct knowledge of. This means their testimony must be about things that happened to them or things that they saw happen. Witnesses are not allowed to repeat what they heard from somebody else. That is called hearsay evidence. The courts do not accept this kind of evidence because it might be unreliable.



## The Criminal Justice System ...continued

If the lawyer believes that one of these rules about questioning has been broken during a trial, they can object to the Judge and give a reason for the objection. The Judge will then decide whether to disallow the question, or ask that the question be rephrased.

### Purpose and Principles of Sentencing

If an Accused is found guilty, there are several factors that will contribute to their sentence.

The *Criminal Code* sets out the purpose and principles of sentencing. The central purpose of a criminal sentence is to build respect for the law and maintain a just, peaceful and safe society. This purpose is to be satisfied by imposing fair and just sanctions. Under the *Criminal Code* sentences should:

- denounce the criminal conduct
- deter the offender and others
- separate offenders from society when necessary
- assist in rehabilitating the offender
- provide reparation to the victim and the community
- give a sense of responsibility to the offender

The sentence should be proportionate to the degree of responsibility and involvement of the offender. It should also be based on sentences for similar crimes and circumstances from across the country.

Courts will also consider the kind of offence and its seriousness. The *Criminal Code* usually provides a maximum sentence for each offence. For some offences, such as drinking and driving, there are also minimum penalties.

Additionally, courts will consider factors specific to the crime and the offender. For example, the courts will consider the circumstances surrounding the offence, how the crime was carried out, the amount of planning or deliberation involved, whether force, threats or weapons were used, the offender's previous criminal record, if any, their age, family history, substance abuse problems, addiction issues, education and employment history, and the offender's attitude regarding the offence and proceedings.

The *Criminal Code* also specifies aggravating factors a Judge should consider in sentencing. If the offender abused a position of trust or authority in committing the offence, the sentence will be harsher. If the crime was motivated by bias, prejudice or hatred against certain identifiable groups in society, as, for example, in racial crimes, the offender would receive a higher penalty.

# People in the Courtroom



Many people are involved in a trial. This includes officers of the court, such as the Judge and the lawyers, and ordinary people, such as the Jury and many of the witnesses.



## The Judge

The Judge is an impartial person with the important duty to ensure that the trial is fair. They give both sides a chance to be heard and determine if the lawyers are obeying the rules about questioning witnesses.

If the trial is by Jury, the Judge explains to the Jury:

- its task,
- the legal principles and rules which must be used to make a decision, and
- the law that Jurors should apply in the case.

In a Jury trial, the Judge cannot give an opinion about the guilt or innocence of the Accused. However, if the Accused is found guilty, the Judge will determine the sentence for the crime.

If the trial is by Judge alone, the Judge will:

- determine the guilt or innocence of the Accused, and
- determine the sentence if the Accused is found guilty.

The Judge may also offer an opinion about the weight to be given to the evidence and about the credibility of the witnesses.



## Court Clerk

The Court Clerk helps the Judge run the trial in an orderly manner. The Clerk's duties include calling the court to order, reading the charge to the Accused, and swearing in the witnesses.



## Jury

Jurors are regular people from the community. To select the twelve people that will form a Jury, a large pool of people is chosen at random. Lawyers from both sides decide who from this pool will be suitable for the Jury. The Jury's duty is to decide whether or not the evidence proves the guilt of the Accused "beyond a reasonable doubt."



## Crown Counsel

The Crown Counsel is the lawyer that represents the state in a trial. It is the Crown and not the victim who prosecutes the crime because crimes are harmful to everyone in society.

Although the onus is on the Crown to prove the case, their interest is not in obtaining an acquittal or conviction. Instead, the Crown's role is to help the court discover the truth by placing facts about the crime before the court. Presenting these facts allows the court to decide upon the guilt or innocence of the Accused. The Crown must prove all the elements of the offence "beyond a reasonable doubt" for the Accused to be found guilty.



## People in the Courtroom ...continued



### Defence Counsel

The task of Defence Counsel 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.

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.)



### Witnesses

Witnesses are people who were somehow involved in the crime. This can include the victim or those who were at the scene and saw the events happen. Witnesses are questioned by the lawyers and are required to answer truthfully. To ensure that witnesses understand the importance of telling the truth, each must swear an oath on a Bible to tell "the whole truth and nothing but the truth" before testifying. Witnesses who do not wish to swear on a Bible can instead provide an affirmation that they will tell the truth.



### The Accused

The Accused is the person charged with breaking the law. Because the Accused has the right to remain silent, the Crown cannot call him or her to the stand to testify. If the Accused is going to testify they will be called by the Defence Lawyer. However, the Accused may choose to give evidence if they have a defence or information that would help avoid conviction.

If the Accused chooses to testify, the Defence examines the Accused, then the Crown Prosecutor has the right to cross-examine. The Accused must answer all questions that are properly asked.



### Exhibits

Sometimes an object that is important to the trial has to be produced in court. If the charge is theft, for example, the item that is thought to have been stolen will be entered as an exhibit. Witnesses must identify it, tell who it belongs to, and describe what happened to it before and after it was recovered. Once the object has been properly identified, the Clerk, on the direction of the Judge, will label it with an exhibit number to make the item part of the official record of the trial.

# Lesson Two

## Introducing the Trial

### Rationale

This guided trial rehearsal will familiarize students with the formalities of court, building the basis of a trial's procedures and allowing students to better consider their possible role in the mock trial.

### Procedure

1. Explain that trials are serious matters. This means that they must be conducted in orderly ways:
  - Show students the *Indictment*. The *Indictment* contains the charge against the Accused and other information. Explain that the Crown must fill it out and provide copies to the Defence Lawyer and the Court Clerk. Decide upon a crime and fill out a copy as a group for the trial rehearsal.
  - Use the *Jury Trial Outline* to illustrate the basic steps to take place in the mock trial. (The *Trial Script* elaborates on each of these steps.)
2. Project the Court Diagram overhead onto the screen so that the classroom can be arranged into a mock courthouse. If materials and time exists (especially if this is a cross-curricular activity with Arts Education), it may be advantageous to create a full courtroom set.
3. To rehearse the procedures of a mock trial and introduce students to possible roles for a mock trial, read-through the Trial Script as a class role-play:
  - Provide all students with copies of the script.
  - Assign reading roles for a Judge, Clerk, Crown Counsel, Defence Counsel, Accused, Witness, and Jury Foreman.
  - Other students may be assigned to the Jury or to Gallery.
  - Teacher can act as director.
  - Use the *Indictment*, completed in Procedure 1, for this read-through, and have students ad-lib their speaking parts based upon this framework.

The responsibilities for each role will be elaborated upon in Lesson 3.

4. Repeating the rehearsal several times may be helpful to accustom students to procedures and formalities. Rotating roles will also help students experiment with several possible roles for the mock trial.

### FURTHER EXPLORATION

5. Teachers wishing to have their students view court procedures firsthand should check out *Visiting a Courthouse*. Find it at [plea.org](http://plea.org).
6. The Ontario Justice Education Network has a full series of mock trial demonstration videos. Their step-by-step instructions will help with this activity and with students' as they perfect individual roles. Find them at [www.ojen.ca](http://www.ojen.ca).

# Indictment

IN THE COURT OF QUEEN'S BENCH (CRIMINAL, JURY)  
JUDICIAL CENTRE OF \_\_\_\_\_

CANADA  
SASKATCHEWAN

HER MAJESTY THE QUEEN  
-AGAINST-

\_\_\_\_\_

## INDICTMENT

\_\_\_\_\_ of the City of \_\_\_\_\_ in the Province  
of Saskatchewan, stands charged:

that she/he, the said accused \_\_\_\_\_, on or about the \_\_\_\_\_  
(name of accused)

day of \_\_\_\_\_, A.D., 20\_\_, at \_\_\_\_\_, in  
(time of offence)

the Province of Saskatchewan, did steal \_\_\_\_\_, the property of \_\_\_\_\_ of a  
value exceeding five thousand dollars, contrary to Section 322.(1) of the Criminal Code.

Dated at the City of \_\_\_\_\_, in the Province of Saskatchewan, this \_\_\_\_\_ day  
of \_\_\_\_\_, A.D. 20\_\_.

\_\_\_\_\_  
(NAME OF CROWN PROSECUTOR)

Agent for the Attorney General  
Province of Saskatchewan





# Jury Trial Outline

1. OPENING OF THE COURT  
Judge enters.
2. CHARGE AND PLEA  
The charge is read by the court clerk and a plea is entered.
3. OPENING STATEMENTS  
Crown and Defence preview their cases.
4. THE CROWN'S CASE  
Crown calls and examines witnesses.  
Defence cross-examines witnesses.
5. THE DEFENCE'S CASE  
Defence calls and examines witnesses.  
Crown cross-examines witnesses.
6. CLOSING STATEMENTS  
Defence and Crown summarize their cases.
7. JUDGE'S CHARGE TO THE JURY  
Judge instructs Jury.
8. RETURNING THE VERDICT  
After deliberating, the Jury gives the verdict.
9. SENTENCING  
Crown and Defence speak to the sentence.  
Judge gives sentence.



# Courthouse Diagram

**CLERK**



**JUDGE**



**WITNESS**



**JURY BOX**



**DOCK FOR ACCUSED**



**DEFENCE COUNSEL**



**CROWN COUNSEL**



**PUBLIC SEATING AREA**



# Trial Script

## PART ONE: OPENING OF THE COURT

1 - a *Everyone, except the JUDGE, should be in position.*

CLERK: All rise. This court is now in session.  
Madam Justice / Mr. Justice \_\_\_\_\_  
now presiding.

*Everyone stands.*

1 - b *JUDGE enters. CROWN and the DEFENCE COUNSEL bow. JUDGE sits down.*

JUDGE: You may be seated. Are all parties present?

1 - c *CROWN COUNSEL stands and introduces the case and all COUNSEL.*

CROWN COUNSEL: The case of The Queen and \_\_\_\_\_, My Lord/My Lady. I am \_\_\_\_\_ for the Crown. My learned friend \_\_\_\_\_ represents the Accused.

JUDGE: Thank you, Mr./Ms. \_\_\_\_\_.

## PART TWO: CHARGE AND PLEA

2 - a JUDGE: (to CLERK) Please read the charge.  
(to ACCUSED) Please rise and hear the charge.

*ACCUSED, DEFENCE COUNSEL, and CLERK stand.*

2 - b CLERK: \_\_\_\_\_, you are charged that on or about \_\_\_\_\_, you did unlawfully \_\_\_\_\_ thereby committing \_\_\_\_\_. How say you this charge? Do you plead guilty or not guilty?

ACCUSED: Not guilty.

*Everyone sits down.*

# Trial Script...continued

## PART THREE: OPENING STATEMENTS

- 3 - a        JUDGE:            *(to CROWN) Mr./Ms. \_\_\_\_\_, do you wish to make an opening statement?*
- CROWN:            *Yes, My Lord/My Lady. (presents opening statement to JURY)*
- 3 - b        JUDGE:            *(to CROWN) Thank you, Counsel. (to DEFENCE) Mr./Ms. \_\_\_\_\_, do you wish to make an opening statement?*
- DEFENCE:           *Yes, My Lord/My Lady. (presents opening statement to JURY)*

## PART FOUR: THE CROWN'S CASE

- 4 - a        *JUDGE asks CROWN to begin.*
- JUDGE:            *Mr./Ms. \_\_\_\_\_, please proceed.*
- 4 - b        *CROWN COUNSEL, who is starting the questioning, stands and gives the name of WITNESS.*
- CROWN:            *The Crown calls \_\_\_\_\_ to the stand.*
- 4 - c        *WITNESS takes the stand. CLERK gives the WITNESS the book for taking the oath.*
- CLERK:            *Will you state your name to the court, please?*
- WITNESS:           \_\_\_\_\_
- CLERK:            *Do you swear the evidence you shall give this court shall be the truth, the whole truth, and nothing but the truth so help you God?*
- WITNESS:           *I do.*
- 4 - d        *CROWN begins questioning the WITNESS. DEFENCE must listen carefully to the questions and to the evidence given.*
- 4 - e        *Once CROWN is finished questioning WITNESS, they inform JUDGE and turn WITNESS over to DEFENCE for cross-examination.*

# Trial Script...continued

CROWN: (to JUDGE) These are all the questions I have of this witness, My Lord/My Lady.

JUDGE: (to DEFENCE) Do you wish to cross-examine the witness?

4 - f *DEFENCE stands and cross-examines WITNESS, usually just on points of disagreement. DEFENCE tells JUDGE when they are finished with WITNESS. JUDGE gives WITNESS permission to leave the stand.*

DEFENCE: (to JUDGE) Those are all the questions I have of this witness, My Lord/My Lady.

JUDGE: (to WITNESS) Thank you. You may step down.

4 - g *Steps b through f are to be followed for each WITNESS.*

4 - h *When all the WITNESSES for CROWN have been called, CROWN closes his or her case.*

CROWN: That is the case for the Crown, My Lord/My Lady.

4 - i *The JUDGE acknowledges this and asks DEFENCE to start its case.*

JUDGE: (to CROWN) Thank you, Mr./Ms. \_\_\_\_\_.  
(to DEFENCE) the Defence may begin.

## PART FIVE: THE DEFENCE'S CASE

5 - a *DEFENCE now has an opportunity to call witnesses who are helpful to the DEFENCE's case.*

5 - b *The steps followed are exactly the same as for CROWN's WITNESS. DEFENCE stands and gives the name of the WITNESS.*

DEFENCE: The Defence calls \_\_\_\_\_ to the stand.

5 - c *WITNESS takes the stand. CLERK gives WITNESS the book for taking the oath.*

CLERK: Will you state your name to the court, please?

# Trial Script...continued

WITNESS: \_\_\_\_\_

CLERK: Do you swear the evidence you shall give this court shall be the truth, the whole truth, and nothing but the truth so help you God?

WITNESS: I do.

5 - d *DEFENCE begins questioning WITNESS. CROWN must listen carefully to the questions and to the evidence given.*

5 - e *Once DEFENCE is finished questioning WITNESS, they inform JUDGE and turn WITNESS over to CROWN for cross-examination.*

DEFENCE: (to JUDGE) These are all the questions I have of this witness, My Lord/My Lady.

JUDGE: (to CROWN) Do you wish to cross-examine the witness?

5 - f *CROWN stands and cross-examines the witness. CROWN tells JUDGE when they are finished with WITNESS. JUDGE gives WITNESS permission to leave the stand.*

CROWN: (to JUDGE) Those are all the questions I have of this witness, My Lord/My Lady.

JUDGE: (to WITNESS) Thank you. You may step down.

5 - g *Steps b through f are to be followed for each WITNESS.*

5 - h *When all the WITNESSES for DEFENCE have been called, DEFENCE closes their case.*

DEFENCE: That is the case for the Crown, My Lord/My Lady.

JUDGE: Thank you, Mr./Ms. \_\_\_\_\_.

## PART SIX: CLOSING STATEMENTS

6 - a *JUDGE will call short recess (5 - 10 minutes) to allow CROWN and DEFENCE to prepare their summations to the JURY.*

JUDGE: Court will recess for \_\_\_\_ minutes.

# Trial Script...continued

CLERK: All rise. Court will resume in \_\_\_\_ minutes.

*Everyone remains standing until JUDGE leaves the courtroom.*

6 - b *When recess is over, CLERK calls the court to order again using a procedure that is similar to the original opening of court.*

CLERK: All rise. This court is now in session.

*Everyone stands. JUDGE enters.*

JUDGE: You may be seated.

6 - c *JUDGE asks DEFENCE to start.*

JUDGE: If you are ready, Mr./Ms. \_\_\_\_\_, we will begin summations.

DEFENCE: Thank you, My Lord/My Lady. *(presents summation to the JURY)*

JUDGE: *(to DEFENCE)* Thank you, Counsel.  
*(to CROWN)* Please proceed, Mr./Ms. \_\_\_\_\_.

CROWN: Thank you, My Lord/My Lady. *(presents summation to JURY)*

JUDGE: Thank you, Counsel.

## PART SEVEN: CHARGE TO THE JURY

7 - a *JUDGE gives instructions to JURY on its duty. (see For the JUDGE on Page 32). Then, JUDGE asks JURY to go to the JURY room to decide upon a verdict.*

JUDGE: Ladies and gentlemen of the JURY, I am going to ask you to retire to your JURY room now. Please appoint a foreperson from among your members who will deliver your verdict after your deliberations are over, if you reach a verdict.

# Trial Script...continued

7 - b      *The court recesses while the JURY discusses the case.*

JUDGE:            Court will now recess.

CLERK:            All rise. This court stands recessed.

*Everyone rises and remains standing until JUDGE and JURY have left the courtroom.*

## PART EIGHT: RETURNING THE VERDICT

8 - a      *As soon as JURY has reached a verdict, the FOREPERSON tells CLERK who informs JUDGE. Court is reconvened and JURY is called back.*

CLERK:            All rise. This court is now in session.

JUDGE:            (to CLERK) Please call the JURY.

8 - b      *JURY returns and takes their places in the JURY Box. ACCUSED and DEFENCE stand to hear the verdict.*

JUDGE:            Ladies and gentlemen of the JURY, have you reached a verdict?

FOREMAN rises to report the decision.

FOREMAN:        Yes, we have reached a verdict, My Lord/My Lady. We find the Accused guilty/not guilty.

JUDGE:            Thank you, members of the JURY. You are now discharged.

8 - c      *JURY can leave the courtroom or remain to hear JUDGE's sentence if ACCUSED has been found guilty. If JURY found ACCUSED not guilty, proceed to 9 - d.*

## PART NINE: SENTENCING

9 - a      *Before JUDGE pronounces a sentence, they ask both CROWN and DEFENCE to present information about ACCUSED which will help in reaching a fair sentence. JUDGE will consider things such as the character of the ACCUSED, any previous record, letters of reference, and so on.*



# Trial Script...continued

JUDGE: (to DEFENCE) Do you wish to speak to sentence?

DEFENCE: Thank you, My Lord/My Lady. (gives information)

JUDGE: (to DEFENCE) Thank you, Counsel.  
(to CROWN) Do you wish to speak to sentence?

CROWN: Thank you, My Lord/My Lady. (gives information)

JUDGE: (to CROWN) Thank you, Counsel.

9 - b *JUDGE can now call a short recess while they decide upon a sentence for the ACCUSED.*

JUDGE: Court will now recess for \_\_\_\_ minutes.

CLERK: All rise. Court will reconvene in \_\_\_\_ minutes.

*Everyone stands while JUDGE leaves.*

9 - c *JUDGE returns, ready to sentence ACCUSED.*

CLERK: All rise. This court is now in session.

JUDGE: You may be seated.

*ACCUSED and DEFENCE remain standing.*

9 - d JUDGE: \_\_\_\_\_, you have been found guilty/not guilty of \_\_\_\_\_ and I sentence you to \_\_\_\_\_/you are free to go.

9 - e *Court is adjourned.*

JUDGE: This court is adjourned.

CLERK: All rise. Court is adjourned.

*Everyone stands until JUDGE has left courtroom.*



# Lesson Three

## Developing Roles and Preparing for the Trial

### Rationale

Because the mock trial is focussed on theft, this lesson will first introduce students to the law surrounding theft before requiring each student to take responsibility for preparing for their role in the mock trial.

### Procedure

1. Ask students if they have ever had something taken from them, or if they have ever taken something that didn't belong to them.
2. Explain that criminal law divides most thefts into two categories: under \$5000 and over \$5000. Because theft over \$5000 is a more serious crime, it has stricter sentences. Then review *Canada's Criminal Code: What is Theft* with class.

#### KEY QUESTIONS

- Why do you think the law views thefts under \$5000 as a lesser offence?
  - Why do you think Judges have discretion in sentencing, rather than the law prescribing a single universal punishment for all cases of theft?
  - Can you think of scenarios where a prank could be misconstrued as a theft?
3. Select students for the roles to be played in the mock trial. Use the *Role Sheet* as a checklist for roles to be filled, and the *Materials List* to determine which case materials each student will require. Because students usually work better as lawyers when in teams, if there are extra students it is best to give first priority to having multiple lawyers.
  4. Inform students that their *Mock Trial Materials* handouts will provide the basic instructions they will require for their role. Remind class that:
    - Students should not discuss the case with each other, except for the lawyers who can discuss it with their witnesses.
    - The Jury should know nothing about the case before the trial.
  5. It may be advantageous to have the class review the *Task Outlines* for each role. This will help give the class a broader understanding of the court process. If this is undertaken, be sure to only share information from the *For the...* handouts and not the witness profile sheets.
  6. To help students plan their roles, teachers may wish to distribute or display the *Time Chart* so that students have an understanding of approximately how much time should be used for each part of the mock trial.

#### FURTHER EXPLORATION

7. Teachers may wish to have students use the *For the...* handouts as a basis to research the roles and responsibilities of courtroom personnel in-depth as part of the character preparation process. Assignments could include written reports and/or interviews.



# Canada's Criminal Code: What is Theft?

How the *Criminal Code* defines theft:

Section 322

- (1) Every one commits theft who fraudulently and without colour of right takes ... anything, whether animate or inanimate, with intent
- (a) to deprive, temporarily or absolutely, the owner of ... his property or interest in it;

The punishment for theft over \$5000:

Section 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 value of the property stolen ... exceeds five thousand dollars

## Explaining the Law

What does “fraudulently or without colour of right” mean?

“Colour of right” is a legal concept in many Commonwealth countries. To act without colour of right means that a person who took the object knew that they had no right to remove it.

What must be proven?

To convict someone of theft over \$5000, the Crown must prove beyond a reasonable doubt four things:

- an object has been taken
- the value of the object is greater than \$5000
- the person who took it knew they did not own it
- they intended to take the object and keep it from the owner, even if just for a short time

What is the possible punishment?

The phrase “liable to imprisonment for a term not exceeding ten years” indicates that ten years in prison is the maximum sentence that the Accused can receive if the verdict is guilty. Because there is no minimum sentence, the Judge is free to choose any sentence that they decide is appropriate for the Accused up to ten years in prison. Generally speaking, maximum sentences are reserved for the worst offenders and the worse-case scenarios.










## What about Case Law?

Case law is the collection of previous court decisions. Together, these decisions form a body of law that Judges can consult to decide a case. Case law is often consulted because written statutes such as the *Criminal Code* cannot account for every possible situation surrounding a crime. It is these previous court judgements that help Judges interpret the law and create precedents to help guide future court judgements.

With theft, some Accused have argued that their actions were merely a prank and that there was no intention to commit theft. If the Accused lacks intent, they cannot be convicted. However, if the Accused intended to steal the item, even as a prank, they may be convicted. However, the fact that it was part of a prank may be relevant at the time of sentencing.




# Role Sheet



	Role	Number of Students	Notes
	Judge	1-2	Because a Judge is essential for a trial, it may be a good idea to select an alternate Judge in case one Judge is absent. The Judge should be confident, thoughtful, and able to effectively express views.
	Crown Prosecutor	2-3	The roles of lawyers require the most work. Both Crown and Defence teams must meet their respective witnesses in the preparation stage to make sure they have the same understanding of the evidence.
	Defence Counsel	2-3	
	Court Clerk	1-2	The Court Clerk is important in running the trial. It may be a good idea to select an alternate in case the other Court Clerk is absent. The Court Clerk needs a loud speaking voice.
	Mark Wyler - The Accused (Defence Witness)	1	A profile will be given for each of the witnesses. Details are only a basic frame. Each role requires students to consider and build their character. Students may fill in details as they see fit so that they can become the person they play.
	Dana Schroeder - The Complainant (Crown Witness)	1	
	Susan MacKenzie - Investigating Officer (Crown Witness)	1	
	Norman Greene - Schroeder's Neighbour (Crown Witness)	1	
	Brad Pelltier - Wyler's Roommate (Defence Witness)	1	



## Role Sheet ...continued

Role	Number of Students	Notes
 Jury	12	The size of the Jury is flexible. For large classes, consider having two Juries so that they can compare verdicts and reasons for the decisions.
 Journalist (Optional)	1	Journalists observe and report on the trial.
 Courtroom Artist (Optional)	1-2	Because cameras are not usually allowed in courtrooms, an artist can sketch the scenes of the trial.

# Materials List



Role	Materials
Judge	<ul style="list-style-type: none"> <li>• The Criminal Justice System (p. 4)</li> <li>• Trial Script (p. 13)</li> <li>• Case Outline</li> <li>• Canada's Criminal Code: What is Theft? (p. 22)</li> </ul>
Crown Prosecutor	<ul style="list-style-type: none"> <li>• Trial Script (p. 13)</li> <li>• Case Outline</li> <li>• Indictment (four copies)</li> <li>• Canada's Criminal Code: What is Theft? (p. 22)</li> <li>• Witness Fact Sheet: Dana Schroeder</li> <li>• Witness Fact Sheet: Norman Greene</li> <li>• Witness Fact Sheet: Officer Susan MacKenzie</li> </ul>
Defence Lawyer	<ul style="list-style-type: none"> <li>• Trial Script (p. 13)</li> <li>• Case Outline</li> <li>• Canada's Criminal Code: What is Theft? (p. 22)</li> <li>• Witness Fact Sheet: Mark Wyler</li> <li>• Witness Fact Sheet: Brad Pelltier</li> <li>• Witness Fact Sheet: Norman Greene</li> <li>• Witness Fact Sheet: Officer Susan MacKenzie</li> </ul>
Court Clerk	<ul style="list-style-type: none"> <li>• Trial Script (p. 13)</li> </ul>
Jury Members	<ul style="list-style-type: none"> <li>• Trial Script (p. 13)</li> </ul>
Witnesses	<ul style="list-style-type: none"> <li>• Trial Script (p. 13)</li> <li>• Witness Fact Sheet (for each particular witness)</li> </ul>



# Time Chart

The following is a time estimation for the trial. These are suggestions: time can be adjusted to meet various circumstances.

1. Court opening, Charge, and Plea	3 minutes
2. Opening Statements	
• Crown	3 minutes
• Defence	3 minutes
3. Crown's Case	
• Direct Examination by the Crown	10-15 minutes
• Cross-Examination by the Defence	5 - 7 minutes
4. Defence's Case	
• Direct Examination by the Defence	10 - 15 minutes
• Cross-Examination by the Crown	5 - 7 minutes
5. Summation	
• Defence	3 minutes
• Crown	3 minutes
6. Charge to the Jury	5 minutes
7. Jury Deliberations	10-15 minutes
8. Returning the Verdict	2 minutes
9. Speaking to the Sentence (if necessary)	
• Defence	3 minutes
• Crown	3 minutes
10. Sentencing (if necessary)	2 minutes
<b>TOTAL TIME</b>	<b>60-89 minutes</b>





## The Witnesses

Mark Wyler .....	The Accused
Susan MacKenzie.....	Investigating Officer
Dana Schroeder .....	The Complainant
Norman Greene.....	Schroeder's Neighbour
Brad Peltier .....	Wyler's Roommate

## The Crown's Case

The Crown alleges that Mark Wyler committed theft over \$5000 when he entered through the back door of Dana Schroeder's house and took a state-of-the-art home theatre system belonging to Dana.

The Crown will call three witnesses to give evidence: Susan Mackenzie, the police officer who arrived at the scene; Norman Greene, Schroeder's neighbour; and Dana Schroeder, the complainant.

Officer MacKenzie will testify that on June 27 she was called to investigate an alleged theft at the home of Dana Schroeder. She will attest that in one corner of the living room there was an empty wooden shelving unit and that on the shelves were three rectangular outlines surrounded by dust. Traced in the dust were the initials "M.W." Officer MacKenzie was later called to Wyler's house where Wyler and Schroeder were present. When MacKenzie arrived, Wyler and Schroeder were arguing. Schroeder told the police officer that the home theatre devices sitting in the corner of the room were hers. Wyler admitted at the time that this was true. Officer MacKenzie then arrested Wyler and informed him of his rights.

Norman Greene, a neighbour of Dana Schroeder's, will swear that at approximately 12:30 am on June 22, he saw a person matching the description of Mark Wyler leave Schroeder's house, rolling a dolly loaded with large objects. He rolled the dolly down the sidewalk and up a ramp onto a half-ton truck, unloaded the objects, then drove away.

Dana Schroeder will attest that she arrived home at about 10:00 am on June 27 from a holiday in Montreal. Upon entering her living room, she found her home theatre system missing. Schroeder immediately called the police who sent an officer to investigate. Later that day, she received a phone call from Mark Wyler, a friend of hers, inviting her for dinner. At Wyler's house, Schroeder became very angry with Wyler and telephoned the police. Schroeder will testify that although she was at first upset with Wyler, she later believed that Wyler could have intended the theft as joke. Schroeder will also swear that Wyler often warned her that the locks on her house were not secure and that considering the large number of people who came to her parties, often unknown to Schroeder, her expensive electronics were not safe.

## The Defence's Case

The Defence will call two witnesses: Mark Wyler, the Accused; and Brad Peltier, Wyler's roommate.

The Defence will concede that Mark Wyler took Schroeder's equipment, but as a joke and to prove to his friend, Dana Schroeder, that her house was not secure.

Peltier will testify that he had discussed with Wyler his plans to take Schroeder's home theatre while she was away on holidays. Peltier had cautioned Wyler that Dana Schroeder would not take it as a joke.



## Case Outline ...continued

Wyler will testify that he entered Schroeder's house by slipping a credit card through the latch of the back door and took Schroeder's home theatre system, but meant it only as a joke and to teach Schroeder a lesson. Wyler will also testify that he intended to invite Schroeder to his house that day after he took her equipment to let her discover her missing things. Wyler will also attest that he phoned her the day of her return from her holidays and invited Schroeder for supper. When she arrived for supper, Wyler tried to explain the joke, but Schroeder, who was very upset, called the police.

In summary, the Defence will allege that Wyler took Schroeder's home theatre system as a prank to show Schroeder that the locks on her house were not secure, and he had not intended to commit theft.

## Witness Profile: Officer Susan MacKenzie



Susan MacKenzie has been with the police force for five years. At 10:27am on June 27, she was called to investigate a theft at 446 Centre Street. She was invited into the house by Dana Schroeder who was visibly upset.

Schroeder led the officer into the living room and showed her an empty shelf unit in the corner. The complainant said that her home theatre system was missing. The officer asked her for the make and year of each piece of equipment. The television was a large-screen Panaphonics model, the receiver was a high-end Sorny model, and the speaker bar was a high-output Magnetbox model. All were purchased this year. Schroeder said that she had been away for a week and had just returned that morning to discover her things were missing.

Officer MacKenzie noticed that there were three bare rectangles surrounded by dust on the shelf. Traced in the dust were the initials "M.W."

At approximately 6:30pm on the same day, Officer MacKenzie attended at 35 Railway Avenue to further investigate the reported theft. The officer could hear raised voices coming from within the house while approaching the front door. Dana Schroeder opened the door for Officer MacKenzie while continuing to argue with a man standing in the living room. Schroeder told the officer that it was the man in the living room, Mark Wyler, who had stolen her equipment which was sitting in the corner. The equipment was the same models as described earlier by Schroeder. Wyler said to the officer "I took her stuff for her own good." It was at this point that MacKenzie arrested Wyler for theft over \$5000 and informed him of his rights.



## Witness Profile: Dana Schroeder

Dana Schroeder is a twenty-five year old engineer who lives by herself in her own house at 446 Centre Street.

Schroeder is a regular customer at The Espresso, a neighbourhood coffee shop where Mark Wyler works. After closing time she often invites everyone at The Espresso to her house for a party. Mark Wyler, with whom Schroeder is well-acquainted, has often commented that he thinks people are just using her so they can party at her expense. Too many strangers come and go, and Schroeder's possessions could easily be stolen. Schroeder knows that Wyler really likes her home theatre and therefore thinks he is more concerned about the home theatre than her own well-being, so she doesn't take Wyler's opinions about her house too seriously.

On June 27 at around 10:00am, she arrived home after spending a week's holiday visiting her sister in Montreal. She went into the living room to turn on the television and discovered that her home theatre system was gone. She immediately phoned the police who arrived shortly afterward. She was quite upset because she didn't have any insurance.

About 2:00pm, Schroeder received a phone call from her friend, Mark Wyler, and she told him what happened. He invited her to his place for supper, saying she needed to get out of the house.

Shortly after she arrived at Wyler's house, Schroeder discovered her equipment. She became very angry with Wyler who tried to pass it off as a joke. She accused him of being a thief and called the police who came and arrested Wyler. Schroeder, after having cooled off, recognized that Wyler may have intended the whole thing as a joke.

## Witness Profile: Norman Greene



Norman Greene, who lives directly across the street from Dana Schroeder, had just turned off his TV at approximately 12:30am on June 22 when he noticed Mark Wyler leave Schroeder's house wheeling a dolly loaded with large objects. Wyler rolled the dolly up a ramp onto a half-ton truck, unloaded the objects, and drove away. At the time, Greene did not call the police because he had seen Wyler at Dana Schroeder's place many times before and had been introduced to him once. Besides, people were always coming and going from Schroeder's place at all hours of the day and night.



## Witness Profile: Brad Peltier

Brad Peltier is a twenty-one year-old taxi driver who lives at 35 Railway Street. He shares the house with Mark Wyler. They have been friends since both were ten years old.

Peltier and Wyler often attend parties at Dana Schroeder's place, which tend to get a bit wild. Frequently, patrons of The Espresso end up at Schroeder's after closing time.

On June 17, while Peltier and Wyler were discussing Schroeder's most recent party, Wyler told Peltier that Schroeder was foolish not to have deadbolts on her doors and locks on her windows. Wyler said that Schroeder's home theatre system could easily be stolen by someone who slipped a credit card in the back door. He then began devising a plan to take Schroeder's home theatre to prove that it could be done. Wyler said he would take advantage of the fact that Schroeder would be gone for a week. Peltier cautioned him that his plan might look like a theft, but Wyler said "I'd do anything for a home theatre system like that."

## Witness Profile: Mark Wyler



Mark Wyler, twenty-one, is a barista at The Espresso where Dana Schroeder is a regular customer. Wyler, along with several people who work at The Espresso and many of the customers usually go to Schroeder's parties. Dozens and dozens of people are often jammed into Schroeder's house on a Saturday night. Wyler, who has a keen interest in electronic equipment, has openly admired Dana Schroeder's state-of-the-art home theatre system, and had indicated to her that if she ever wanted to get rid of it, he would take it off her hands.

Wyler is concerned that Schroeder is practically inviting someone to steal her home theatre system. The locks on her back door can easily be opened with a credit card. There are no locks on the windows. Considering the large number of people who pass through the house and who are able to see the expensive equipment, Wyler believes that the home theatre isn't safe. He has told Schroeder this often, but she doesn't agree with him.

On June 17, while Wyler and Pelltier were discussing Schroeder's most recent party, Wyler told Pelltier that Schroeder was foolish not to have deadbolts on her doors and locks on her windows. Wyler said that Schroeder's home theatre could easily be stolen by someone who slipped a credit card in the back door. He then began devising a plan to take Schroeder's home theatre to prove that it could be done. Wyler said that he would take advantage of the fact that Schroeder would be gone for a week. Pelltier cautioned him that his plan might look like theft, but Wyler said he would take that chance for such a good home theatre.



## 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*.





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.



# Lesson Four

## Conducting the Trial

### Rationale

This lesson is the culmination of the preparation set out in Lesson Three. It will allow students and invited members of the community to better understand court processes through the experience of a mock trial.

### Procedure

1. After students have adequately considered and prepared for their roles and the set and costumes have been prepared, the mock trial can be performed. For performing the mock trial, consider designating a student—perhaps the Court Clerk—to act as a timekeeper.
2. Immediately prior to the commencement of the mock trial, people should be assembled as follows:
  - visitors should be assembled in the gallery
  - witnesses should be seated in the gallery until called to the stand
  - lawyers should be seated at their tables
3. To begin the trial:
  - members of the Jury should enter and take their places in the Jury Box
  - the Accused should be escorted to the Dock, where they will remain at all times unless they are asked to the stand to testify (a student may be designated as a Provost Officer who will escort the Accused to the Dock)
  - the trial may then begin as outlined in the *Trial Script*



# Lesson Five

## Debriefing

### Rational

Students will critically consider their experiences and accomplishments in order to better understand the justice system.

### Procedures

1. As a class, review each student's experience.

#### KEY QUESTIONS:

- What were the main responsibilities of your role?
- How is that role important to a fair trial?
- How did it feel to play your role?

2. Review the specifics of the case.

#### KEY QUESTIONS:

- What were the elements of the crime that had to be proven?
- How did the Crown set about proving each element?
- What did the lawyers ask the Accused and witnesses?
  - Why did they ask these questions?
  - Should other questions have been asked?
  - Should some questions not have been asked?
- Did you believe the witnesses? The Accused?
- Did each side effectively sum up the case for the Jury?
  - What was the main point each side made?
  - Would you have summarized the case differently?
- What was the verdict? Do you believe the correct decision was made?
- What did the Judge decide for a sentence? Was it fair?

3. Discuss with students that the idea of "winner" and "loser" is not necessarily clear-cut, even in a court case where a verdict is rendered.

#### KEY QUESTIONS:

- A great defence may not save an Accused who has clearly broken the law. Does a conviction then necessarily mean the Defence Lawyers are "losers"?
- A good attempt at prosecution may not convict an Accused if the Prosecution's witnesses are unbelievable. Does this necessarily mean the Crown Prosecutors are "losers"?
- How does society win when justice is served?



# Glossary

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Accused	The person who is charged with breaking a criminal law and is brought before the court to be tried.
Attest	To declare something.
Beyond a Reasonable Doubt	The facts presented in court must convince the Jury of the Accused's guilt, and the evidence must not show any other sensible explanation of the events.
Burden of Proof	The responsibility for proving all the facts of the case. In a criminal trial, the Crown has the burden of proof.
Charge	A statement of the offence which the Accused is said to have committed.
Charge to the Jury	Instructions given by the Judge to the Jury at the close of a case. The Judge explains the law which applies to the offence and what the Jury's task is.
Complainant	A person who claims that they have been wronged.
Convicted	Found guilty and sentenced by the Judge. A convicted person will have a criminal record.
Counsel	A lawyer representing one of the parties at trial.
Cross-Examination	see Examination
Crown	The state or government. The Crown Counsel (sometimes called Crown Prosecutor) is the lawyer who represents our society at the trial.
Defence	A defence is the Accused's answer to a charge.
Defence Counsel	Defence counsel represents the accused person and ensures that their rights and interests are protected.
Deliberations	Discussion of the facts of the case by the Jury so that a verdict may be reached. The Jurors deliberate by themselves in the Jury Room.
Direct Examination	see Examination
Evidence	The facts about the crime which the witnesses tell the court, and any objects that support their statements (such as the item that was stolen if the charge was theft.) The objects are introduced to the court under the name "exhibits."
Examination	The questioning of a witness in court by counsel. Direct Examination occurs when the lawyer who calls the witness to the stand asks questions. Cross- Examination is the questioning of the witness by the lawyer for the other side.

Exhibit	An object related to the crime which is brought before the court as evidence.
Hearsay	This occurs when a witness repeats in court what someone else has said instead of telling what they personally saw or experienced. This type of testimony is not permitted.
Impartial	Showing no favour to either side. For the Jurors, this means not making up their minds about the guilt or innocence of the Accused until all the evidence has been presented.
<i>Indictable Offence</i>	The most serious kinds of acts are indictable offences which usually have higher maximum sentences than summary offences. Generally, a person accused of an indictable offence may choose to have a Jury.
<i>Indictment</i>	The official document which the Crown uses to begin the trial process. It states the charge against the Accused.
Juror	One of the twelve people with the responsibility of deciding the question of the Accused's guilt or innocence.
Leading Question	A question which tells or suggests the answer that the witness should give. This type of question is not allowed during the direct examination of a witness. An example of a leading question is "The car was red, wasn't it?" Instead, counsel should ask "What colour was the car?"
Oath	A promise to tell the truth in court which is made by a witness when they take the stand.
Objection	A request by a lawyer for the Judge to decide whether or not another counsel broke one of the rules about questioning. (Also see Overruled and Sustained.)
Overruled	When one counsel believes the opposing counsel has broken the rules, they raise an objection to the Judge. If the Judge thinks the rule has not been broken, the Judge will say to the lawyer who raised the objection that "Objection overruled" and tells the opposing counsel to continue.
Plea	The Accused's answer to the reading of the charge. This answer will be "guilty" or "not guilty."
Prosecute	To bring an accused person to trial on a charge.
Provost Officer	Special officer who is responsible for escorting the Accused in and out of the courtroom.
Sentence	The order made by the Judge if the Accused is found guilty, stating what is to happen to them.
Straw Vote	Unofficial vote that lets the group know what each member is thinking at a certain point in time. It is useful to facilitate discussion in order to reach a unanimous decision.



Summary Offence	Less serious types of offences fall into this category. Unless the law says otherwise, the maximum sentence for a summary offence is a fine of \$2000 and/or imprisonment for six months.
Summation	A closing argument to the Jury made by the Crown and the Defence counsel. Each side outlines the evidence that was presented and stresses how it proves or does not prove the case against the Accused.
Sustained	When one counsel believes the opposing counsel has broken the rules, they raise an objection to the Judge. If the Judge thinks the rule has been broken, they say to the lawyer who raised the objection "Objection sustained" and tell the opposing counsel to stop, rephrase their question, or move on.
Testimony	The evidence given by a witness in court under oath.
Witness	A person who is called before the court to give evidence because they have information related to the crime.

# Further Resources

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## **Mock Trial Kits**

Several of PLEA's counterpart organizations across Canada have mock trial kits. The Justice Education Society of British Columbia and the Ontario Justice Education Network have several mock trials available at no charge. To learn more, check out their websites at [www.justiceeducation.ca](http://www.justiceeducation.ca) and [www.ojen.ca](http://www.ojen.ca).

## **Mock Trial Demonstration Videos**

The Ontario Justice Education Network has a full series of mock trial demonstration videos. Find them at [www.ojen.ca](http://www.ojen.ca)

## **Online Discussions**

*Perjuries* is an international online discussion community for mock trials. Check them out at [www.perjuries.com](http://www.perjuries.com).

## **Information About the Law**

PLEA offers a full library of plain-language information about the law that can help along most mock trials. Use the search tool at [plea.org](http://plea.org).

## **Guest Speakers**

PLEA can help to arrange a guest speaker from the legal community to help explain trials. Head to [plea.org](http://plea.org) and click on *Book a Speaker*.

## **McKercher Cup**

The Canadian Bar Association (Saskatchewan Branch) holds an annual mock trial tournament as part of Law Day celebrations. Learn more at [www.cbask.org](http://www.cbask.org).



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