

# CIVIL LAW MOCK TRIAL: OPOLSKY V. JASWAL AND PASHA



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For each OJEN Civil Law Mock Trial, there are three packages:

- » OJEN Civil Law Mock Trial **Scenario**
- » OJEN Civil Law Mock Trial **Role Preparation Package**
- » OJEN Civil Law Mock Trial **Justice Sector Volunteer Package**

Youth need the **Scenario** and **Role Preparation** packages.

Justice sector volunteers/teachers/organizers need all three packages.

# CIVIL LAW MOCK TRIAL: OPOLSKY V. JASWAL AND PASHA



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## SCENARIO:

### ***OPOLSKY v. JASWAL AND PASHA***

- Defamation
- Facebook

For each OJEN Civil Law Mock Trial, there are three packages:

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PARTICIPANTS

## LIST OF PARTICIPANTS

1. **Bruce Opolsky** (Plaintiff)
2. **Tahiya Jaswal** (Defendant)
3. **Jordan Pasha** (Defendant)
4. **Lani Chu** (Witness)
5. **Lawyers for the Plaintiff** (4)
6. **Lawyers for the Defendants** (4)
7. **Judge** (can be played by a student, a teacher, a judge, or a lawyer)
8. **Court Services Officer** (keeps order in the court) (*optional*)
9. **Court Clerk** (assists the judge) (*optional*)
10. **Jury Members** (10) (*optional*)
11. **The Press** (2, report on the trial) (*optional*)
12. **Court Artists** (2, sketch what happens at trial) (*optional*)

## WHAT HAPPENED?

Bruce Opolsky is a wrestler for the Burdett Lake High School wrestling team. He is not the best on his team, but has worked hard and recently won the “Most Improved Player Award.” On April 23, 20\*\* Bruce applied to Lani Chu, the Co-Coordinator of Graykes Overnight Camp, for a job as a camp counsellor at their summer sports camp.

### WHAT HAPPENED?

Bruce Nicholas is in the same year as Bruce Opolsky. He is a member of the football team at Burdett Lake High.

On May 12, 20\*\* a group of students, led by Tahiya Jaswal, created a Facebook group for their school newspaper, the *Burdett Lake Bugle*. One of the discussion threads on the group’s site was called “Bruce is a Cheater.”

In the initial post, Tahiya Jaswal, the editor of the newspaper, wrote an ‘exposé’ about “Bruce.” In it she wrote:

“Bruce is a cheater. He takes the easy way out of everything. He paid Kiran to finish his English report and he cheated during his Chemistry final. I’m sure he doesn’t come by anything honestly. He doesn’t even know how to work – I bet he’s on steroids.”

After Tahiya’s post, a number of other students commented as well. Jordan Pasha wrote:

“I totally agree. He’s cheated off my work in class. The ‘roids probably make his tackles and flips more forceful but his brain cells useless!”

The newspaper’s group is available to all students in the Burdett Lake High School Facebook network. The “Bruce is a Cheater” discussion thread came up on the newsfeed for all members of Facebook from Burdett Lake High School.

Burdett Lake is a small high school and most students know both Bruces. Last year Bruce Nicholas was the Prom King and Bruce Opolsky placed second at OFSAA for wrestling. Both Bruces are registered in grade twelve chemistry this year.

The wrestling coach heard about the Facebook posts and made Bruce Opolsky take a urine analysis test. He was benched while the coach waited for the results. In addition, Lani Chu heard about the Facebook posting through her daughter, a student at Burdett Lake. Based on the posting, Lani denied Bruce Opolsky the summer camp counsellor job because she didn’t feel that he was a trustworthy candidate.



After these events (and a clean bill of health from the wrestling coach), Bruce Opolsky sued Tahiya Jaswal and Jordan Pasha for defamation. In his lawsuit, Bruce Opolsky asked for the following in damages:

- » \$2,500 for lost wages as a camp counsellor
- » \$5,000 for general damages

WHAT  
HAPPENED?

## THE LAW

### WHAT IS DEFAMATION?

Defamation or defaming another person can occur when someone makes an untrue statement about someone else that harms that person's reputation in the community. When the statement is written, it is referred to as libel. A spoken statement is called slander.

For an untrue statement to be libel or libelous, it must meet three criteria:

1. it must be published
2. it must be about the plaintiff
3. it must have caused harm to lower the plaintiff's reputation in the community

### DEFENCES TO A CLAIM OF DEFAMATION

If the plaintiff has established these three criteria, the person who published the statement can provide a defence to defamation. In Canada there are three common defences to defamation:

**Truth:** If the defendant can prove that the statement is true, then the harm to the reputation is related to the plaintiff's own actions, not the publishing of the statement. For example, if a newspaper reports that a business owner participated in insider trading, and can show that the person was found guilty of insider trading, then the newspaper article didn't create the harm – the insider trading created the harm.

**Fair Comment:** A person may have a defence to defamation if the statement is an issue of public importance or debate. If the person has an honest belief in the statement and is participating in the debate on a matter of public interest, he or she might not be responsible for any harm caused.

**Privilege:** Sometimes someone will make a statement in court or in the legislature that hurts someone's reputation. However, statements made in these environments are said to be privileged. This means that someone cannot be sued for harm created by a statement made in these settings.



## BRUCE OPOLSKY, PLAINTIFF

### Your background:

- Your name is Bruce Opolsky. You are 16 years old and a student at Burdett Lake High School. You are a member of your school’s wrestling team.
- You won the “Most Improved Player Award” on your team and placed second at OFSAA for wrestling.
- You have been wrestling ever since you started high school and you think you might have a future in wrestling.
- You have never taken steroids or any other illegal substance.
- You were well-liked at your school before the Facebook group thread was created.
- You are taking grade twelve chemistry and you have never cheated on any work in class.

### Your version of what happened:

- On April 23, 20\*\*, you applied to Graykes Overnight Camp at their summer sports camp for a job as camp counsellor.
- You noticed one day that there was a Facebook group discussion thread called “Bruce is a Cheater” and that it said “Bruce” was taking steroids and cheating off others in class.
- You felt embarrassed and angry about the things said about you on the thread.
- A few days after the Facebook group thread was created, people at school started to laugh at you and called you a cheater. Students do not want to work with you because they think you will cheat off of them.

### HOW CAN I PREPARE TO BE A GOOD WITNESS DURING TRIAL?

- » Learn your facts by heart.
- » You will be sworn in during the trial and need to spell your character’s full name.
- » Stick to the script. Don’t make up facts because this is unfair to the student lawyers.
- » Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- » If a lawyer asks a question about something that isn’t in your package, you can say you don’t know the answer.
- » Speak with the lawyers representing your side ahead of time, and get into character when you take the stand.

WITNESS INFORMATION



## BRUCE OPOLSKY, PLAINTIFF

- Your wrestling coach asked you to take a urine test and you were benched while the coach waited for the results.
- The other players on your wrestling team treated you differently and seemed to lose respect for you as a result of everything that had happened.
- Lani Chu, the Co-Coordinator of Graykes, denied you your summer job because she didn't feel that you were a trustworthy candidate.
- You have not applied for any other summer jobs and really wanted to work at the summer sports camp. You are not sure how you'll earn money this summer.
- You do not know why Tahiya Jaswal said you were a cheater. You have never lied about her or hurt her in any way.

### QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:

How do you feel about people saying that you take steroids?

Why did you want to work as a camp counselor for Grakytes Overnight Camp?

How did you feel about being benched and having to take a urine test?

How has this experience impacted you?





## TAHIYA JASWAL, DEFENDANT

### Your background:

- Your name is Tahiya Jaswal. You are 16 years old and a student at Burdett Lake High School.
- You are the editor of the school newspaper, the *Burdett Lake Bugle*.
- You enjoy writing interesting articles and hope to have a career in journalism one day.

### Your version of what happened:

- One day at school, your friend Kiran told you that Bruce Nicholas paid her \$25 to finish his English report. You also heard a rumor that Bruce cheated on his Chemistry final exam.
- You also know that Bruce is member of the Burdett Lake High School football team.
- You believe cheating is wrong and wanted everyone to know that Bruce cheated.
- You created a discussion thread on the school newspaper's Facebook group entitled "Bruce is a Cheater." You wrote an exposé on Bruce which stated that he cheats in school and that he is dishonest. You also said that you bet he was on steroids.
- You did not know that there were two students named Bruce in the school. You did not specify Bruce's last name in the title of the group or in your posting.
- In your message, you were referring to Bruce Nicholas, not Bruce Opolsky.
- After your exposé, a number of students made comments on your thread.

### HOW CAN I PREPARE TO BE A GOOD WITNESS DURING TRIAL?

- » Learn your facts by heart.
- » You will be sworn in during the trial and need to spell your character's full name.
- » Stick to the script. Don't make up facts because this is unfair to the student lawyers.
- » Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- » If a lawyer asks a question about something that isn't in your package, you can say you don't know the answer.
- » Speak with the lawyers representing your side ahead of time, and get into character when you take the stand.

WITNESS  
INFORMATION



**TAHIYA JASWAL, DEFENDANT**

**QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:**

Why did you want to write an exposé about Bruce?

Why didn't you include a last name?

What effects do you think your article had on Bruce Opolsky?

WITNESS  
INFORMATION



## JORDAN PASHA, DEFENDANT

### Your background:

- Your name is Jordan Pasha. You are 16 years old and a student at Burdett Lake High School.
- You are in the same grade twelve Chemistry class as both Bruce Opolsky and Bruce Nicholas.
- You do very well in school and do not like people cheating off of you.
- You enjoy reading the school newspaper, the *Burdett Lake Bugle*.

### Your version of what happened:

- When you read the Facebook discussion thread “Bruce is a Cheater”, you assumed that it was referring to Bruce Nicholas because he cheated off of you during the final Chemistry exam.
- A day after you saw the posting by Tahiya Jaswal, you posted a comment on the same thread saying that you agree that Bruce is a cheater because he cheated off of you on your Chemistry exam. You also wrote that his brain cells were useless.
- When you wrote that Bruce cheated off of you, you were talking about Bruce Nicholas.
- Bruce Opolsky has never cheated off of your work.

### HOW CAN I PREPARE TO BE A GOOD WITNESS DURING TRIAL?

- » Learn your facts by heart.
- » You will be sworn in during the trial and need to spell your character’s full name.
- » Stick to the script. Don’t make up facts because this is unfair to the student lawyers.
- » Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- » If a lawyer asks a question about something that isn’t in your package, you can say you don’t know the answer.
- » Speak with the lawyers representing your side ahead of time, and get into character when you take the stand.

### QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:

Why did you write that Bruce cheated off of you in class?

Which Bruce were you talking about?

Did you know which Bruce the thread was talking about?

WITNESS INFORMATION



## LANI CHU, WITNESS

### Your background:

- Your name is Lani Chu. You are 39 years old.
- You have worked as Co-ordinator for Graykes Overnight Camp for 3 years and are responsible for hiring counsellors at the camp.
- You usually hire students who are responsible and enjoy sports because the camp has many sport activities.
- You have a 15 year old daughter who goes to Burdett Lake High School.

### Your version of what happened:

- On April 23, 20\*\*, you received a resumé from Bruce Opolsky seeking a position as a camp counsellor at your summer sports camp.
- You were originally going to hire Opolsky because he was very interested in the job and you believed that he was responsible and enjoyed sports.
- Your daughter told you one night about a Facebook discussion thread that stated Bruce was taking steroids and that he cheated on his work.
- After your daughter told you about the Facebook discussion, you changed your mind about Opolsky because you did not believe that he was a trustworthy candidate. You gave the job to someone else.
- You have concerns that Bruce may have taken steroids and is dishonest and don't think he would be a good candidate for the position if these are true.

### HOW CAN I PREPARE TO BE A GOOD WITNESS DURING TRIAL?

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- » Stick to the script. Don't make up facts because this is unfair to the student lawyers.
- » Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- » If a lawyer asks a question about something that isn't in your package, you can say you don't know the answer.
- » Speak with the lawyers representing your side ahead of time, and get into character when you take the stand.



## LANI CHU, WITNESS

### QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:

What qualities do you look for in a counselor for summer camp?

How did your opinion of Bruce Opolsky change after you heard about the thread?

WITNESS  
INFORMATION



Court File No: 09-AB-876543 CD2

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**BRUCE OPOLSKY**

Plaintiff

- and -

**TAHIYA JASWAL and JORDAN PASHA**

Defendants

**STATEMENT OF CLAIM**

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

STATEMENT  
OF CLAIM



[Empty box]

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

[Empty box]

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Dated: March 15, 20XX

Issued by: \_\_\_\_\_

[Empty box]

Local Registrar  
10th Floor  
500 Legal Avenue  
Anytown, Ontario  
A1A 2B2

[Empty box]

TO:  
TAHIYA JASWAL  
111 Main Street  
Anytown, Ontario  
A1A 2B2

[Empty box]

AND TO:  
JORDAN PASHA  
403 Centre Road  
Anytown, Ontario  
A1A 2B2

[Empty box]

STATEMENT  
OF CLAIM

## THE CLAIM

### 1. The Plaintiff claims against the defendants:

- a. General damages for defamation in the amount of \$5,000.00;
- b. Lost wages in the amount of \$2,500.00;
- c. Interest from the date that notice was given to the defendants until Judgment pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C-43;
- d. Costs of this action on a substantial basis; and
- e. Such further and other relief as this Honourable Court deems just.

### The Parties

2. The plaintiff, Bruce Opolsky (“Bruce”), is an individual who resides in the City of Toronto in the Province of Ontario and attends Burdett Lake High School (“Burdett”). He is a wrestler for the Burdett School team.

3. The defendant, Tahiya Jaswal (“Tahiya”), is an individual who resides in the City of Toronto in the Province of Ontario. She also attends Burdett, and is the editor of the school newspaper.

4. The defendant, Jordan Pasha (“Jordan”), is an individual who resides in the City of Toronto in the Province of Ontario. He also attends Burdett.

### The Libel

5. On May 12, 20XX, Tahiya created a discussion group on the website “Facebook” for the Burdett School newspaper. One of the discussion threads on the group’s site was called “Bruce is a Cheater” (the “Thread”). The thread is defamatory of the Plaintiff in its entirety as well as in the following statements written by Tahiya:

*“Bruce is a cheater. He takes the easy way out of everything. He paid Kiran to finish his English report and he cheated during our Chemistry final. I’m sure he doesn’t come by anything honestly. He doesn’t even know how to work – I bet he’s on steroids.”*

6. Each of these defamatory statements referred to the plaintiff and could be understood to refer to the plaintiff. Each statement was false and defamatory of the plaintiff.





[Empty box for note-taking]

7. The words in the thread meant and were understood to mean in their natural and ordinary meaning that:

1. the plaintiff was a cheat and dishonest in his academics;
2. the plaintiff was dishonest in his athletics; and
3. the plaintiff owes his performance on the school wrestling team to steroids.

[Empty box for note-taking]

8. The statements written and posted on the Thread by the defendant, Jordan, are also defamatory of the plaintiff:

*"I totally agree. He's tried to cheat off my work in class. The 'roids probably make his tackles and flips more forceful but his brain cells useless!"*

[Empty box for note-taking]

9. The defendant, Tahiya, is responsible for publishing the defamatory statements in her capacity as the editor of the School newspaper and as the owner of the Facebook group.

**The Damages**

[Empty box for note-taking]

10. The defamatory postings disparaged the character of the plaintiff in the community and throughout the Province.

11. The newspaper's Facebook group is available to all the students in the Burdett Facebook network. The "Bruce is a Cheater" discussion thread came up on the newsfeed for all members of Facebook from Burdett.

12. The defendants knew or ought to have known that the plain meaning and innuendo of the words were defamatory and libelous of the plaintiff and that the words, their meaning and the innuendo were untrue.

STATEMENT OF CLAIM

1. As a result of the publication of the postings the plaintiff has been greatly injured in his character, credit and reputation and has been held up to public scandal, ridicule and contempt. The defendants' conduct has caused the plaintiff great distress, embarrassment, loss of reputation, humiliation and financial loss.

2. The postings disparaged the reputation and competence of the plaintiff in his intended profession, wrestling. In addition, as a result of the defamatory postings, the plaintiff suffered a loss of employment as a camp counselor.

3. The defendants acted out of malice towards the plaintiff and with the de-

[Empty box for note-taking]



liberate intention of discredited his reputation and holding him up to public scandal, ridicule and contempt.

**The Trial**

13. The plaintiff proposes that the trial of this action be heard with a jury in Toronto.

Date Issued: May 1, 20XX

**The Litigator LLP**

456 Centre Street  
Anytown, ON A1A 2B2

**J. Lawyerly, LL.B.**

Lawyer for the Plaintiff

Bruce Opolsky Plaintiff	and	Tahiya Jaswal and Jordan Pasha Defendants	Court File No: 09-AB-876543 CD2
			<p><i>ONTARIO</i> SUPERIOR COURT OF JUSTICE</p> <p>Proceeding commenced at Toronto</p>
			STATEMENT OF CLAIM
			<p>THE LEGAL EAGLES LLP Barristers &amp; Solicitors 789 High Street Anytown, ON A1A 2B2</p> <p>A. Justice Lawyer for the Defendant Served on Fax: 416-555-5555</p>

STATEMENT OF CLAIM



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**BRUCE OPOLSKY**

Plaintiff

- and -

**TAHIYA JASWAL and JORDAN PASHA**

Defendants

**STATEMENT OF DEFENCE OF THE DEFENDANTS  
TAHIYA JASWAL and JORDAN PASHA**

1. The defendants admit paragraphs 2, 3 and 4 of the Statement of Claim.
2. The defendants deny the remainder of the Statement of Claim and specifically, deny that the plaintiff is entitled to the relief claimed in paragraph 1.
3. The defendant Tahiya Jaswal admits that she created the private Facebook discussion thread entitled "Bruce is a Cheater," and that she wrote the statements in paragraph 5 of the Statement of Claim.
4. The defendant Jordan Pasha admits that she created the private Facebook posting that began with the line "I totally agree."
5. The Facebook website permits the owner and approved members to post comments in the discussion threads and to create same. Reader comments of-

STATEMENT  
OF DEFENCE



ten take the form of a conversation or debate.

6. Facebook provides an opportunity for users to correct or challenge assertions made by the author of the original posting, material that is quoted from other sources or to add information that expands the discussion.

7. The defendants plead that opinions and facts posted on Facebook are subject to revision, correction and refutation by other members.

8. The defendants pleads that the words complained of are not defamatory of the plaintiff, did not refer to the plaintiff, and are not capable of referring to the plaintiff. The words complained of referred to another individual, Bruce Nicholas, also a student at Burdett Lake High School. Anyone who read the words complained of would have known that they referred to Bruce Nicholas, and not the plaintiff.

9. The defendants deny that the words complained of bear or are capable of bearing the meanings set out in paragraph 7 of the statement of claim.

9. The defendants deny that the words complained of bear or are capable of bearing the meanings set out in paragraph 7 of the statement of claim.

10. In the alternative, insofar as the words complained of consist of statements of fact about Bruce Nicholas, they were true statements of fact, and insofar as they consist of expressions of opinion they were fair comment made honestly in good faith and without malice.

10. In the alternative, insofar as the words complained of consist of statements of fact about Bruce Nicholas, they were true statements of fact, and insofar as they consist of expressions of opinion they were fair comment made honestly in good faith and without malice.

11. These defendants say that the words were published in good faith without malice on an occasion of qualified privilege in that the defendants had a legitimate interest and duty to publish the words to the Burdett Lake High School group, which had a corresponding interest in receiving that information.

11. These defendants say that the words were published in good faith without malice on an occasion of qualified privilege in that the defendants had a legitimate interest and duty to publish the words to the Burdett Lake High School group, which had a corresponding interest in receiving that information.

12. These defendants state that the words complained of were published as an incident of the Freedom of Expression guaranteed by Sections 1 and 2 of the Charter of Rights and Freedoms.

12. These defendants state that the words complained of were published as an incident of the Freedom of Expression guaranteed by Sections 1 and 2 of the Charter of Rights and Freedoms.

13. The defendants deny that the plaintiff has been injured or suffered any loss or damages as alleged, and puts the plaintiff to the strict proof thereof. If the plaintiff has suffered any loss or damage it is the result of the actions of the plaintiff, the full details of which are known to the plaintiff and not to these defendants.

13. The defendants deny that the plaintiff has been injured or suffered any loss or damages as alleged, and puts the plaintiff to the strict proof thereof. If the plaintiff has suffered any loss or damage it is the result of the actions of the plaintiff, the full details of which are known to the plaintiff and not to these defendants.

14. The defendants plead and rely upon Sections 23 and 24 of the Libel and Slander Act, R.S.O. 1990 c. L.12.

STATEMENT OF DEFENCE



15. These defendants submit that this action be dismissed with costs on a substantial indemnity basis.

Date: May 2, 20XX

THE LEGAL EAGLES LLP  
Barristers & Solicitors  
Anytown, ON A1A 2B2

A. Justice, LL.B.  
Solicitor for the defendants,  
Tahiya Jaswal and  
Jordan Pasha

**TO: The Litigator LLP**  
456 Centre Street  
Anytown, ON A1A 2B2  
  
J. Lawyerly, LL.B.  
Lawyer for the Plaintiff

Bruce Opolsky Plaintiff	and	Tahiya Jaswal and Jordan Pasha Defendants	Court File No: 09-AB-876543 CD2
			ONTARIO SUPERIOR COURT OF JUSTICE Proceeding commenced at Toronto
			STATEMENT OF DEFENCE
			THE LEGAL EAGLES LLP Barristers & Solicitors 789 High Street Anytown, ON A1A 2B2  A. Justice Lawyer for the Defendants Served on Fax: 416-555-5555

STATEMENT  
OF DEFENCE