

CRIMINAL LAW MOCK TRIAL: ROLE PREPARATION

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For each OJEN criminal mock trial, there are three packages:

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

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

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

PREPARING FOR A MOCK TRIAL

Mock trials are designed to help you learn more about the criminal justice system. Many of you may have some idea about what a criminal trial is from what you have seen on television or in movies. Some of what you have seen might be accurate, but a lot of what is shown in courtroom dramas is not. In an actual trial many witnesses say things that are not planned, and lawyers have to think quickly on their feet.

Now is your moment to try out playing one of the many important roles in the criminal trial process. Get into character and have fun with it. Those of you who are lawyers and witnesses will have a lot of work to do up front. Others who are judges, jury members and court staff will play an important role on the day of the trial.

TIME CHART

TIME CHART FOR A CRIMINAL LAW MOCK TRIAL

Clerk calls to order	1 min
Clerk asks the accused, Crown and Defence to stand, reads charge, enter pleas, and introduces parties	3 mins
CROWN CASE:	
Crown opening statement	3 mins
Crown direct examination Crown witness 1	4 mins
Defence cross-examination	4 mins
Crown direct examination Crown witness 2	4 mins
Defence cross-examination	4 mins
DEFENCE CASE:	
Defence opening statement	3 mins
Defence direct examination Defence witness 1	4 mins
Crown cross-examination	4 mins
Defence direct examination Defence witness 2	4 mins
Crown cross-examination	4 mins
CLOSING ARGUMENTS:	
Defence closing arguments	3 mins
Crown closing arguments	3 mins
Judge instructs Jury (if there is a jury. If not, judge deliberates and renders a verdict – 12 minutes)	2 mins
Jury deliberates and gives verdict (if there is a jury)	10 mins
Judge gives feedback and discusses trial process etc.	10 mins
TOTAL	70 mins

COURTROOM ETIQUETTE AND PROTOCOL

The courtroom is a formal setting, and there are some specific etiquette rules to follow that may not be familiar to you. Here are some pointers:

- When facing the judge, counsel for the accused usually sits at the table to the left and counsel for the crown sits at the table to the right.
- When the judge enters, all counsel, and everyone else in the courtroom, must stand-up. Counsel then bow to the judge. Sit down when the clerk instructs everyone to do so.
- When you are getting ready to address the judge, either stand at your table, or by the podium (if there is one). Wait until the judge seems ready to proceed. The judge may nod or may say that you can proceed. If you are not sure, ask the judge if you may proceed.
- The first counsel to address the court should introduce other counsel. For example, you might say “[name] appearing for the crown; my colleague [name] is also appearing for the crown” or “my friends [name] and [name] appear for the accused”.
- Every other counsel should introduce themselves again before starting to address the court.
- If it is not your turn to address the judge, pay attention to what is happening. Take notes that you can use during your submissions or closing statements.
- Try not to distract the judge. If you need to talk with your co-counsel, write a note.
- Stand every time you are addressing or being addressed by the judge.
- Refer to your co-counsel as “my colleague” or “my co-counsel”. Opposing counsel should be referred to as “my friend” or “counsel for [position or name of the client]”.
- Address the judge formally. Refer to each judge as “Justice [name]” or simply as “Justice”.



ETIQUETTE

- Do not interrupt the judge, and if a judge interrupts you stop immediately, and wait until they are finished before replying. Never interrupt or object while an opposing counsel is addressing the judge. Wait until you are specifically asked by the judge to respond to a point argued by opposing counsel.
- If the judge asks you a question, take your time to think about it before replying. If you do not hear the question, or are confused by it, ask the judge to repeat or restate the question. If you do not know the answer, say so. Once a question has been answered, pick up from where you were before the question.

REMEMBER TO:

- » Speak clearly
- » Use an appropriate volume
- » Try not to say “um”, “ah” or “okay”
- » Do not go too fast



ROLE PREPARATION FOR CROWN AND DEFENCE LAWYERS

As a **defence lawyer** you represent the accused.

As a **crown attorney** you represent the government and the public.

During the trial, lawyers for both sides give:

- Opening and closing statements;
- Direct examination of your own witnesses; and
- Cross-examinations of the other side’s witnesses.

The crown will make its opening statement and call its witnesses first. The defence goes next with its opening statement and witnesses.

The defence gives its closing arguments first. The crown goes second.

PREPARATION:
LAWYERS

HOW TO PREPARE AN OPENING STATEMENT:

- Become familiar with your witnesses’ fact sheets.
- Select which facts should be included in the opening statement. Include the central facts to your case that are not likely to be challenged by the other side.
- Stick to facts. The facts are what will paint the picture for the judge.
- Check with the lawyer writing the closing arguments for your side, to make sure that both the opening and closing arguments are very similar, and cover the same facts.
- When giving the opening arguments, try to speak in short, clear sentences. Be brief and to the point.
- Have notes handy to refresh your memory.
- Remember that the opening statement is very brief but gives an overview of your case.



PREPARATION:
LAWYERS

HOW TO PREPARE FOR DIRECT EXAMINATION:

- Write down all the things that your side is trying to prove.
- Read the witness’ testimony carefully, several times over.
- Make a list of all the facts in the witness’ testimony that help your case.
- Put a star beside the most important facts that you must make sure that your witness talks about. For example an important fact for the Crown might be if your witness saw the actual crime take place.
- Create questions to ask the witness that will help the witness tell a story:
- Start with questions that will let the witness tell the court who s/he is (“What is your name? What do you do? How long have you worked in that job?”)
- Move to the events in question (“What were you doing on the night in question? Where were you? When did you first hear there was a problem?”)
- Move to more specific questions (“What did you see? What did you do after that happened?”)
- Remember not to ask leading questions.
- When your witness is on the stand, do not be afraid to ask a question twice, using different words, if you do not get the answer you were expecting.

HOW TO PREPARE FOR CROSS-EXAMINATION:

- Make a list of all the facts in the witness’ testimony that hurt your case.
- If there are a lot of facts that don’t help your case, can you find a way to challenge the witness’ credibility? For example can you show that the witness made a mistake or has a reason for not telling the truth?
- Put a star beside the facts you must make the witness talk about.
- Write short leading questions that move towards the key points you want to make.
- Depending on what the witnesses’ say you might need to come up with different questions on the spot during the trial.

HOW TO PREPARE CLOSING STATEMENTS:

PREPARATION:
LAWYERS

- Write down your key arguments and summarize the important facts you want to stick in the judge and jury’s mind.
- When delivering the closing arguments, try to speak in short, clear sentences. Be brief and to the point.
- Only summarize evidence that actually was given at trial. This may mean you have to re-write your closing arguments on the spot during the trial.
- Where a witness for the other side admitted something important to your case, point that out. For example: “The witness says she identified Mr. Smith as the man who broke into the car. However, she admitted that she was standing three blocks away from the car when she made the identification. She admitted that it was dark out. There is a real doubt that the witness actually could have identified anyone, let alone someone she had never met before, in the circumstances.”
- Check with the lawyer writing the opening statements for your side, to make sure that both the opening and closing statements are very similar, and cover the same facts.



ROLE PREPARATION FOR JUDGE

A judge's role is to:

- Be a referee and explain to the jury what the law is.
- If a lawyer objects to a question by another lawyer, decide whether or not the witness must answer the question.
- At the end of the trial, summarize what the law and evidence is relating to this case.
- If it is a jury trial, instruct the jury who then decides if the accused is guilty or not.
- If the accused is found guilty decide what the sentence will be.



PREPARATION:
JUDGE + JURY

ROLE PREPARATION FOR JURY

A jury's role is to:

- Listen to all of the evidence without making any decisions until the end of the trial about the guilt or innocence of the accused
- Listen to the judge describe the evidence and what the law is
- Elect a Foreperson (spokesperson) to head the jury and give the final decision
- Talk about the evidence with other jurors behind closed doors, then vote on the guilt or innocence of the accused
- Come up with a decision that all jurors agree on



ROLE PREPARATION FOR COURT CLERK

Your role is to help the judge to make sure that the trial runs smoothly. You will:

1. Open the court
2. Read the charge to the accused and ask him to plead guilty or not guilty
3. Swear in the witnesses
4. Adjourn the court for a recess
5. Close the courts

1. HOW TO OPEN THE COURTS:

When all participants are in their places, you will bring in the judge and say:

Order in the court, all rise please.

After the judge has entered and sat down you say:

Court is now in session, please be seated.

2. HOW TO READ THE CHARGES:

To prepare this section, please refer to the Mock Trial Scenario for the mock trial you are participating in. Insert the particulars of the accused and charge(s) from the Information into the script below.

Stand and say:

[Name of accused] who is a young person within the meaning of the Youth Criminal Justice Act, is charged that [s/he], on or about the ** day of *** 20**, in the City of **, did [insert particulars of charge] contrary to section *** of the ***.

[Name of accused], how do you plead to this charge? Guilty or not guilty?

If there is more than one charge, add the following for each charge:

And further, that [Name of accused], who is a young person within the meaning of the Youth Criminal Justice Act, is further charged that he, on or about the **th day of *** 20**, in the City of *** did [insert particulars of charge] contrary to section *** of the ***.

[Name of accused], how do you plead to this charge? Guilty or not guilty?

3. HOW TO SWEAR IN WITNESSES:

If either one of the lawyers calls a witness during the trial then ask them to enter the witness box (closest to the reporter) and you will swear them in by saying:

Will you please state your name for the court? Please spell your first and last name.

A witness can either affirm (promise) or swear on a holy book, to tell the truth. Ask the witness:

Do you wish to affirm or swear on a holy book?

If the witness chooses to affirm, you ask:

Do you solemnly affirm that the evidence you are about to give, shall be the truth, the whole truth and nothing but the truth?

If the witness chooses to swear on a holy book, you ask:

Do you swear that the evidence you are about to give shall be the truth, the whole truth and nothing but the truth, so help you God?

4. HOW TO ADJOURN THE COURT FOR A RECESS:

After both the Crown and the Defence have made their closing arguments, the judge may recess before giving their verdict/sentence.

When the judge is ready to adjourn, s/he will announce that the court is going to recess for ____ minutes (usually 10 or 15 minutes but the judge will say the length of the break).

When ready to adjourn, you stand and say:

All rise please. Court is in recess for _____ minutes.

When the Judge is ready to return, you enter the courtroom and say:

Order in court all rise.

When the judge has sat down you say:

Court is now reconvened. Please be seated.

5. CLOSING THE COURT:

After the lawyers have made their closing arguments and the Jury has given its decision, then the Court is closed and you will say:

All rise please. Court is adjourned for the day.

ROLE PREPARATION FOR COURT SERVICES OFFICER

Your role is to:

- Bring the accused into the courtroom.
- Help the judge in keeping order in the courtroom.
- Making sure the accused and the Jury are not threatened during the trial.
- Escort the accused/witnesses to the witness box.
- You can prepare for your role by reviewing the background documents and understanding what will happen during the trial.
- The judge will expect you to escort anyone who becomes too loud or is not behaving out of the courtroom.



ROLE PREPARATION FOR COURT ARTIST

In Canadian Courts, cameras are not allowed in the trial level courtroom. Your job is to sketch what is taking place in the courtroom for record keeping and for reporting to the public. Perhaps your sketches might appear in the newspaper or on TV news.

Divide up the roles so that one of you is:

- Sketching the witnesses.
- Sketching the crown and defence lawyers in action.

ROLE PREPARATION FOR MEMBERS OF THE PRESS

Things for you to think about reporting on:

- What is the name of the case?
- Who are the people involved?
- Which court is the trial taking place in?
- Is it a judge and a jury or just a judge?
- What things are you not allowed to report because the accused is a youth?
- Why is a trial taking place?
- What crime(s) is the accused charged with?
- What are the key facts?
- What is the outcome / decision?

Is there anything you want to ask the Crown and Defence lawyers about after the case?

Are there any other things you want to say in general in your article about these particular types of charges?



PREPARATION:
PRESS