2019 BC Provincial High School Mock Trial Competition

Tournament Guide, Professional Code of Conduct, and Case Materials

Version 1.0

Acknowledgement

We are very grateful to the Ontario Bar Association (OBA) and the Ontario Justice Education Network (OJEN) for the use of these materials. The following documents have been borrowed from OJEN as well as adapted from the case materials of the OBA/OJEN Law Day Secondary School Mock Trial Program (LDSSMT). Any reference to the LDSSMT in the documents should be disregarded and instead read as the BC Provincial High School Mock Trial Competition.

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2019 BC Provincial High School Mock Trial Competition

1 – Preface

We are very pleased to be hosting the 14th BC Provincial High School Mock Trial Competition. We hope that we can build on the excitement and excellence of last year's competition and have been working hard to expand the number of schools involved this year. We have also worked to incorporate feedback from last year's competition and hope that participants will appreciate the changes we have made. Please read through this document in its entirety, it contains all of the details of the competition, and should be studied carefully. Experienced competitors and coaches should note changes from previous year's competitions and amended rules; **please read through this package carefully**.

Please note that where a discrepancy exists between information on the initial tournament invitation and this document, that this document shall be considered as the final and official tournament rules. The tournament organizers reserve the right to update the rules contained in this packages should any problems emerge or amendments be necessary, and participants will be notified of any potential changes should they occur.

We are very grateful to the Ontario Bar Association (OBA) and Ontario Justice Education Network (OJEN) for the use of their case materials, and are glad to spread the spirit and goals of mock trial and Law Day to BC. We are thankful for the support that the OBA and OJEN received from members of the Canadian legal community in compiling the case for this competition. We are also grateful to all of the partners who made this competition possible, the Native Courtworker and Counselling Association of BC, the Victoria Bar Association, and the Canadian Bar Association who have come together to make this competition possible, as well as the assistance of the Debate and Speech Association of BC (DSABC).

We are also grateful to all of the legal professionals, teachers, parents and members of the community who have volunteered their time to make this tournament possible. Finally we are grateful to the competitors. You have decided to participate in an event that is both highly educational as well as fun.

We are particularly grateful to the Native Courtworker and Counselling Association of BC (NCCABC), who are celebrating their 40th anniversary this year. Founded in 1973, the NCCABC has been part of the implementation of reconciliation for Aboriginal peoples within the justice system for over 40 years. NCCABC's mission is to provide assistance to Aboriginal people in conflict with the law and ensures they participate fully in the justice system through a holistic approach to prevention and intervention. NCCABC achieves this by providing culturally appropriate programs and services to Aboriginal peoples and communities consistent with their needs. It is NCCABC's belief that a successful strategy for providing these programs and services, is that they must be client-centered, community-based and a safe place for Aboriginal people.

The NCCABC has generously provided funds to cover the cost of lunch, allowing us to significantly reduce registration costs this year. In the spirit of reconciliation, and acknowledging with respect that the Victoria courthouse is located on the traditional territory of the Lekwungen-speaking people, as represented by the Songhees, Esquimalt, and W̱SÁNEĆ Nations, our competition this year will also include a traditional welcome and drumming.

Mock Trial is a hands-on, experiential activity that exposes students to the functioning of our justice system. It helps teach participants about how the law functions in Canada and helps them develop their personal advocacy skills. We hope that student participants will develop a greater appreciation for the importance of the law, and deeper knowledge of the legal process and principles of justice. We are pleased to prioritize the students' experience in this exercise, which will be a fun and exhilarating learning opportunity for participants.

The mock trial also provides an opportunity to justice sector professionals and educators to work together towards common goals. By incorporating experiential learning and access to local lawyers and judges, students benefit by gaining a basic understanding of how our legal system works on a personal level. Lawyers also benefit; honing skills like plain language communication and learning about youth's perspectives of legal issues. We strongly believe that all participants and stakeholders benefit from their involvement in the Mock Trial competition.

While participating in mock trial, students, coaches and all other mock trial stakeholders are encouraged to exemplify the qualities of courtesy, respect, civility, cooperation and professionalism that are fundamental to both the justice system and to Canadian society.

Objectives

- The Canadian Bar Association (CBA) introduced Law Day in 1983 to commemorate the signing of the Charter and educate the public about the legal system. Mock trials are an integral part the Law Day celebration.
- To offer students an experiential learning opportunity that builds advocacy skills while increasing their knowledge of the judicial system.
- To provide opportunities for BC students to work collaboratively, gaining first-hand experience of the complexity of resolving legal issues.
- To involve expert mentors from the legal community in the process of preparing legal arguments and to support students in the experience.
- To develop relationships between educators and their local legal community, such that they may provide additional opportunities for the benefit of BC high school students.
- To emphasize local regional programs increasing the accessibility for mock trial participation to the greatest number of students.
- To support educators by providing opportunities for their students to apply what they are learning in class, while also minimizing the time commitment required for organizing these opportunities

- To provide every high school student in BC the opportunity to celebrate Charter values throughout the year

With an eye at increasing accessibility, we have been working hard to expand the number of schools that participate in the competition. With this in mind, we have sought to prepare teacher-coaches through professional development training and have volunteers standing by to get support teachers in setting up teams.

We sincerely hope that all participants in the mock trial competition gain a greater appreciation for the importance of law and have an exciting and enjoyable learning experience.

Dr. Teale Phelps Bondaroff
Lead Organizer
Researcher and Debate Coach

2 - Tournament Details/Invitation

What is it?

We invite you to attend the **2019 BC Provincial High School Mock Trial Competition**, on Saturday April 13th, 2019. This competition is a special event designed to provide grade 9 to 12 students with the opportunity to learn about the Canadian justice system while actively participating in a real court room simulation. All BC high schools are welcome to participate. This will be the 14th iteration of this competition.

When is it?

The competition will be taking place on **Law Day, Saturday, April 13th, 2019.** The competition is part of Law Week, a national event held annually celebrating the signing of Canada's *Charter of Rights and Freedoms*, on April 17, 1982. Originated by the Canadian Bar Association and first held in Canada in 1983, Law Week provides the public with an opportunity to learn about the law and some of the legal institutions that form the cornerstones of Canadian democracy. It also provides the legal profession with an opportunity to educate the public about the vital role lawyers and the judiciaries play in guaranteeing an open, independent and unbiased judicial system.

Where is it?

The Victoria Law Courts, at 850 Burdett Avenue. Teams will compete in real courtrooms!

How is it set up?

The event will involve **teams consisting of 6 to 8 students**. 4 students on the team will act in the role of lawyers and the remainder of students (2-4) will act in the roles of witnesses. Students may only be lawyers or witnesses; they will not be permitted to act in both roles. Teams will be permitted to bring no more than 2 alternates should they so desire (for a total of up to10). **It is recommended that schools arrange for teams of at least 8 participants.**

Each team will act as a prosecution and as a defence team during the first two morning rounds of the competition. The initial round judges (volunteer senior lawyers), will determine which teams exhibit the best 'lawyering' skills (this could even mean that a team loses a case but demonstrates better lawyering skills). Four teams will then break to a semi-final round, with the top two teams moving on to the finals to compete for the Provincial Mock Trial Trophy, with a real judge presiding, along with a jury comprised of local volunteer lawyers.

Accommodation and Transportation

Teams are responsible for arranging their own transport and accommodation. Given the requirements of travel, some teams may need to arrive a day early or leave a day late. The tournament does not have accommodation, however, we suggest the Marriott Inner Harbour Hotel, which is not too far from the Victoria Courthouse.

Something Special This Year

We are very excited that this year, the Native Courtworker and Counselling Association of BC (NCCABC) is celebrating their 45th Anniversary, and to celebrate will be catering Law Day and our competition (with delicious stew and fry bread). The NCCABC acts as a "A Helping Hand to Justice" for all Indigenous people across the province of British Columbia, providing culturally appropriate justice and health related services. We are thankful for their support and appreciative of all the work they do in our courts.

This year we have been able to significantly reduce registration costs. We have adjusted our schedule from previous years to include a Traditional Welcome to Lekwungen Territory, which will occur before the start of the first round, but after registration and the introductory briefing.

Method of Preparation

Official rules, professional codes of conduct, and detailed briefs and depositions will all be made available on the DSABC website and through email to registrants on March 1, 2019. If you have any questions about any of these documents, the competition rules, or how the competition proceeds, please contact the lead organizer, Dr. Teale Phelps Bondaroff (778-678-8325, tealepb@gmail.com).

It is then highly recommended that your team garner the assistance of a local and active courtroom lawyer to familiarize you with legal procedure and strategy. The Victoria Bar Association has generously offered to assist teams with finding a lawyer to help teams prepare for the competition. If you would like the assistance of a local lawyer to help coach and/or train your team, please contact Aesha Faux on the Law Day Committee (afaux@victoriafamilylaw.ca) to get connected.

It is the competition organizers' desire to have as widespread participation in this tournament as possible, and so if there is anything we can do to help you successfully set up and prepare your team, please let us know. The tournament is open to all high school students in BC (Grades 9 to 12), and to teams representing BC high schools. Due to limited court room space, the tournament organizers reserve the right to limit the number of teams registered per school.

Please note that registration includes a catered lunch. Please indicate any dietary restrictions of participants on the registration form, and likewise indicate the number of coaches attending with the team to we may arrange for the correct number of meals.

Summary: 2019 BC Provincial High School Mock Trial Competitions

- Start Time – 8:30 a.m., Saturday April 13th, 2019
- Location –Victoria Law Courts, Victoria, B.C. (location, see above)
- **$150 per team, cheques made out to 'The Idea Tree Consulting.'** And mailed to:

Teale Phelps Bondaroff
#502 – 3252 Glasgow Ave.
Victoria, BC, V8X 1M2

- **Registration is open until Friday, March 29th, at 3:30 pm.** No registrations will be accepted after this point, as we will need to book courtrooms and recruit judges/lawyers. **Registration will only be complete upon receipt of your payment, and payment must be submitted prior to the registration deadline or teams will not be considered as registered.**

Questions or complications? Contact Dr. Teale Phelps Bondaroff: tealepb@gmail.com or 778-678-8325

3 – Registration Form

2019 BC Provincial High School Mock Trial Competition, Saturday, April 13, 2019.

Registration Deadline: Friday, March 29th at 3:30 pm.
Cost: $150 per team (6 to 10 students).
~Please note any dietary requirements of participants and coaches~

Name of School - _____

Name of Contact (coach) - _____
(Please note the number of coaches attending for catering purposes)

E–Mail that is monitored - _____

Home phone number/Cell - _____

School phone number - _____

Names of team participants

1)_____

2) _____

3) _____

4) _____

5) _____

6) _____

7) _____

8) _____

Alternates:

9) _____

10) _____

Registration Deadline: Friday, March 29th at 3:30 pm.

This information should be e-mailed to tealepb@gmail.com. I will then send a confirmation of receipt via e-mail. **Registration will only be complete upon receipt of your payment, and payment must be submitted prior to the registration deadline or teams will not be considered as registered.** A receipt or invoice can be provided upon request.

4 – Tentative Schedule – Saturday, April 13, 2019

9:00 - 9:30 – Registration (please be on time so we can start on time)

9:30 – 9:50 – Opening remarks and participant briefings

10:00 - 10:30 – Traditional Welcome and Drumming

10:45 - 12:00 – Round 1

12:00 - 1:00 – Lunch

1:00 - 2:30 – Round 2

2:45 – Announcement of Semi-Finalists

2:45 - 4:15 – Semi-Finals

4:15 – Finalists Announced

4:15 - 5:30 – Finals

5:30 – Awards and Closing Remarks

*Please note that we have scheduled the maximum amount of time possible for rounds. In previous years, some rounds have ended earlier, which provided participants with a chance to explore the various other activities that are part of Law Day.

Family and friends are of course invited to come and watch the proceedings and participate in the wide variety of interesting and educational Law Day events and activities. For more information please visit the Victoria Bar Association website.

5 – BC Provincial High School Mock Trial Code of Professional Conduct

Lawyers in BC are governed by a code of professional conduct enforced by the Law Society of BC (LSBC). If a lawyer acts in a way contrary to that code they are subject to disciplinary sanctions. For example according to the LSBC Rules of Professional Conduct (Rule 5.1-2(e)):

When acting as an advocate, a lawyer shall not knowingly attempt to deceive a tribunal or influence the course of justice by offering false evidence, misstating facts or law, presenting or relying upon a false or deceptive affidavit, suppressing what ought to be disclosed, or otherwise assisting in any fraud, crime, or illegal conduct.

The lawyer's duty of professionalism, integrity and promoting the administration of justice is a fundamental part of the Mock Trial Program. Accordingly, what follows is a code of professional conduct (the Code) that will apply to all students, teacher and participants in the BC Mock Trial.

Based on experience, participants are extremely enthusiastic about mock trials. Students, teachers and lawyer volunteers work very hard to prepare and are eager to have their efforts rewarded with positive results. While this enthusiasm is a natural element of the competitive nature of mock trials, if left unchecked it can lead to a negative experience for some participants, casting a shadow on the benefits of experiential education. It is our ultimate goal that this Code and Tournament Guide will assist the participants in the tournament in receiving the full educational benefit of participating in BC Mock Trial.

The code provides as follows:

The tournament shall be conducted as an educational exercise first and as a competition second. While winning the tournament is an admirable goal, it is a goal that is secondary to the educational exercise. Some students may suffer disappointment but will have the rewards and benefits of participating in the tournament. Students must be prepared to lose even if it appears to them (and others) that they deserved to win.

There shall be no questioning a judge's ruling.

All participants are responsible for promoting conduct that is consistent with BC Provincial High School Mock Trial Tournament Guide and Code of Professional Conduct.

5.1 – Avoiding and Accepting Disappointment

Participants should remember that all of the students participating in mock trials have worked very hard, prepared for long hours, and are undoubtedly above-average students, or they would not have bothered to put in all the work required. Just as Olympic medals can be awarded based on very small margins, either of time, distance, a shoot out, or a judge's interpretation, mock trials are often decided by just a few points.

There is an element of subjectivity in judging – not every judge will respond to the same points or the same style of presentation. That said, when panels of judges score mock trials, they don't disagree that often as to the result, though they often struggle as a group to decide the winner because of the high quality of the performances of participants. Teams should keep in mind that their theory of the case and their interpretation of the evidence and the witness statements are not the only ones that are valid. The best way to avoid disappointment is to practice thoroughly. Consider every possible angle, and don't just stick to practicing the case that you will be using in the tournament. There are a number of online resources available, including past cases used at this tournament, which can be used to help teams hone their abilities; to get accustomed to the art of litigation, to develop their skill sets are advocates or their range as a witness.

One of the biggest mistakes a team can make is to treat the mock trial like a performance piece, which can be executed exactly as planned, as if according to a script. The opposing team will have its own plans. The more a team is comfortable, adaptable, and able to deal with the unexpected, the better its chances of success.

Teachers and coaches are encourages to prepare their students to accept their results and to use the experience, whatever the outcome, as a learning opportunity.

6 – 2019 BC Provincial High School Mock Trial Official Rules

These rules have been organized with an aim of being as coherent as possible. We recommend that participants and coaches read through the rules in their entirety as some sections are cross-referenced, and most sections have been amended, albeit slightly, from previous years. We would also appreciate it if participants would flag any errors or omissions in these rules, so that we may improve them for future years.

6.1 – Eligibility

6.1.1 – Eligibility

The BC Mock Trial program is open to full-time BC high school students from grades 9 through 12. Teams must represent a BC high school (or two, see 6.2.5 – Hybrid Teams).

6.1.2 – Private Teams

Unfortunately private debate, mock trial or forensics clubs/teams will be prohibited this year. We encourage students who have participated from such clubs/teams in the past to set up teams at their schools, and are happy to provide them with support to do so.

6.2 – Team Composition

6.2.1 – The Core Team

During the trial, all teams *must* be composed of at least six students: four lawyers and two witnesses. In any given round, there are roles for six students (four lawyers and two witnesses). In a team of six, all students will participate in every round. Teams have the option of using two students to portray their Crown witnesses and two different students to portray their defence witnesses (for a total team of 8 students). This option can be a good one, as it allows for a greater number of participants, and for witnesses to really get into character.

6.2.2 – Alternates

Each team may also submit a maximum of two alternates. These students will step in to a role if a member of the above core team is not able to participate on the day of the event, for whatever reason. One alternate may serve as the team's official timekeeper during the

trial. If an alternate substitute is used for a core team member, tournament organizers must be informed, so that judges have the correct names for all participants.

6.2.3 – Timekeeper

Each team must provide a timekeeper to keep time in the mock trial round. Who keeps time can change from round to round, so that the timekeeper can be a core team member who is not participating in a particular round (for teams with 7 or 8 members), an alternate, or a specially designated timekeeper. The role of timekeeper is also an excellent one for those new to the competition, as it provides the participant with a firsthand look at what transpires at the tournament.

6.2.4 – Additional People

Teams may bring any number of coaches, trainers, supporters, but these individuals are not permitted to assist the teams in any way once the trial begins. This includes verbal, non-verbal, and written communication in any form. Teams that abuse this rule will be disqualified.

Please note that registration only covers the cost of up to 10 participants and 2 coaches, this is due to the cost of catering lunch. Teams, who wish to bring more officially registered participants (additional coaches, trainers, supporters and parents) who wish to partake in lunch, should inform tournament organizers and will be required to pay an additional small fee to cover the cost of lunch.

6.2.5 – Hybrid Teams

Teams need not be comprised of students from the same school; hybrid teams are permitted in the name of increasing accessibility. The tournament organizers encourage this if it means that more teams can participate, as we recognize that sometimes it can be difficult to fund the necessary number of students for a team. If this occurs, the school hosting the team, or the school with the greatest number of participants on the team, will be recorded as the school for that team (at the preference of the team). In the event of a team having an equal number of participants from two schools, or is comprised of students from only two schools, they can appeal to the tournament organizers to be listed as representing both schools.

6.2.6 – Court Clerks

Tournament organizers and judges may choose to deputize timekeepers (parents or other observers) to perform the functions of court clerk; reading the arraignment, swearing in witnesses, etc. Therefore any student who may act as timekeeper is encouraged to

familiarize themselves with the duties of the Court Clerk, which are included in this package, see below.

6.2.7 – Team Rosters

1) Teams should submit the names of all participants with their registration, however they will not be required to specify the precise roles of participants until the week prior to the tournament. Changes in the roles of members of a team can be changed up to the commencement of the tournament, but cannot be changed while the tournament is underway (unless a participant is required to pull out of the tournament while it is underway, in which case an alternate may step into their role and the tournament organizers should be informed).

2) If an alternate team member is required to replace a core team member, the alternate must be drawn from the names listed on the team's official roster.

3) If an alternate member substitutes for a core member in one round, the core member may return to their role in a subsequent round, or the alternate member may be re-listed as a core member, with the original core member being re-listed as an alternate member.

4) Teams are responsible for having a back-up plan in case a core team member cannot perform. In fairness to other teams, the rules on team composition and team line-ups may not be relaxed to accommodate teams with missing members.

5) If a team loses more core members than it can replace with alternates under the above stipulations (i.e. having lost more than two members and being left with only five or fewer team members), it will be disqualified from advancing to the next stage of competition. If this situation occurs in the middle of a competition day, then the team may continue to participate with fewer than six members, but it may not advance to the next round of competition, even it its score would allow it to. If this situations occurs after a team has earned a spot in the next stage of competition (e.g. between the preliminary and semi-finals, or semi-finals and find round), the team's place at the next stage of competition will be given to the next team in the standings.

6) These rules are in place to ensure that no team uses a 'star player' to perform more roles than permitted. And to ensure that when a team advances to the next stage of competition, a substantial number of members that earned the right to advance, continue to be part of the team at subsequent stages.

6.3 – Roles

Teams must be prepared to play the role of counsel and witnesses for the Crown and the accused respectively. This requires teams to establish two 'line-ups' within the team: one for the Crown, and one for the defence. Each line-up will have roles for four lawyers, and two witnesses.

Teams have some flexibility in determining their line-ups. Within a team, lawyers are not restricted to filling the same speaking roles when representing the Crown or the defence. That is, the person who gives the opening statement for prosecution need not be (and with an aim to spreading roles equally throughout a team, should not be) the same lawyer who delivers the opening statement for defense.

Students must restrict their participation as only a lawyer or witness. Note that this is a new rule from earlier years, but has been introduced so that individual participation awards may be equitably and effectively awarded.

Additional rule regarding line-ups are as follows:

- That four (4) students must play lawyers on each line-up.
- That each student lawyer must examine one witness, either on direct examination or cross-examination.
- In addition to examining one witness, two of the four lawyers must also deliver the opening and closing arguments. The same lawyer cannot deliver both opening and closing arguments.

Line up violations: Line-up violations create serious issues of fairness towards the opposing team, and are very likely to lead to a team's disqualification from the tournament.

6.4 – Notes

Lawyers may use notes in presenting their cases. Witnesses are not permitted to use notes, unless the witness is a police officer, in which case examining counsel must request the court's permission for the officer to use their notes.

6.5 – Pairings

For the initial two rounds of the competition teams will be assigned a position through a randomized, school-protected draw, which will ensure that each team has the opportunity to represent the Crown and defence once. These pairings will be school protected for those schools that register more than one team. This means that two teams from the same school will almost certainly not face each other in the initial two rounds.

Please note that the initial pairings are dependent on an even number of teams participating, in the event that an odd number of teams are registered, the tournament organizers regrettably reserve the right to give a 'bye' to one team in each of the initial two rounds. Should this occur, these teams will be awarded a win for the bye, for the purposes of the team's advancement in the tournament. Their team score for the round in which they compete will be averaged for both preliminary rounds.

Following the initial two rounds, the top four teams will break to semi-finals, where sides will be decided by a coin toss. With the winner of the coin toss choosing Crown or defence. The only exception to this rule is if the two teams have already met during the competition, in which case they will play the reverse of the sides that they played in the previous round. Team pairings for the semi-finals will be: 1 vs. 4 and 2 vs. 3.

6.6 – Preparation

Teams are encouraged to work with volunteers from the local legal community to practice for the competition. All competitors are strongly encouraged to be familiar with the rules included in this package.

Teams looking for additional training materials can consult the OJEN website, which has numerous helpful video tutorials to help teams prepare, including step-by-step videos walking a team through every component of the competition:

http://ojen.ca/en/resources/videos/mock-trial-how-to

6.7 – Case Materials: Evidence and Exhibits

6.7.1 – Evidence

Participants should familiarize themselves with the 'Simplified Rules of Evidence' detailed below, for the specific procedural rules of evidence, including how to enter exhibits. This section contains the general rules.

There are three types of evidence provided for the case: witness testimony, exhibits, and the credentials of Dr. Chao. The case materials will contain all of the witness testimony, exhibits and Dr. Chao's CV, which may be used at trial. The witnesses whose affidavits were provided must all be called, and all of the exhibits must be entered by the sides indicated in the official evidence (where indicated in the case, see below). Please note that some of the exhibits in this year's competition must be led, while other exhibits are options, which is which is indicated in the case, below.

All affidavits are deemed to be authentic and signatures valid. All witnesses must be called, but may be called in any order.

6.7.2 – Exhibits

Only the exhibits provided with materials may be led (which means introduced) at trial. In some cases, practicality demands the use of a photograph or scan of what would, in a real trial, be an actually physical piece of evidence. These are to be treated as if they were the actual objects.

For fairness, the tournament organizers will provide enlarged colour prints of the relevant exhibits, for each courtroom. These are to be treated as if they were actual objects. Under no circumstances should a team attempt to bring a toy gun, mock, or other such items into a working courthouse. There are real security officers in the courtroom and they do not take kindly to such things.

Teams may only use the exhibits provided in the official case package. Some exhibits must be led, others are options, as indicated below (and in the case materials). All exhibits in the case packages are deemed to have been disclosed prior to the trial. Exhibits may represent enlargements of an actual object or photograph, and these enlargements are to be considered a valid and to have been disclosed prior to trial.

The official case package (below), contains specific instructions on the handling of the provided exhibits, which teams are required to follow.

When a team enters an exhibit and it is deposited with the court clerk or judge, that copy becomes the 'real' exhibit for the round. Counsel from the team that did not enter the exhibit must ask the clerk for that copy if they wish to use it in their submissions.

Please do not remove the exhibits from the courtroom at the end of the trial, as the exhibits are re-used in subsequent rounds, and spare copies are not made by the tournament organizers.

6.8 – Disclosure

Counsel must call all witnesses and lead all evidence (where required, as indicated below). Immediately before the trial commences, counsel for each team should confer to 'disclose' the evidence so that it can be verified as correct by all (see Pre-Trial Meeting, below).

6.9 – Demonstrations

Teams are permitted to conduct a demonstration during a witness examination: for example, to use a human subject and ask a witness to identify the spots where an injury

occurred. Such demonstrations require the consent of the judge. The clock *shall not* be stopped for the setting up of any demonstration, and any time used for a demonstration is part of a team's allotted time for examinations. Demonstrations are not permitted during opening or closing statements.

7 – Mock Trial Scope

The following rules are implemented to ensure a full and fun experience for all, while recognizing that limited time requires that some boundaries be set.

7.1 – Use of Applicable Law

Only the applicable law provided with the case package may be referred to at trial. No other statutory law or case law may be introduced, including any reference to the Charter of Rights and Freedoms. Students are expected to have researched and to identify the relevant legal tests associated with the official case facts, but should simply refer to those tests in applying the law to the facts of the official case, rather than making submissions referencing individual cases.

7.2 – Motions, Redirect/Re-examination

For the purposes of this mock trial, motions to dismiss the proceedings or exclude witnesses will not be allowed. Similarly there is no right to redirect/re-examine a witness. If a judge erroneously offers such a right, all teams shall politely decline.

7.3 – External Evidence

Teams must be careful only to question witnesses and introduce evidence based on what has actually been provided in the case package. Even though a case may appear to be 'ripped from the headlines' and factually similar to a real-world case, any introduction of facts or evidence that were not provided can only harm a team's case and success, and is not permitted.

7.4 – Objections

Students making objections will be expected to defend their argument. If the judge requests opposing counsel to respond, they may do so. When an objection is raised and the counsel speaking cannot answer it, any member at the counsel table can answer it.

Objections, responses and explanations shall be made to the presiding judge only (not opposing counsel). Frivolous objections are discouraged and may reduce marks for performance. Traditional evidentiary objections (hearsay, leading, relevance etc.) are permissible as long as they do not interfere with a fulsome mock trial experience. The judge has the right to limit or forbid objections if they are being used in a manner that interferes with learning objectives. Objections will stop the clock (See 10, below). For more on objections, see 7.14 – Rules for Objections, below.

7.5 – Charter

Teams are to assume that there are no Charter issues arising from these facts; the Canadian Charter of Rights and Freedoms shall not be raised at trial.

7.6 – Pre-Trial

Prior to the commencement of each trial round teams are advised to meet informally between each other when they get to their courtrooms to discuss matter such as:

- Who is keeping time and where they will sit.
- The gender of witnesses.
- Confirming the presence of all the appropriate exhibits.

Resolving the above issues ahead of time can reduce confusion and save time during the trial. This is also an opportunity to shake hands and wish each other good luck, and may relieve some of the tension of competition. As such, teams are strongly encouraged to arrive at their assigned courtrooms in advance of the scheduled start time of the trial.

7.7 – Requirements for Defence Case

The defence must call its witnesses and go through the trial process. No application for directed verdict, or motions to dismiss the proceedings, are allowed.

7.8 – Evidence and Trial Procedure

As a simulation, mock trials demand certain modifications of court rules and procedures. The actual rules of evidence and procedure in effect in BC will apply in the mock trial, except where there is a conflict between those rules and anything specified in this Guide, in which case, the rules in this Guide take precedence. For additional information on exhibits, see section 6.7.2 above.

7.9 – Witnesses

7.9.1 – Calling Witnesses

All witnesses must be called, and may be called in any order.

7.9.2 – Witnesses Not to Be Excluded

No judge shall order, and no team shall request, that witnesses be excluded from the proceedings. If a judge orders that a witness be excluded, counsel should object and refer the judge to this section of the rules.

7.9.3 – Witness Characterization

Witnesses may wear apparel and accessories appropriate to their characters. Witnesses are encouraged to be flexible, get into character and have fun with their role. The use of unusual speech patterns, mannerisms, and so forth, which are appropriate for the witness character, are permitted. Witness characterization may not, however, cause undue distraction from the substance of the mock trial, act as cover to avoid answering questions in a timely fashion, or in general create an unfair situation for the opposing team. Whether a witness' characterizations cross the line is a matter for judges to consider in their deliberations.

7.9.4 – References to Gender

The witnesses may be played by students of any gender. All references in the witness statements to a specific gender may be modified as the particular situation dictates. Any examination of a witness's gender (direct or cross) is not permitted. Teams shall not make submissions around gender to change or influence the spirit of the facts of the case. Participants will note that the names selected for witnesses are all sufficiently gender-non-specific to be used to for witnesses of any gender.

No submissions which make gender material to the case may be made at trial. For example, participants must not ask questions such as, "Did you hear a male or female scream?", or give answers such as, "I'm a gentleman, I'd never hit a girl."

If witness characterization and costume makes it difficult to easily identify their gender, teams may wish to specify their witnesses preferred gender pronouns when meeting with the other team pre-trial.

7.9.5 – Witness Stalling

Witnesses have considerable leeway in answering questions, as long as they do provide and answer. Counsel cannot direct a witness to "just answer yes or no." Some evasiveness or framing of a response to suit their position is to be expected from opposing witnesses. Counsel cannot force a witness to give the answer that counsel wants.

However, to ensure fairness, witnesses must not engage in excessive 'stalling.' Excessive stalling, when it occurs, should be apparent to a reasonable person as calculated and intentional, rather than due to a lack of comprehension or confusion on the part of the witness.

If excessive stalling occurs, counsel may ask the judge to instruct the witness to cease the stalling, and counsel may ask for an extension of time, which they judge may grant, within reason and within the time parameters permitted by the tournament schedule.

7.10 – Sworn Witness Statements

7.10.1 – Affidavits and Oral Testimony

Signatures at the bottom of any documents belong to the signatory; witnesses shall not testify otherwise (e.g. a witness cannot say, "that is not my signature").

The role of the witness is integral to the mock trial. Witnesses must learn their role and testify in accordance with their sworn witness statement. We encourage witnesses to be flexible, anticipate unexpected questions, 'get into character', and have fun with their role. That said, witnesses must answer questions on the spirit of the facts and provide evidence that is consistent with their witness statement.

Witnesses can extrapolate: they can expand on the facts but not contradict them. They cannot create new facts that would create an unfair situation for the other team, nor can they contradict what is stated in their affidavit without risking 'impeachment' by the other team.

Impeachment, for the purpose of the mock trial, simply means that a witness has been cross-examined on inconsistencies or omissions in their testimony such that it is apparent that the oral testimony they gave contradicted their affidavit, or that they left out such key facts so that their oral testimony painted a different picture of events than what a reasonable person would conclude from reading their affidavit.

7.10.2 – Inconsistent Testimony

Testimony that a witness gives that is not consistent with their affidavit is inconsistent testimony. Inconsistent testimony can take the form of contradiction, unfair extrapolation or omission:

- **Contradiction**: When a witness's oral testimony directly contradicts an element of their affidavit.

- **Unfair Extrapolation**: When a witness gives testimony that is not strictly a contradiction of their affidavit but which nevertheless creates such new facts as to create an unfair situation for the opposing team and negatively impacts the mock trial round.

- **Omission**: When a witness has given testimony that is neither a contradiction nor an unfair extrapolation, but in their testimony omits such key elements of their affidavit as to create an unfair situation for the opposing team and negatively impacts the mock trial round.

An opposing council will either be faced with alleged inconsistent testimony while engaged in cross-examination or while listening to the witness's direct examination before cross-examining that witness. In either case, if the counsel is concerned about inconsistency, they should raise it by cross-examining the witness on the inconsistency.

Where counsel believes the witness is not testifying in accordance with the sworn witness statement in such a way that severely disrupts the case, they are permitted to alert the judge by saying:

"Your honour, the witness is not testifying in accordance with her/his sworn witness statement."

They should then proceed to cross-examine the witness on the inconsistency or omission in relation to the sworn witness statement. This is known as impeachment of the witness. Making an actual objection is not necessary to impeach a witness, as this can be introduced through cross-examination.

Students are not expected to apply the rules of impeachment as impeaching a witness is challenging even for very experienced counsel. Depending on whether or not the impeachment is successful (i.e. if the judge accepts that the witness's testimony was inconsistent or omitted important facts), the judge may penalize the team by point deduction during his/her deliberations. Any such point deduction is strictly within the discretion of the judge.

7.12 – Case Location

Please note that this case is taking place in BC. We are grateful to OJEN for the use of their excellent case materials. Because our re-working these documents to change locations to make them BC specific risked introducing potential errors into the documents (and so that exhibits would not appear poorly doctored by our tournament organizers feeble Photoshop skills), we have opted to preserve the OJEN case materials in their original form. As such, participants should consider all references to 'Ontario' as referring to British Columbia. The town of Mariposa, and the County of Massinaba should both be considered as being in British Columbia, Canada, and lovely places to live, apart from the odd murder and skyrocketing housing prices.

7.13 – Rule Violation

Any alleged rule violations should be noted by counsel. Counsel has the choice of raising the rule violation in the form of a special objection, if it is appropriate to do so, or they can wait until the end of the trial and make a note to the judge in their closing statements.

Teams should use their discretion in interrupting the mock trial with an objection for a rule violation. They should only do so when the rule violation is of a kind that demands immediate attention (such as improper coaching). Other rule violations, such as an improper line-up, are best addressed in the closing statements and the judge can deliberate with tournament organizers before reaching a decision on appropriate action (if necessary).

Inconsistent testimony shall not be the basis for an objection, as there is a procedure laid out for dealing with inconsistent testimonies, as elaborated above.

7.14 – Rules for Objections

For the purpose of the mock trial, there are two types of objections:

7.14.1 – Regular Trial Objections

Counsel may raise any objections to evidence and procedures that are enumerated in this guide. Section 9.4 details some common objections. While other objects are permissible on BC courtrooms, we have simplified the list of possible objections with the aim of maximizing fairness. We encourage all lawyers to familiarize themselves with, and practice using, the objections explained in section 9.

7.14.2 – Special Objections

A special objection relates to an issue with the mock trial rules, stated in this Guide, that are not regular trial evidence and procedure (i.e. outside the fictitious 'universe' of the mock trial). Because fair competition requires consistent application of the rules, counsel may raise a special objections in the same way they would raise a regular trial objection, and refer the judge to the issue at hand in this Tournament Guide. When doing so, counsel should calmly rise as usual and, when recognized say "Your Honour, I have a special objection based on the tournament rules," or something to that effect, so that the judge immediately understands that this is not a regular objections.

Teams must be judicious and careful in alleging a rule violation. Not all issues with the rules are best dealt with during the course of the trial.

7.15 – Dealing with Rule Violations and Enforcement

7.15.1 – Before a Trial Begins

If a team notices an apparent rule violation outside of a mock trial round, including just before a round has begun, they should alert the tournament organizers, even if it means delaying the start of the mock trial. It is much more difficult to resolve and remedy issues after a trial has begun than beforehand, so if there is an issue before the start of a mock trial round (such a dispute over exhibits, or a team's line-up), participants should simply inform the judge that there is a pre-trial rule issue to resolve and a team representative should leave the courtroom and seek out a tournament organizer, who will generally be in the main lobby near registration. If the tournament organizer is absent, they are dealing with another issue, in which case representatives should wait at registration and if the organizer does not return after 5 minutes, should call the organizer.

Before a trial has begun, it is a tournament organizer, not a judge, who is best placed to resolve and rule on the issue.

7.15.2 – During a Trial

If a rule violation occurs during a mock trial, a team can either raise a special objection with the judge immediately (see 7.14.2 above), or wait until the end of the trial and note to the judge in their closing statement that they are alleging a violation of the rules, and what it is.

Teams should use their discretion in interrupting the mock trial with an objection for an alleged rule violation. They should only do so when the rule violation is of a kind which demands immediate attention (for example, improper coaching). Many rule violations (for example, an improper line-up) are best addressed in the closing statements as the

judge can then deliberate with tournament organizers before reaching a decision on appropriate action. Judges may not be well-acquainted with some technical rules and may not be as well-placed to make a determination on the issues as tournament organizers.

Inconsistent testimony (see 7.10.2) shall not be the basis for an objection of any kind as there is a procedure laid out for dealing with inconsistent testimony detailed in this Guide.

7.15.3 – Rule Deviation by a Judge

If a judge makes a ruling which is clearly at odds with the tournament rules, then counsel may raise this point with the judge through a special objection. Counsel must clearly point the judge to the rule in question. Counsel must accept the judge's ruling on the point as the judge is the ultimate decision-maker in the courtroom, but should advise tournament organizers of the issue after the conclusion of the trial.

7.15.4 – Sanctions for Rules Violations

Sanctions for rule violations will depend on the context and nature of the issue. Tournament organizers shall seek to resolve issues by applying the letter and spirit of the tournament rules, with the aim of maintaining the fairness and integrity of the competition. Any violation of the tournament rules may - but will not necessarily- result in a team's disqualification from the competition, at the discretion of tournament organizers.

8 – Additional Tournament Rules and Clarifications

8.1 – Awards

Using scoring sheets, the initial round judges (volunteer senior lawyers and judges), will determine which teams exhibit the best 'lawyering' skills (this could even mean that a team loses a case but demonstrates better lawyering skills). Semi-finalist teams are determined through points, as are the finalists who will ultimately compete for the Provincial Mock Trial Trophy with a Provincial Court Judge presiding. Awards will also be given Top Overall Lawyer, Top Witness, and the Finalist Team. The tournament organizers reserve the right to award additional awards to individual participants for exceptional performances, and so all participants, including those who do not break to the semi-finals or finals, are encourage to attend the final awards ceremony.

Please note that we are constantly adjusting our scoring system to optimize its ease of use by judges as well as fairness for participants. If you have any feedback relating to scoring, please pass it along to the tournament organizers.

8.2 – Expenses

Tournament participants are expected to cover their own expenses, and registration costs. The tournament organizers endeavour to keep costs as low as possible. Costs are reduced significantly with the support of sponsors, if you are aware of any law firms, companies of individuals who would be willing to support the tournament through monetary contributions or in-kind donations, we would greatly appreciate it if you put them in contact with the tournament organizers.

If your team is having difficulty in raising the funds necessary to cover the cost of registration or travel, we would encourage you to seek out sponsorship from your local legal community.

8.3 – Observers and Spectators

Anyone related to a team (student, coach, parent, mentor, etc.) will only be allowed to observe their own team compete. Teams or representatives from a team, shall not observe other teams compete in other rounds (scouting). If a team does not advance in a competition, they may observe any of the out rounds, and are strongly encouraged to do so. Note that members of the public are also encouraged to observe proceedings from the gallery if space and the presiding Justice permit.

In general, teams should attend with only their members, teacher/coaches, and a reasonable number of spectators. Some courtroom sizes are limited and we cannot guarantee space for all spectators.

Any spectators that are being disruptive or not adhering to proper courtroom decorum can be ejected from the courtroom at the judges' discretion. Judges have ultimate discretion as to the conduct of proceedings in their courtrooms.

8.4 – Dress

Students playing counsel should dress appropriately in business wear (or business casual at the very least). Teams that have their own set of gowns may not wear them unless gowns are available to both teams. If teams have access to robes, we would be grateful if they would bring them to the competition, along with additional robes for other teams if possible. The tournament organizers have access to a limited numbers of robes, and will provide these to court rooms where possible. Dressing appropriately adds to the realism of the exercise and therefore the enjoyment of all participants.

Witnesses may (and are encouraged to) dress appropriately for their characters (see 7.9.3 above).

8.5 – Cameras, Photos, Other Electronic Equipment

Organizers will take steps to permit the taking of photographs in courthouses, but there are usually some restrictions on where and when photos can be taken even when this permission is granted. Taking pictures is not generally permitted in a courthouse, so participants and observers should not take photos without checking with organizers first. Even if taking photographs is permitted generally, individual judges may restrict use in their courtroom, so please also check with the presiding judge to verify whether the taking of photographs is permitted in their courtroom.

The use of electronic devices to take notes or keep time is permitted, although students must be mindful of the impression created by excessive use of electronics in the courtroom. It is much likelier to appear disengaged or accidentally disrupt the trial by the use of these devices than by simply making notes on paper. This is particularly the case for cell phones, which are liable to give the impression one is texting, rather than taking notes.

Communicating via digital methods to coaches for advice during a trial is strictly prohibited, and is grounds for disqualification. Participants using a device due to a disability should inform organizers or judges before round, so they are not unfairly prejudiced in case judges take issue with device use.

8.6 – Coaching During a Trial

Once a mock trial round is under way, a team may not receive any coaching verbally, visually, digitally, by way of a written note, or in any other conceivable way. A team

found to have been receiving coaching may be disqualified from the tournament. Coaches can of course work with their teams prior to the beginning of a round, and debrief them afterwards.

8.7 – Judicial Discretion

If a judge is not aware of a rule or makes a ruling that contravenes the rules in this package, participants may, and are encouraged to, politely point this out to the judge. However, if a judge wishes to proceed, they may, as the judge is the ultimate decision-maker in the courtroom.

Participants should be aware that our judges are volunteer members of the local law community and may be less familiar with these rules than themselves. They should also be aware that different judges have different ways of managing their courtrooms, and therefore we encourage participants to demonstrate adaptability.

8.8 – Discrepancies in this Document

This document and its associated attachments are subject to error. We encourage those who identify a significant error to bring it to our attention so that we can correct it in future iterations of the mock trial rules and to improve future competition. Should a discrepancy, inconsistency or error be contained in this document such that it impairs the functioning of a mock trial round, the rules should be interpreted with the aim of making the competition as equitable and educational as possible.

If the need to adjudicate any disputes of the rules, the lead tournament organizer will be the ultimate arbiter.

8.9 – School/Team Identification

In order to ensure impartiality, all teams will be given randomized (and clever?) team names at registration. Teams are asked to avoid wearing any articles of clothing which might serve to identify their school or origin, and likewise to avoid indicating their school or origin in any other way in the courtroom. If Justices ask teams, they should politely decline, unless it is at the conclusion of the competition.

9 – Simplified Rules of Evidence and Procedure

9.1 – Overview

Court procedure and the rules of evidence are some of the most difficult things to learn. However, knowing court procedure and the rules of evidence is essential to a good trial. Judges make their decisions based on the evidence before them, and they will only accept evidence if it is presented according to the rules of evidence. It is important to understand that the rules of evidence are not "technicalities." They have evolved over hundreds of years, and are based on the idea that some sources of information are more reliable than others. This does not mean the rules are perfect – in fact, the courts sometimes conclude that a certain rule has outlived its usefulness and will abolish it. Nonetheless, our justice system has found that the rules of evidence are, for the most part, important to a fair trial.

Most of the rules of evidence deal with whether or not evidence is admissible – only "admissible" evidence is considered by a judge in making his or her decision. Evidence can be inadmissible for a number of reasons. For example, confessions made under threat of torture are inadmissible because history has shown that people under duress will confess to things they didn't do. In this example, evidence is deemed to be inadmissible because it is not reliable. Occasionally, evidence will be inadmissible even though it is reliable. For example, evidence obtained in an unconstitutional manner (for example, illegal search or seizure by policy) is often inadmissible for policy reasons. Our society has decided that if evidence obtained in an unconstitutional manner was admissible, it may encourage the police to disregard our constitutional rights. This sometimes leads to the impression that useful evidence is excluded for "technical reasons."

For the purposes of the tournament, the rules of evidence have been simplified and condensed. Participants are only expected to know, **and may only use**, the rules of evidence and court procedures as outlined in these materials.

9.2 – Rules for Entering Exhibits

9.2.1 – Types of Evidence

Evidence gets before the court in two ways: through oral testimony of witnesses, and through exhibits. Roughly speaking, there are three types of exhibits:

- Real evidence
- Demonstrative Evidence
- Documentary Evidence

(i) Real Evidence: The actual objects that played a role in the events that gave rise to the trial. For example, a bloodied shirt worn by an accused when arrested or a bullet casing with the accused's fingerprints on it, may be real evidence useful to the trial. Photographs of the crime scene are also considered real evidence in some cases. For example, a photograph of an intersection showing how a stop sign is obscured by tree branches would be real evidence.

(ii) Demonstrative evidence: Exhibits that are used to illustrate a witness's testimony. For example, models, graphs or drawings can be used to explain or illustrate the testimony of a witness. For example, a witness testifying about how an accident occurred could refer to the diagram of an intersection in order to more clearly explain what the witness observed.

(iii) Documentary evidence: Written documents such as notes, police records, business records or letter. The relevance of Documentary Evidence is usually related to the contents of the documents. For example, a police report may be used to cross-examine a police officer where the officer's oral testimony conflicts with what is contained in the report.

9.2.2 – Foundation

For exhibits to be used as evidence, the lawyer offering the exhibit must establish a foundation for the exhibit.

To establish a foundation for the exhibit, the lawyer introducing an exhibit has to have a witness verify under oath that the exhibit is, in fact, genuine.

For example, a police officer can lay the foundation for a knife (real evidence) found at a crime scene if he or she is the person who found it there. Likewise, a person who witnessed an accident at an intersection can verify that a diagram (demonstrative evidence) accurately represents that intersection.

Finally, a person who wrote a letter (documentary evidence) can testify that the exhibit is in fact the letter that he or she wrote.

The key to establishing the foundation for an exhibit is to have a witness who has direct personal knowledge of the exhibit.

The following are three examples of how to establish the foundation for different types of exhibits.

Example 1: Real Evidence

Q: Ms. X, I am showing you a kitchen knife. Do you recognize this knife?
A: Yes I do. That was the knife I found in the dumpster behind my restaurant.

Q: Your Honour, could I have this marked as an exhibit?

This may well be all you need to ask this particular witness depending on what else she saw. If you are trying to establish that the accused used the knife in the commission of a crime, you will have to call the police officer who found the accused's fingerprints on the knife. You would establish with a similar line of questioning that the knife was the same one that the police officer tested for fingerprints. However, you would not have to have it marked as an exhibit again.

Example 2: Demonstrative Evidence

Q: Mr. X I am showing you a diagram of the intersection where the accident occurred. Does it accurately reflect your recollection of the intersection.
A: Yes
Q: Your honour could I have this marked as an exhibit?

The lawyer can then proceed to have the witness draw on the diagram where he saw the pedestrian get hit. It is not good enough for the witness just to point to the diagram because the transcript won't capture the details of the witness's testimony. By having the witness draw on the diagram of the intersection, the judge will be able to look back at the exhibit after the trial and see what the witness indicated.

Example 3: Documentary Evidence

Q: Ms. X, I am showing you a cash register receipt for two items – a toothbrush and a tube of toothpaste. Do you recognize this receipt?
A: Yes
Q: How is it that you recognize it?
A: The cash registers in my store print out the name of my store on the top, like it is on this receipt.
Q: Your Honour may I have this made an exhibit?

The lawyer can then go on to establish, for example, that the owner asked the accused to empty his grocery bag and found a shoplifted item as well as the two items paid for.
In all of these examples, some of the questions may sound a bit obvious. For example, you may ask why it is necessary for a lawyer to tell the witness that he or she is showing the witness a kitchen knife. However, remember that in a real trial, a transcript of all the testimony will be prepared. The transcript is used by the judge to review what was said at trial. It is important that the transcript identify in words the visual aspect of the live trial. Students who will be asking questions of witnesses should think about how their questions will appear on paper.

9.2.3 – Marking Exhibits

Once an exhibit has been entered it will be given a number corresponding to the order in which it was entered. It can be given to the court clerk once counsel has finished using it in examination.

9.2.4 – Entering Exhibits with Consent of the Other Side

One exception to the need to lay a foundation for an exhibit is where counsel enters an exhibit with the consent of the other side. The facts of the official case may call for this in situations where there is no witness character to lay the foundation for the exhibition; for example, an 'agreed statement of facts.' If this is the case, instead of laying a foundation in the usual way, counsel should simply inform the judge that they wish to enter an exhibit with the consent of the other side. The judge will then confirm that with the other side and, for the purposes of the mock trial, opposing counsel is required to consent to the entering of the exhibit.

9.3 – Oral Testimony

As already mentioned, information becomes evidence either by being an exhibit or through oral testimony. In the most trial, most of the evidence will be through oral testimony. Often, oral testimony of the witnesses will conflict. Where there are conflicts, they will be either due to different perceptions of the witnesses or because one witness is not being honest. If you think a witness is lying, ask them questions that will uncover the lie. On the other hand, if you think the witnesses just perceived things differently, then ask questions that will show why your witness's perception is more reliable.

The following are specific rules that deal with the admission of oral testimony as evidence:

9.3.1 – Hearsay

Hearsay is not admissible if it is offered to prove the contents of the statement. Like the name suggests, hearsay is evidence that the witness "heard was said." For example, suppose a witness testifies that she was told by the passenger of a vehicle that the driver was drunk. The witness did not observe the driver's intoxication herself. Instead, she is only able to tell the court that someone else told her the driver was drunk. In general, this type of testimony is not allowed because it is hearsay.

9.3.2 – Opinion evidence

Opinion evidence is evidence in which the witness draws a conclusion based on a set of facts. Suppose a witness saw a car that had numerous dents all over the body, and the witness saw a hammer lying nearby on the sidewalk. Those are facts. Saying that the car had been dented by the hammer is an opinion.

(i) *Lay Witness*: A "lay witness" (i.e. a witness who is not qualified as an expert) is not allowed to give opinion evidence except in limited circumstances.

A lay witness can give an opinion on such things as the speed a vehicle was travelling, whether a person was drunk, the height, age or weight of another person, and whether another person was happy, angry, scared, etc.

These opinions are allowed because they are thought to be within the normal experience of every person, and even though they are opinions, it would be too difficult to restrict the witness to pure facts.

(ii) *Expert Witness*: An expert witness is allowed to give opinion evidence. An expert witness can provide opinions because they have special knowledge which makes them better able to draw certain conclusions from the facts.

An expert witness must be properly qualified to offer an expert opinion. Before accepting expert opinion evidence, the court has to be satisfied that the witness is qualified to give such an opinion. Guidance will be provided to teams in years where an expert witness is included in the case. Given that this year's case includes an expert witness, this guidance can be found in the case materials below.

9.4 – Objections

The rules of evidence are meant to ensure that the judge only considers reliable and relevant evidence when making his or her decision. When one lawyer believes that certain questions or evidence are not within the rules of evidence, that lawyer can make an objection.

To make an objection, counsel should generally stand silently and wait for the judge to recognize them. If the judge has not noticed that counsel is standing, it is permissible to interrupt the proceedings by simply saying "Objection, Your Honour."

After explaining the basis for the objection to the judge, and after the judge gives the other lawyer a chance to respond, the judge will rule on whether the objection is sustained (i.e. the judge agrees that the objection is valid) or overruled. Objections can be made either to a question asked of a witness, or to the answer provided by a witness.

The following objection will be allowed in the tournament:

9.4.1 – Leading Question

Generally, leading questions are not permitted in direct examination. Leading questions are permitted, however, when the questions relate to basic things like establishing the witness's name, age, or the qualifications of an expert witness. Leading questions are also permitted in cross-examination. In fact, cross-examination should largely consist of leading questions.

9.4.2 – Assuming Facts Not in Evidence

This objection can be made where the witness is required to assume some fact that has not been "proven". Here, "proven" just means that some evidence has been offered to support the fact Whether or not the judge will agree that the evidence establishes the fact will not be known until the end of the trial.

In the following question, the witness can't answer "yes" to having asked for an advance without implicitly agreeing that he was short of money. Assume that no evidence has been led with respect to whether the witness was short of money or had asked for an advance.

Q: Because you were short of money, you asked your boss for an advance on your paycheque didn't you?

The solution is to ask two separate questions:

Q: You asked your employer for an advance on your paycheque didn't you?
A: Yes.
Q: And you did that because you were short of money didn't you?
A: No, I was worried that my employer was going to go bankrupt and I wouldn't get paid if I waited until payday.

9.4.3 – Repetitive Question

Once a lawyer has asked a question, she or he must move on. Variations of a question are permitted as long as the variations are trying to get at something different. You cannot ask the same question twice.

For example, this line of questioning (in cross-examination) could give rise to an objection:

Q1: Did you have an unobstructed view of the mugging?
A: Yes.
Q2: But you said you were standing on the southeast corner of the intersection didn't you?
A: Yes.

Q3: And isn't there a hedge and a fence in between that corner and the place where the mugging took place?
A: Yes.
Q4: So wouldn't that block your view of the mugging?
A: No, the hedge and fence are both pretty low, I saw right over them.
Q5. So even though there was a fence and a hedge, you say you had an unobstructed view of the mugging?

In the above example, Q5 is repetitive. It asks the witness exactly what was asked in Q4. In contrast, Q1 and Q4 are not repetitive, they are permissible variations. In Q1 the lawyer is asking a general question to see what the witness will say. When the witness says the view was unobstructed, they lawyer gets the witness to admit that there was a fence and a hedge in between the witness and the crime (Q2 and Q3). Having added this bit of information, the lawyer asks not just whether the witness had an unobstructed view, but whether the hedge or fence obstructed the view.

9.4.4 – Argumentative Question

An argumentative question is one that asks the witness to accept the lawyer's conclusion rather than to accept a fact.

Consider, for example, the questions about the unobstructed view in the previous example. Suppose the lawyer doing the cross-examination had asked the following question as Q5:

Q5: You couldn't really see over the fence and hedge could you?

This type of question invites a "Yes you did" and "No I didn't" line of questions and answers. If the lawyer has a basis for believing the witness couldn't see over the fence (e.g. if the fence was 8 feet high), then that should be put to the witness. It is improper just to argue with the witness.

9.4.5 – Hearsay

As discussed above, hearsay is evidence that doesn't come directly from a person who can be cross-examined on the truth of evidence. Hearsay comes in many forms and can be quite difficult to identify. The following are some examples to help you with the concept, and to show how an objection is made. ("Q" refers to the lawyer asking the questions, "OC" refers to the opposing counsel who is making the objections, "J" is the judge and "W" refers to the witness.

Example 1

Q: When you were knocked unconscious, what did your friends do?
OC: Objection, hearsay. The witness has no direct knowledge of what her friends may or may not have done while she was unconscious.
J: Sustained.

Example 2

Q: Where was the knife found?
A: My friend said it was in a…
OC: Objection, Your Honour, this is hearsay. The witness only seems to know what his friend told him.
J: [Looking at the questioning lawyer] Counsel, what do you say to that?
Q: Your Honour, the witness was clearly right there when his friend told him where the knife was found. That isn't hearsay
J: [Looking at the opposing counsel] Any reply?
OC: Yes, Your Honour. The issue here is where, in fact, the knife was. The witness has no direct knowledge of that because he only knows what this friend of his told him. What the friend may have told the witness is hearsay if it is being used to establish where the knife was.
J: The objection is sustained.

Example 3:

Q: What did the accused say to you when you passed her in the hall that morning?
A: She said she was going to be at the mall that afternoon, and did I want anything really cheap.
OC: Objection, that's hearsay.
J: [Looking at the questioning lawyer] Counsel, what do you say to that?
Q: Your Honour, the accused is charged with shoplifting items at the mall. The witness heard the accused state that she was going to be going to the mall. Furthermore, the accused made a comment that suggests the accused was offering to steal something for the witness. I don't think this is hearsay.
J: I'll overrule the objection. If the witness was testifying that a friend of his was asked the same thing by the accused, then I would agree it was hearsay. However, in this case, what the accused told the witness can be used to establish that the accused had the intention of stealing items from the mall. Opposing counsel can challenge this inference on cross-examination by showing that the witness is not a credible witness or that the witness's recollection is faulty. Therefore, the testimony is not hearsay.

Example 4

Q: What happened after school that day?
A: Well, when I got home I found a note on the table.
Q: Was it this note I'm showing you now?

A: Yes.
Q: And do you recognize the writing?
A: Yes, the writing is that of the accused, my brother. He has very distinctive handwriting.
Q: Your Honour, I would like to have this note made an exhibit.
J: Mark it Exhibit 1.
Q: So to your knowledge, where was the accused when you got home from school that day?
A: The note said that the accused had gone to the park down the street.
OC: Objection, Your Honour. This is hearsay. The witness is relying on the note and has no actual knowledge of where the accused was.
Q: Your Honour, this is a note in the accused's handwriting placing him exactly where the victim's backpack was stolen. How can a written note be hearsay?
J: I'm going to allow the objection. The witness was able to testify to the fact that Exhibit 1 is a note in the accused's handwriting, stating that he would be at what turned out to be the scene of the crime. That speaks for itself. However, to go one step further, and to allow the accused's sister to testify that the accused was at the park based only on having read the note would be hearsay.

9.4.6 – Lack of Foundation

Any exhibit has to have a foundation established. This means that a person who has first-hand knowledge of creating or receiving the exhibit (e.g. letters) or who can verify the accuracy of the exhibit (e.g. a photograph or diagram of the crime scene) must testify that the exhibit is what it appears to be. The process for laying the foundation for an exhibit is discussed elsewhere in these Simplified Rules of Evidence.

If a lawyer attempts to introduce an exhibit without laying the proper foundation, opposing counsel can object. For example:

Q: So you saw the accident from all the way on the other side of the street?
A: Yes.
Q: Well look at this picture, look at how many bushes and shrubs there are between where you were and the accident took place. Are you sure you could have seen everything?
OC: Objection Your Honour, no foundation has been laid for this photograph.
J: Objection sustained. We haven't even established that this is a photograph of the same street where the accident took place. Unless you establish the foundation for this photograph, it is not evidence and should not be put to the witness.

9.4.7 – Speculative

A lawyer may not ask a witness questions which require speculation on the part of the witness. The following are examples of questions that likely call for speculation:

Q: What would have happened if you hadn't been there to stop the fight?
Q: Why did the accused do that?
Q: What will happen to you next?

However, a witness is entitled to answer questions that call for reasonable estimates based on perception. There is a fine line between what is speculative and what is justified estimation, and there is room for disagreement on any particular question.

By modifying a question slightly you may be able to make the same point without asking the witness to speculate. The following are examples of questions that likely would be allowed.

Q: Did it look to you like one person was in worse shape than the other when you broke up the fight?
Q: Was the accused angry when you did that?
Q: How will your injury affect your ability to play basketball?

Because there is no firm rule for when a question ventures into speculation, if an opposing lawyer objects to your question and the judge sustains the objection, then take a moment to see if you can rephrase the question in a way that does not call for speculation.

9.4.8 – Not Letting the Witness Answer the Question

Sometimes in cross-examination, the lawyer will cut off the witness or demand just a "yes or no" answer. In some cases this can form the basis for an objection.

The most famous unfair question is "Have you stopped doing illegal drugs, sir?" Obviously a witness who has never done illegal drugs cannot answer the question by a simple yes or no. A witness is entitled to answer this sort of question fully. If the lawyer asking the question won't allow the witness to answer the question accurately, you should object.

In other cases, it is less clear whether a witness should be allowed to explain a yes or no answer. The reason is that cross-examination is an opportunity for the examining lawyer to control the process. The witness has had the chance in direct examination to say his or her piece, and if the witness is asked a simple (and fair) yes/no question, then that is what should be provided.

For example, suppose the witness is asked "Are you sure about that?" (this is a bad question for cross-examination, but assume it slipped out by accident). The witness will almost certainly say "Yes". That is a full answer to the question, and after realizing this was not a brilliant question, the lawyer would likely want to move on. The witness on the other hand, may want to go on to explain why he or she is so certain. If the witness tries to explain, the lawyer can say something like "Thank you, you answered the question, I'd like to move on to my next question." At this point the opposing counsel may object on

the basis that the witness is entitled to explain his or her answer. Whether the objection is sustained or not will likely depend on whether the judge feels it would be unfair to require the witness to be limited to yes or no.

9.5 – Cross-Examining a Witness on an Inconsistency

9.5.1 – How to Cross-Examine a Witness

This is also known as "impeaching" the witness, but "impeachment" is not as formal a process as it may sound. In fact, and particularly for the purposes of the mock trial, all "impeaching" a witness means is to cross-examine a witness on an inconsistency between their oral testimony and their affidavit, in such a way that points out that inconsistency to the judge. See also 7.10.

Below is an example of what this looks like:

Q: You had a great scoring opportunity, didn't you?
A: Yes, but it was ruined by the Jets player who tripped me.
Q: That made you angry, right?
A: I was annoyed, but I wouldn't say I was *that* angry. I mean, it happens…
Q: You weren't angry?
A: No, I'd say I was annoyed
Q: You remember making your sworn statement to the police after the event, right?
A: Yes.
Q: That statement was just a couple of weeks after the incident, right?
A: Yes.
Q: You were telling the truth when you made that statement, weren't you?
A: Yes.
Q: Your honour, may I approach the witness?
J: Yes.
Counsel approaches the witness
Q: Your honour, please see paragraph 11 of the witness's affidavit. Sir, I'm reading your affidavit at paragraph 11. "My scoring chance was completely ruined. I was *so* angry." Is that what your affidavit says?
A: It does say that.
Q: You told police you were *so* angry you were tripped, right?
A: Well, yes, I said that at the time.
This is all that is necessary for the moment. There's no reason to dwell more on this as there will be many points to cover in a short time. The final step will be to re-iterate to the judge in summation that the witness was shown to have given inconsistent testimony.

The other scenario that could well arise is where the witness gave inconsistent testimony when the lawyer on their own team concluded direct examination. As opposing counsel, this provides an opportunity to, on cross-examination, bring this up to discredit the

witness. The procedure will look very similar to the above example, except that the lawyer will be the one bringing up the prior inconsistency.

9.5.2 – Assessment and Penalties for Inconsistent Testimony

In a real trial, a lawyer could have a variety of reasons for impeaching a witness. The lawyer may wish for the witness to adopt their oral testimony and explain why they said something different previously, because the new testimony better fits with the lawyer's objectives, among other reasons. In the mock trial, the primary purpose is to catch witnesses who are trying to change facts or who are inadequately prepared and to prevent the unfairness that can arise from these situations.

Judges will be instructed to apply penalties to witnesses who give inconsistent testimony at their discretion, based on the gravity of the inconsistency.

9.5.3 – Proper Approach to Unexpected or Novel Testimony

As with many things in law, determining what is truly inconsistent testimony is not an entirely easy or black-and-white exercise. Consider the following example:

Q: You say you were sure you saw the accused punch the victim, but you only saw it out of the corner of your eye, right?
A: That's right.
Q: So, how can you be sure when you only saw it out of the corner of your eye?
A: I have excellent peripheral vision.

In this example, the witness's affidavit said only that he witness saw the incident "out of the corner" of their eye. It doesn't say anything about the quality of the witness's peripheral vision. Is this an opportunity to try to impeach the witness? No – it's an opportunity for counsel to show how they can "roll with it" – a quality which is very highly regarded by judges:

Q: Okay…but what makes your peripheral vision so excellent – what makes it better than anyone else's?
A: Well, it's just very good.
Q: But it's not special peripheral vision is it, it's just the normal peripheral vision anyone has, correct?
A: I think it's excellent. I can see very well in the corners.
Q: But you only see what you see, you can't compare this to anyone else's vision, right?
A: Well, I suppose so.
Q: So really, all we now is that you saw it, not in the centre of your field of vision, but in the corner, right?
A: Yes.

That is probably all that is needed on that point. The witness saw it, out of the corner of their eye – and their statement about their vision being "excellent" is shown to be an opinion and nothing more. If the witness responded by saying that they were certified by some official body as actually having above-average peripheral vision, that is the time to impeach.

It is very important for teams to remember that in real trials, no one has any control over what witnesses say. In mock trials, witnesses are expected to testify consistently with their statement as noted above, but the trials would not be much fun if there was no variability or colour to the witness characters. Therefore, impeaching a witness should only happen when the testimony is clearly inconsistent, not merely unanticipated or novel to the opposing team.

Being able to appreciate what is and is not truly inconsistent testimony will be an important skill for teams to develop as they become completely conversant with their facts. Teams that can think on their feet and respond effectively to "curve-ball" answers will do well. Teams that nit-pick over really insignificant aspects of a witness's testimony, or try to score a procedural victory by trying to impeach unnecessarily, will not achieve the success they seek.

10 – Timekeepers and Timekeeping Rules

10.1. – General Timekeeping Rule

Each team must provide one official timekeeper (an alternate team member may double in this role, see above for more details). Timekeepers from each team will sit together during the trial, within view of the opposing teams and presiding judges and keep time for each segment of the trial for both teams.

Any device with a stopwatch function may be used to keep time if permissible in the courtroom. The permissibility of cell phones and other mobile devices may vary depending on whims of the presiding judge. Teams are encouraged to bring a timing device other than a cell phone (stop watch, kitchen timer, etc.) in case a judge does not permit the use of cell phones in their court. All timing devices should be set to silent so as not to disrupt court proceedings.

At the end of each segment of the trial (e.g. an opening statement, witness examination, etc.), the two timekeepers must compare their timekeeping devices to ensure consistency between them; if there is a discrepancy, they must bring this to the judge's attention immediately. The judge's ruling on the correct time is final.

To ensure that timesheets are consistent between teams, teams should download the official timesheets (included in this package) and use these at trial.

Teams will have a combined total of 10 minutes for chief examination of both of their witnesses and a combined total of 10 minutes to cross-examine the opposing team's two witnesses. Teams may divide the time amongst the witnesses as they see fit. Timekeepers will stop the clock for objections, questions from the judge. Refer to the 2019 BC Provincial High School Mock Trial Time Chart and Time Stoppage Rules fact sheet below for details.

When timekeepers give the signal that time for a segment is up, participants may ask the judge for permission to conclude a question or statement, or that a witness be permitted to give an answer. At that point participants should be mindful that they are continuing with the judge's indulgence and should promptly conclude their remarks.

10.2 – Stoppage of Time

The following instances will require timekeepers to stop the clock:

<u>10.2.1 – Judicial Interventions and Questions</u>

The clock shall stop whenever the judge intervenes in the proceedings of their own accord and no in response to a question by counsel. Timekeepers should stop the clock

whenever a judge asks a question or makes a statement which is not a response to a question by counsel.

Therefore, response to counsel's requests to enter exhibits, set up an enlargement of an exhibition, etc. do not stop the clock. If the clock stops because a judge has intervened, it shall remain stopped while counsel respond directly to the intervention, and resume once counsel has moved on. Usually, in this case, a judge will say 'thank you,' or 'okay, go ahead,' signifying that counsel can resume submissions, and the timekeeper should resume the clock.

Counsel may request 'the court's indulgence' for a moment to confer with colleagues or set up an enlarged exhibit or demonstration, and this is permitted – but an 'indulgence' just means a break in the counsel's submissions; it does not stop the clock.

10.2.2 – Objections:

The clock shall stop when an objection is raised (an exception to the above rule) and remain stopped while the judge addresses it, including any further speaking by counsel for either side on the objection itself. The clock shall resume once the objection has been dealt with and regular proceedings carry on.

10.3 – Witness Examinations

Timekeepers will note that teams are allocated 10 minutes to examine both their witnesses and 10 minutes to examine the other team's witnesses. This means that if, for example, counsel examines one witness for seven minutes on direct examination, then three minutes remain for counsel to examine their second witness.

Teams can use their 10 minutes as they wish, except that both witnesses must be called within the 10-minute period. For complete time allocations, see the Time Chart and Time Stoppage Rules, fact sheet below.

Fact Sheet: Court Clerk

The clerk helps the judge run the courtroom. The clerk will announce the opening of the court, recesses and adjournments and swear in witnesses. In *R v Delaney*, the accused is assumed not to be in custody and therefore will not be escorted into the court by a court services officer.

Trial Script Summary

1. Clerk escorts judge to bench and calls order; court clerk formally opens court.
2. Counsel stands to identify themselves (Crown followed by defence).
3. Clerk reads the indictment and accused pleads to charge (if present, otherwise the defence team enter the plea).
4. Crown counsel makes opening statement.
5. Defence counsel makes opening statement.
6. First Crown witness called and sworn in by court clerk.
7. Crown examines witness (direct examination).
8. Defence examines witness (cross-examination).
9. Steps 5-7 are repeated for each Crown witness.
10. Defence examines witness (direct examination).
11. Crown examines witness (cross-examination).
12. Steps 5-7 are repeated for each defence witness with defence conducting direct examination and Crown conducting cross-examination.
13. Defence presents closing arguments.
14. Crown presents closing arguments.
15. Judge leaves.
16. Court adjourns briefly to await return of judge.
17. Judge returns and tells the accused that he/she is “guilty” or “not guilty.”
18. Judge evaluates teams and announces the winning team.
19. Judge provides feedback to teams.
20. Court is adjourned.

Specific duties of the Court Clerk

1. Announce the Opening of Court:

When all participants have taken their places, the Court Clerk will usher in the judge and announce: "*Order, all rise". Oyez, Oyez, Oyez, anyone having business before the Queen's Justice of the Superior Court of Justice draw near and you shall be heard. Long live the Queen."*

2. Read the Information to the Accused:

After the Crown and Defence lawyers have identified themselves, you will stand up read the charges as they are set out in the information. This year's case has one charge. After reading out the charge you must ask the accused to enter a plea.

"Skye Delaney, you stand charged: That he/she, on or about the 21st through 27th days of August, 2018, in the City of Mariposa, being the parent of Jack Delaney-Parker, did fail without lawful excuse to provide the necessaries of life to Jack Delaney-Parker, a child under the age of sixteen years, and did thereby endanger the life of Jack Delaney-Parker, to wit: Skye Delaney failed to seek or facilitate timely medical attention for Jack Delaney-Parker for injuries sustained under his/her care, contrary to section 215 of the Criminal Code. How say you to this charge? Do you plead guilty or not guilty?"

3. Swear in the Witness

After the accused pleads not guilty to the charge, the Crown will begin its case. They will call their first witness to the stand and the Court Clerk will be responsible for swearing all witnesses. In the interest of time, some judges may choose to skip the swearing in of witnesses and simply advise the witnesses to presume they are sworn in.

If the judge wants to have witnesses sworn in, say:

> *"Will you state your name to the court please?"*

After the name is given, the oath is given on of two ways:

1 – No religious text:

"Do you promise to tell the truth as you know it concerning this matter?"

2 – Bible is used:

"Do you swear that the evidence to be given by you to this court between our Sovereign Lady the Queen and the accused shall be the truth, the whole truth, and nothing but the truth, so help you God?"

4. Announce Adjournments and the Closing of Court:

After the closing arguments have been made by both sides, the judge will adjourn for 10-12 minutes to decide on the verdict and prepare the team evaluation. When ready to adjourn, you will rise and say:

"All rise. Court will now adjourn (or recess) for 10 minutes."

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

"Court is now resumed, please be seated."

The judge will then announce the verdict (guilty or not guilty). When all is finished, you rise and say:

"All rise. Court is adjourned."

After the court is officially adjourned, the judge will announce which team delivered the best performance. Judges are also encouraged to provide participants with feedback on their efforts.

5. Miscellaneous Duties:

There may be other jobs that the court clerk can perform for the judge, such as providing pens and paper, and a glass of water. It might also be collect some "performance sheets" from the tournament organizers, in case the judge forgets to bring one.

Keep an eye on the time: following adjournment, judges are encouraged to provide feedback to participants, and in past competitions judges have taken this recommendation to heart. Please keep an eye on the time to make sure that the round ends at least 5 minutes before the scheduled termination of the round to allow the participants to make it to the next round. You may need to politely remind the judge of the time constraints.

If the round is before lunch, participants and the presiding judge may agree to extend feedback by a few more minutes, but please do not go more than 10 minutes into lunch (as competitors and judges need to rest and recuperate over the lunch break).

Fact Sheet: Time Chart and Time Stoppage Rules 2019

1. Call to order, read charge, enter plea, introduction of teams. 2-3 mins

2. Crown – opening statement 4 mins

4. Defence – opening statement 4 mins

3. Crown Witnesses (2 witnesses)
(Both witnesses must be called by each side. The order that the witnesses are called is at each team's discretion).

- Direct examination W#1
    - Cross-examination W#1
- Direct examination W#2
    - Cross-examination W#2

Both teams will have a combined total of 10 minutes for direct examination of both of their witnesses and a combined total of 10 minutes to cross-examine the opposing teams' two witnesses. Teams may divide the time amongst the witnesses as they see fit.

5. Defence Witnesses (2 witnesses)
(Both witnesses must be called by each side. The order that the witnesses are called is at each team's discretion).

- Direct examination W#1
    - Cross-examination W#1
- Direct examination W#2
    - Cross-examination W#2

6. Summations (closing statements)
Defence 6 mins
Crown 6 mins

7 . Recess for judges deliberation 10 mins max.

8. Judge – delivery of verdict and assessment of teams (feedback) 10 mins

For the purposes of the competition, there is no right of re-direct/re-examination. Should a judge offer it, counsel should decline by saying, "Your honour, thank you however the Guide prohibits re-direct/re-examination, so we must respectfully decline." It is all counsel's responsibility to advice the court if the matter should arise.

Following the reading of the verdict, and adjournment, judges may provide feedback to participants. This feedback should be concluded such that participants have time to make their next round in a timely fashion. This feedback is not considered part of the court proceedings or the 'universe' in which the mock trial takes place.

Role Preparation Guide

Role Preparation for Crown and Defence Lawyers

- As a defence lawyer you must 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-examination of the other side's witnesses.
- The crown will make its opening statement, followed by the defence. This represents a deviation from normal courtroom procedure (where the defence would deliver their opening statement prior to introducing their witnesses). We have introduced this deviation in order to equalize things in the court room for the sake of the competition. We appreciate feedback on this practice.
- Following opening statements by both sides, the Crown will call their first witness. The defence goes next with its witnesses.
- The defence gives its closing arguments first. The Crown goes last.

<u>How to prepare an opening statement</u>

- Become familiar with your witnesses' fact sheets and the Agreed Statement of Facts of the accused.
- 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 the facts. The facts are what will paint the picture for the judge.
- Check with the lawyer delivering the closing statements for your side to make sure that both the opening and closing arguments are very similar, and cover the same key points.
- 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.

How to prepare for direct examination

- Write down all the things that your side is trying to prove.
- Read the witness's testimony carefully, several times over.
- Make a list of all the facts in the witness's 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's 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 shot 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, so listen carefully and take notes if need be.

How to prepare a summation (also known as your closing arguments)

- Write down your key arguments and summarize the important facts you want to stick in the judge (and jury's) minds.

- 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 the trial. This may mean you have to re-write your closing arguments on the spot during the trial.
- Point out where a witness for the other side admitted something important to your case. For example: "The witness says she identified Mr. Smith as the man who broke into the car. However, she admitted 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 delivering the opening statements for your side, to make sure that both the opening and closing statements are very similar, and cover the same key points.

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. One thing to note is that Canadian courts are not the same as American courts, so please to not get your courtroom etiquette from binge watching Suits or The Good Wife. 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 unsure, ask the judge if you may proceed.
- The first counsel to address the Court should introduce the other counsel. For example, you might say: "[Name] appearing for the Crown; my colleagues [Names listed] is also appearing for the Crown," or "my friends [Names listed] 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 submission or closing statements.
- Try not to distract the judge. If you need to talk to 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 colleagues’ or ‘my co-counsel.’ Opposing counsel should be referred to as ‘my friend’ or ‘counsel for the [position or name of the client].’
- Address the judge formally. Refer to each judge as ‘Your honour,’ ‘Justice [name]’ or simply as ‘Justice.’
- 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.

General reminders

- Speak clearly.
- Use an appropriate volume.
- Try not to say ‘um’, ‘ah’, ‘okay’, or ‘like.’
- Do not speak too fast.

Role Preparation for Witnesses

Witnesses are an integral part of the mock trial. You need to learn your role very well and ‘get into character.’ This will help you feel more natural on the stand. It’s a lot like being an actor. Read your sworn witness statements carefully and try to act as your character comes across to you. Listen carefully to the questions asked of you and ask for them to be repeated if you didn’t hear the question or didn’t understand.

How to prepare for direct examination

- Whether you are acting as a Crown or a defence witness this is where you are on the same side as the attorney asking you questions, as far as the mock trial is concerned.
- The attorney asking you questions will be on your team, and as a team you will have put a lot of planning into the questions that will be asked and answers you will give.

- It would not make sense for you to throw your examining attorney any ‘curveball’ answers, nor for the attorney to ask you any unexpected questions. Your challenge will be to make an exchange, which is largely rehearsed, appear natural and realistic. To do this, you may wish to try different ways of answering the same question and consider leaving room for you and the attorney to improvise somewhat.
- The more you practice getting into character, the easier it will be for you to give confident and natural responses to questions.
- Remember that you need to answer questions ‘on the spirit of the facts’ according to the above rules. This means that when you get asked a question that has a clear answer in your statement, just give that answer. For direct examination, you and your teammates can come up with questions and answers that are grounded in the facts of your statement but extrapolate on them. In other words, your answers may expand on the facts but cannot contradict them.

<u>How to prepare for cross-examination</u>

- Whether you are acting as a crown or defence witness, this is where you are on the opposing side as the attorney asking you questions, as far as the mock trial is concerned.
- Unlike cross-examination, you won’t be able to know ahead of time just what the examining attorney will ask you. You can, however, get a pretty good idea from your tam preparations, as you need to prepare to play both Crown and defence.
- Remember that this time the attorney asking you questions is trying to beat your team in a competition. The more you get into character, the easier it will be to give confident and natural responses to questions.
- Don’t get flustered if you get ‘curveball’ question. Take your time to think about the question and your sworn statement. Just like you will have done in direct examination, the other team will try to be creative in its questions. If you can answer the question without contradicting your statement, then do it. That’s part of getting into character.
- It will never do your team any good to deny or try to hide from facts contained in your sworn statement. It’s better for a witness’s credibility to just admit a negative fact if you are asked a direct question about it, rather than try to dodge it.

Tips for Team Composition

The purpose of this section is to provide additional guidance to teachers/coaches on the options available in configuring their team.

An easy way to visualize this, is to think of your mock trial team as having two lineups: Crown and defence. Each lineup consists of six jobs for lawyers:

- Opening statement
- Direct examination of your Witness #1
- Direct examination of your Witness #2
- Cross-examination of the other side's Witness #1
- Cross-examination of the other side's Witness #2
- Closing statement

Each lawyer will conduct one of the four examinations, and two of those lawyers will also deliver a statement: opening or closing. So there is room for four lawyers in a lineup, and two witnesses for a total of six roles per lineup. You must have a minimum of six students per team, but you can have up to eight. If you have more than six students on your team, some team members will only play roles on one lineup.

Remember:

- Teams must prepare to play the Crown and defence.
- Six students must appear on each of your lineups.
- Each team member must play a part in at least one lineup (with the exception to alternates).
- There are four lawyers on a lineup, each must do one examination, and two will do an examination plus deliver an opening or closing statement.
- Competitors can either enter the competition as lawyers or witnesses, thus, a participant cannot be a witness on one lineup and a lawyer on the other.

Case: R v Delaney – OBA/OJEN Competitive Mock Trial: tournament Case 2019 (Final Version)

Please see the attached case booklet of the above title, this will be the case for this year's competition. This following content contains two appendices:

- Appendix I: Legal Guidance
- Appendix II: Exhibits

Please read through this case material carefully. You will find helpful guidance regarding the specifics of the laws involved in this case in Appendix I. Please note that this guide directs participants to further readings, and these should be consulted, but as noted (Appendix I, page 4):

"There is no need, and the rules do not allow, for you to reference cases by name. Simply state what you believe the law requires in the case at hand."

Please note, as specified in 7.12 above, that this case is taking place in BC. We are grateful to OJEN for the use of their excellent case materials. Because our re-working these documents to change locations to make them BC specific risked introducing potential errors into the documents, we have opted to preserve the OJEN case materials in their original form. As such, participants should consider all references to 'Ontario' as referring to British Columbia. The town of Mariposa, and the County of Massinaba should both be considered as being in British Columbia, Canada.

OBA OJEN COMPETITIVE MOCK TRIALS

Tournament Case 2019

R v Delaney

OJEN ROEJ
ONTARIO JUSTICE EDUCATION NETWORK
RÉSEAU ONTARIEN D'ÉDUCATION JURIDIQUE

ONTARIO BAR ASSOCIATION
L'ASSOCIATION DU BARREAU DE L'ONTARIO
A Branch of the Canadian Bar Association
Une division de l'Association du Barreau canadien

FINAL VERSION

Canada,

Province of Ontario,

County of Missinaba.

In the Superior Court of Justice,

Her Majesty the Queen

against

Skye Delaney

Skye Delaney stands charged:

1. That he/she, on or about the 21st through 27th days of August, 2018, in the City of Mariposa, being the parent of Jack Delaney-Parker, did fail without lawful excuse to provide the necessaries of life to Jack Delaney-Parker, a child under the age of sixteen years, and did thereby endanger the life of Jack Delaney-Parker, to wit: Skye Delaney failed to seek or facilitate timely medical attention for Jack Delaney-Parker for injuries sustained under his/her care, contrary to section 215 of the Criminal Code.

Dated this 12th day of November, A.D. 2018 at Mariposa, Ontario.

Steve Smith,

Agent for the Attorney-General of Ontario

Criminal Code of Canada

(RSC, 1985, c. C-46, as am.)

Duties Tending to Preservation of Life

Duty of persons to provide necessaries

215(1) Every one is under a legal duty

(a) as a parent, foster parent, guardian or head of a family, to provide the necessaries of life for a child under the age of sixteen years; …

Offence

(2) Everyone commits an offence who, being under a legal duty within the meaning of subsection (1), fails without lawful excuse, the proof of which lies on him, to perform the duty, if

(a) with respect to the duty imposed by paragraph (1) (a) …,

(i) the person to whom the duty is owed is in destitute or necessitous circumstances, or

(ii) the failure to perform the duty endangers the life of the person to whom the duty is owed, or causes or is likely to cause the health of that person to be endangered permanently …

Punishment

(3) Everyone who commits an offence under subsection (2)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

Presumptions

(4) For the purpose of proceedings under this section,

(b) evidence that a person has in any way recognized a child as being his child is, in the absence of any evidence to the contrary, proof that the child is his child;…

Witness List

Crown:

- Detective Constable Robin Lestrade
- Dr. Blair Chao

Defence:

- Skye Delaney (defendant)
- Quinn Parker

Notes:

- Dr. Blair Chao should be "qualified" as an expert witness. Qualifying a witness as an expert allows the witness to give opinions in their area of expertise (in this case, paediatric medicine and surgery). To do this, Crown counsel will enter Dr. Chao's CV as an exhibit and ask a few leading questions at the beginning of direct examination (which is permitted) to establish Dr. Chao's credentials and expertise. This is not a long process. Crown counsel will then ask the judge to accept Dr. Chao as an expert witness and the judge will make a ruling (Dr. Chao's credentials are not in question, so the ruling will be positive). Dr. Chao can then provide expert opinion testimony.

- Witnesses playing Dr. Chao are free to do whatever research they wish to convincingly play Dr. Chao and answer questions on cross-examination. **Questions to Dr. Chao must be material to the case**; i.e. Dr. Chao cannot be expected to answer general medical questions beyond the scope of the case.

Sworn Statement of Det. Cst. Robin Lestrade

I have been a police officer with the Mariposa Police Service for six years. I hold the rank of Detective Constable and have worked in the Children and Vulnerable Persons sub-unit for one year. Before that, I worked in Drug Enforcement for two years after I became a detective.

On Monday, August 27th, 2018, at approximately 10:50 a.m., I attended Mariposa General Hospital to investigate suspicious circumstances surrounding injuries sustained by a child: Jack Delaney-Parker, aged two years, two months.

I spoke with Dr. Chao, the paediatric surgeon who operated on Jack, and took a statement.

I then spoke to Jack's parents, Skye Delaney and Quinn Parker. They were resistant to coming down to the station to give statements. They said wanted to stay close to Jack, who was in the post-operative recovery room. Wanting to get separate statements as soon as possible, I took them at the hospital.

Delaney did not want to give a statement at all. Naturally, I informed both Delaney and Parker that any statements they gave at that point would be voluntary. Parker took Delaney aside for a moment and when they came back, Delaney agreed to give a statement.

Based on my interviews, I attended the Delaney/Parker home at 8277 Blue Ridge Road later that day, with the permission of Delaney and Parker. Delaney accompanied me to give me access.

I observed that the home had three staircases. There were baby gates at the top and bottom of two staircases, and at the top of one – the one leading to what I would call the sub-basement. The house has a level that is five steps down from ground level, then another level six more steps down from that, which appeared to be used for storage. There is an upper level where the

bedrooms are located, seven steps up from the main level. According to Delaney, this is where the fall with Jack happened.

I decided to conduct a thorough forensic investigation of the home. Delaney seemed agitated about this prospect and told me I couldn't. I therefore left and obtained a search warrant, though Quinn Parker called me while I was in the process of doing so to consent to the search, and to say that Delaney had as well.

I obtained the search warrant anyway, and returned to the home at 3:50 p.m. with the forensic team. We conducted a thorough forensic investigation of the stairs, but found nothing of significance. The baby gates were functional and undamaged. The gates were made of strong plastic and seemed very sturdy, so the fact that they were not damaged did not, in my opinion, mean that the fall Delaney had with Jack was insignificant. We did find several towels and children's clothing with dried vomit on them, waiting to be laundered in the laundry room in the sub-basement.

From my interview with Parker, I formed the impression that a sore spot in the relationship was a broken arm Jack had suffered under Delaney's care before the reconciliation and Delaney moving back in. Parker seemed to be deflecting on this topic. I noted that Parker and Delaney had only recently reconciled after having broken up shortly after Jack was born.

I contacted Missinaba Child and Family Services (MCFS) to obtain the file on the family. The only note was for the incident that Quinn Parker disclosed, where Jack had broken his arm in November 2017. It did not say very much: it seemed to have been a routine investigation due to the broken arm, which was closed after the first, most minimal, stage of investigation. There was no police involvement.

I suspected that this history, and fear of Parker's reaction, may have been the reason Delaney failed to seek immediate medical attention or disclose Jack's fall to the doctors initially at the hospital.

Based on Dr. Chao's assessment of Jack's injuries, the symptoms that he would have presented, and the risk that resulted from the delay in seeking medical attention, I charged Skye Delaney with failing to provide necessaries of life, contrary to section 215 of the Criminal Code.

D/Cst. Robin Lestrade #988

Sworn (or Affirmed) before me at
Mariposa
in the PROVINCE OF ONTARIO, on
this 6th day of September 20 18

A Commissioner for Taking Oaths for Ontario

Sworn Statement of Skye Delaney

I am 38 years old, and I am self-employed as a software developer. I live at 8277 Blue Ridge Road in Mariposa. I've lived there since April of this year, when I moved in with my partner, Quinn Parker.

I am giving this statement voluntarily. I understand that I do not have to say anything, and I have been instructed of my right to consult a lawyer at any time.

Quinn and I were together for several years before our son, Jack, arrived. Around that time that I got offered a job heading an app team in California for the company I worked for at the time.

Needless to say, Quinn was not impressed with my timing. But, the job was a huge opportunity and our relationship was not really going well. We broke up and I gave Quinn full custody of Jack. After about a year, I moved back. The scene out there wasn't really for me, and I didn't want to miss Jack growing up. Now I run my own app development company. Working from home makes up for the fact that sometimes I have to work long hours.

I had to work very hard to win back Quinn's trust. Quinn felt that I would just move away on a whim again but I think I have proved that I turned over a new leaf. Quinn slowly let Jack spend more and more time with me. From all that time spent co-parenting, Quinn and I grew closer together again. Finally, Quinn said I could move back in in April, and we have been a happy family ever since.

The week of August 20, 2018, Quinn was at a conference in Las Vegas for five days. This was the longest time I had ever looked after Jack myself. Honestly, this business with Jack getting injured, it's just so weird. It wasn't until after the surgery that I thought it could even be the issue. All his symptoms seemed like the flu or some sort of stomach bug. The fall just never crossed my mind as being related.

The second night that Quinn was away was August 21. Sometime in the middle of the night, Jack got up and came into my bedroom, saying he couldn't sleep. I got up and took him downstairs to get something to eat or drink.

We have a baby gate at the top of the stairs and another at the bottom. The house is a split-level, so it's only five or six steps per staircase. I picked Jack up and held him with one arm, kind of sitting on my forearm, so that I could open the first gate with my other hand. I do this all the time. I think that around the first or second stair I stepped right onto a toy and we fell, landing on the second baby gate.

The way I remember it, I held Jack close to protect him as we fell. The baby gate broke our fall. The baby gates are attached to the wall by tension, so the gate bounced loose when we fell on it.

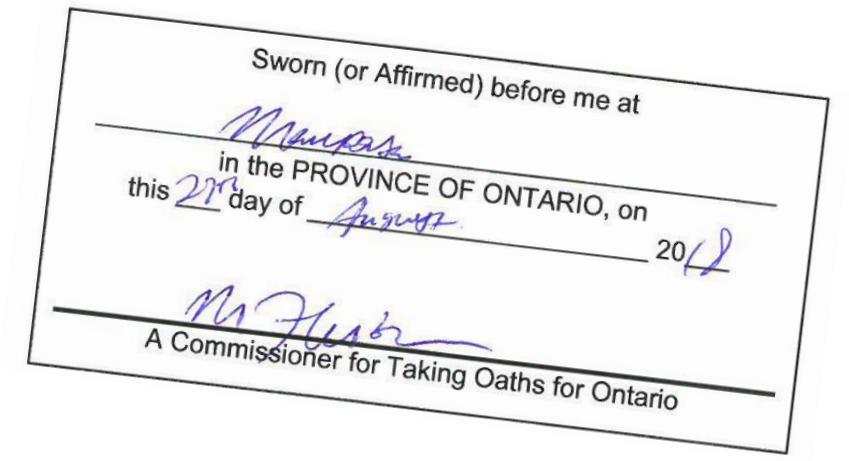
Honestly, it did not seem like a big deal at the time. Jack was crying, but he cries every time he falls or bumps himself. I was a little dazed, but I was unhurt, and Jack stopped crying after a few minutes. After Jack had settled down, I gave him a glass of juice and some cookies and we stayed up together for a half-hour or so. He vomited up the juice and cookies after about 20 minutes, but that's not odd for Jack. He has this on-and-off problem with upset stomach. Honestly, I never connected the vomiting to the fall. I was thinking more about his ongoing stomach issue and what the trigger could be.

For the next few days, Jack seemed sick, but as a toddler, that's not uncommon. After a day or so, I figured it wasn't related to food and must be a stomach bug of some kind. He was crankier than usual and quite sleepy, but it wasn't to an extreme. It was like a flu. He was better in the mornings, but wore out earlier throughout the day.

I never noticed bruises during the couple of times I gave Jack a bath or changed his clothes. Even still, as a toddler, running around, it's normal for him to get bumps and bruises.

When Dr. Chao asked me about whether Jack had had any kind of "trauma" recently, the fall down the stairs never occurred to me. Obviously, now it seems like, how could it not? But when the doctor asked me, I hadn't even thought about it since it happened. I had been thinking about Jack's stomach problems as part of the ongoing issue, or that he had an illness of some kind. I feel absolutely terrible about the whole thing, but I'm not a criminal.

Skye Delaney



Sworn Statement of Quinn Parker

I am 35 years old and work as a pharmaceutical sales representative. I live at 8277 Blue Ridge Road in Mariposa with my partner, Skye Delaney, and our son, Jack.

I am giving this statement voluntarily. I understand that I do not have to say anything, and I have been instructed of my right to consult a lawyer at any time.

Jack was born June 2, 2016. It wasn't long after we had Jack that Skye left for a job in California. I wasn't ready for the upheaval. Truthfully, the relationship was already on the rocks. I got full custody with no argument from Skye.

Skye eventually moved back to Mariposa after about a year and wanted to be part of Jack's life. We got into a rhythm of Skye taking Jack for periods of time, and eventually overnight sometimes.

Co-parenting brought us closer together. Skye moved in with us in April of this year. Parenting was an adjustment for Skye, who's a tech geek. But, Skye has stepped up.

Since the house is a split-level, it has several sets of stairs. Ever since Jack began walking independently, I put up baby gates everywhere to ensure that Jack does not fall down and seriously hurt himself. There's a gate at the bottom and the top of each staircase.

The only incident of Jack getting seriously injured was in November of 2017. Jack broke his arm when he fell off a play structure at the park when he was with Skye. Skye wasn't sure exactly what happened, but thought that another kid probably knocked Jack off the structure. He hadn't been walking for very long at that point, so I guess balance was an issue.

That led to an investigation by Child and Family Services after we took Jack to the hospital. I guess they were just following procedure. They just spoke to us, visited us both at our homes, and then they closed the investigation since obviously there was nothing going on.

Of course, I was upset. Skye should have been paying more attention. I don't think I would have let that happen because I would have been right there with Jack. But, accidents do happen. At the playground, there's a lot going on. It's easy enough to get distracted for a moment. I assumed that it was a painful learning experience for Skye.

I was away at a conference in Las Vegas for work from August 20 to 25. It was the longest I had been away from Jack but definitely not the only time I had left him overnight with Skye.

I video-called the first time on the second night – August 21 – and everything seemed fine. When I called on August 23, Skye said that Jack seemed unwell: he had been vomiting and seemed quite tired. Jack has had an on-again, off-again problem with upset stomach for about six months. Our family doctor has been trying to figure out what it is: lactose intolerance, food allergies or something else. There's no obvious trigger. Given Jack's age, he's prone to catching bugs from daycare and such, so it's been really hard to tell what the issue is.

I called the last time on August 24, but Skye said that Jack was sleeping and since he had been sick, we just let him sleep. When I got back on August 25, Jack was very sleepy. He vomited after dinner and clutched his stomach and said that it hurt. I stayed with him all night. He woke up to vomit a couple more times, but otherwise was very sleepy.

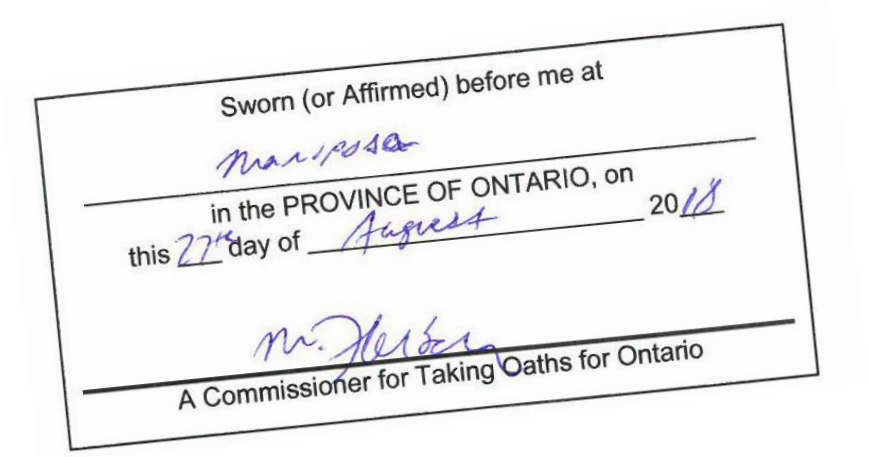
The next day, August 26, I took Jack to our family doctor, first thing in the morning. The doctor thought it was probably stomach flu, although he thought it was important to monitor because Jack wasn't running much of a fever. When the doctor examined Jack, he noticed some bruises on his belly that I hadn't noticed before. I asked Skye about the bruises, but Skye had no idea. Jack definitely gets bruises from time to time from running around, as all children do, and sometimes we don't see what happened or know where they came from.

Jack and I stayed home and rested all day that day. Then, early in the morning on August 27, Jack woke up to vomit, and he seemed more unresponsive than usual, so we took him to the emergency room around 5am. Everything happened very fast from that point.

After the surgery, Dr. Chao told us that this was a close call, but Jack was going to be okay. I was floored when Dr. Chao said that Jack had internal bleeding. Dr. Chao asked again whether Jack might have had a fall or experienced any other type of trauma recently. I remembered the bruises on Jack's belly and asked Skye about them again. That was when Skye mentioned falling down the stairs with Jack.

Of course, this whole situation has me worried. But, accidents do happen. I believe that this was like a perfect storm: I was away, the fall happened in the middle of the night, Jack's ongoing stomach issues, the symptoms being hard to detect. Skye loves Jack, and I cannot believe that Skye would intentionally let him suffer. Even if I had known about the fall, I can't say that I would have connected those symptoms with it either.

Quinn Parker



Sworn Statement of Dr. Blair Chao

I am 45 years old and work as a paediatric surgeon. I obtained my medical degree from McGill University in 1999. I was certified as a specialist in general surgery by the Royal College of Physicians and Surgeons of Canada in 2006, and in paediatric surgery in 2008. I have practised paediatric surgery at Mariposa General Hospital ever since.

At about 5:45 a.m. on August 27, 2018, I was consulted by Dr. Dolores about a child, Jack Delaney-Parker, who she had examined in the emergency room. Dr. Dolores found Jack to be very listless, unresponsive, and exhibiting low energy. Jack had a low-grade fever and his abdomen was warm, tender, somewhat tense, and slightly distended. I noted two bruises on Jack's left lower abdomen: one was large and purple; the other was smaller, brown, and close to the larger one. I took photographs, which is standard procedure. Jack seemed dehydrated, and his pulse was faster than normal.

I ordered an ultrasound, followed by a CT scan. The ultrasound showed a lot of unexplained fluid in the abdomen and the CT scan showed not only fluid but also a possible laceration of the pancreas.

In my initial consult with Jack's parents, I asked them whether they knew about any trauma or a fall that he might have experienced recently. They told me that he had fallen off a slide at a playground almost a year ago but denied any recent trauma. As I was concerned about the injury to the abdomen and puzzled about the source of fluid, I elected to operate and obtained the parents' consent.

The original plan was to conduct a laparoscopy, which would involve a small incision and inserting a small camera into the abdomen to assist in determining the cause of fluid. However, as I entered the abdomen, I realized that there was a lot of blood. I aborted the laparoscopy and proceeded instead with a laparotomy, which involved making a large incision in the abdomen.

After making the incision, I found that the abdomen was full of blood. I also found saponified fat, which indicated that the fat had already been digested by an enzyme which may have originated in the pancreas. This indicated that the injuries were over 24 hours old, although I cannot date them more specifically than that.

During the operation, I also found multiple lacerations which appeared to be caused by a trauma. I had to repair a deep bleeder in the mesentery (the membrane containing blood vessels which supplies the small bowel). 16 centimetres of small bowel was detached from the mesentery. Because of what I had found so far during the laparotomy, I called the hospital's SCAN (Suspected Child Abuse and Neglect) team.

I proceeded to examine the pancreas. It showed signs of injury and the tail of the pancreas was damaged. I drained the fluid in the pancreas to treat it. Finally, I removed two damaged areas of bowel and reconnected the remaining bowel. A transfusion of one litre of blood was required.

I consider the surgery that I performed to be "major surgery". The injuries were life threatening. I believe that the child was not brought to the emergency room within a reasonable time, as he was already very ill on arrival. The injuries could have become fatal within 24 hours. Jack had to remain in hospital for approximately three weeks after surgery to fully recover.

After surgery, I reported my findings to the parents. I asked again about possible trauma. Only then did Skye Delaney tell me about Jack falling down the stairs onto a baby gate five or six days prior. The way it was told to me, Delaney may have fallen on top of Jack, which would have placed considerable pressure on his abdomen if it hit the baby gate, and would have caused the injuries that I found.

Had the injury been treated sooner, Jack may not have required a blood transfusion. He also may not have lost so much bowel. We may have even been able to just repair it. When bowel is removed, there is a long-term risk of complications.

Based on my experience, this type of a fall would cause the injuries that Jack had, and the symptoms that would likely have presented include vomiting, crying, complaining of a stomach ache, and not wanting to eat. The bruises, in particular, must have been caused by this fall, or whatever trauma it was that caused the internal injuries, and they would have been hard to miss for an attentive parent. The bruises would have turned blue-purple within one to two days of the injury.

Dr. Blair Chao

Sworn (or Affirmed) before me at
Mariposa
in the PROVINCE OF ONTARIO, on
this 27th day of August 2019
A Commissioner for Taking Oaths for Ontario

OBA OJEN COMPETITIVE MOCK TRIALS

Tournament Case 2019

R v Delaney

APPENDIX I: LEGAL GUIDANCE

OJEN ROEJ
ONTARIO JUSTICE EDUCATION NETWORK
RÉSEAU ONTARIEN D'ÉDUCATION JURIDIQUE

ONTARIO BAR ASSOCIATION
L'ASSOCIATION DU BARREAU DE L'ONTARIO
A Branch of the Canadian Bar Association
Une division de l'Association du Barreau canadien

FINAL VERSION

Legal Guidance for *R. v. Delaney*

Overview of Section 215 of the *Criminal Code of Canada*

Most laws tell us what *not* to do. However, some laws tell us what we *must* do. These laws create a "duty" – a legal obligation to take certain actions in particular circumstances.

The existence of a duty is an exception to the norm; there is, for example, no *legal* duty to call 911 or intervene if you witness a house fire or a victim who is drowning (though you may feel a strong *moral* duty to do so). One exception to this general rule is found in section 215 of the Criminal Code.

"Necessaries" is often accidentally misstated as "necessities", so watch out for that.

The Parliament of Canada has decided that parents have certain legal duties towards their children. So, it created s. 215, commonly called "failing to provide the necessaries of life", which has been in our *Criminal Code* since the *Code* was first introduced in 1892. An offence is committed when a parent is *negligent* in the performance of their duty. Negligence is not about what the accused intended, but about whether their conduct **met or fell short of the standard that the law sets for all parents.**

The most serious cases of harm to children, where a child is assaulted or neglected over a long period of time – especially those leading to serious injury – will attract even more serious charges than s. 215. Section 215 sets the most basic standard that all parents must live up to. Because it is judged on the standard of negligence, a parent who does not mean to cause any harm at all may still be found guilty of the offence if a judge or jury finds that the parent nonetheless fell short of the standard.

As you read and dissect this case, you will see that it is about the alleged failure of a parent to perform their parental duty over a short period of time in a specific situation – a situation any parent might find themselves in. That's why there are no additional charges beyond s. 215.

The standard of fault, or *mens rea*

The law uses the terms "subjective" and "objective" to express two basic standards for judging the "fault element" of a crime, also known as the *mens rea*. These are broad categories, with variations depending on the offence in question.

The subjective standard focuses on what an accused person **intended and knew** in the situation. It is a personalized assessment of what was going through the accused's mind at the time, and it applies to many serious crimes, such as murder and assault.

Failing to provide the necessaries of life is, however, judged on an objective standard. The objective standard does not look at what the accused was thinking or intended; instead, it holds the accused to the standard of a hypothetical "reasonable person". In the *Delaney* case, the question will be **what a reasonable parent in the same circumstances would have done.**

The "reasonable parent" is a made-up, normal parent, with a normal degree of skill and knowledge about parenting, who provides the "trier of fact" (the jury, or the judge in a trial without a jury) with someone to judge the accused against: how would a reasonable parent have behaved in this situation, and did the accused fail to live up to that standard?

Applying the standard of fault: The "modified objective test"

The standard for the *mens rea* applying to s. 215 is called a "modified objective test". It's "modified" because the Supreme Court of Canada has determined that the simple objective standard, often used in civil (i.e., non-criminal) law needs to be modified for criminal law, in two key ways:

First, the conduct must be a **marked departure** from the conduct of the reasonable parent in the same circumstances. A "marked departure" is something more than a "mere departure". Therefore, a parent is not guilty of the offence if they failed to meet the standard, but only slightly.

Second, even though the standard is objective, not subjective, the accused can be acquitted if they can raise a reasonable doubt that they **were incapable of appreciating the situation.**

The Supreme Court has specifically rejected the idea that the "human frailties" or "personal characteristics" of the accused, such as youth, inexperience, or lack of education, can go into the consideration of what a reasonable person would have done in the circumstances.

In other words, the trier of fact cannot ask, "What would a reasonable parent, who had very little experience caring for a baby, have done?", or, "What would a parent who thought that fall was no big deal have done?" The point of the objective standard is to maintain a minimum standard that everyone has to live up to.

However, the defence can argue that **something personal to the accused, or something about the circumstances of the situation, meant that the accused simply could not**

understand or perceive what was going on. One hypothetical example that has been suggested in the case law is an illiterate person carelessly handling an explosive substance because they couldn't read the label. Another interesting one is that "a reasonable person will not show the same anxious care when handling an umbrella as when holding a loaded gun". But, what if the umbrella is, unknown to the accused, actually a gun disguised to look like an umbrella (James Bond-style!)?

The guilty act, or *actus reus*

In criminal law, to find someone guilty, they must have had both a guilty mind, or *mens rea*, and they must have committed a guilty act, or *actus reus*.

There are two possible ways to establish the *actus reus*, depending, as with *mens rea*, on the offence in question:

- **Commission of an act:** a person does something they shouldn't.
- **Omission of an act:** a person omits, or fails, to do something which the law requires of them.

Which one applies to failing to provide the necessaries of life?

Note re: "… fails without lawful excuse, the proof of which lies on him,

Although the words, "the proof of which lies on him" still appear in s. 215 (2), they are no longer applied. They were declared unconstitutional for creating a "reverse onus" – requiring an accused person to prove something in order to avoid conviction. The accused only needs to raise a reasonable doubt that they had a lawful excuse.

However, the defence of "lawful excuse" does not apply to the facts of *R v Delaney*. It generally only applies to cases where someone has a legal duty that prohibited them from providing the necessaries of life. An example could be a prison guard who, during a riot, is obligated to lock down the prison to prevent harm to the whole prison population and, as a result, can't immediately attend to the injuries of a particular prisoner.

Applying the Law and Further Reading

With your teacher and lawyer coaches, you will need to work on applying the law to the facts of the case. Remember that different witnesses may have conflicting "facts" – what one witness thinks is fact does not make it the undisputed truth.

Your opening statement and your closing arguments should argue how the law applies to the evidence. Your opening statement should outline the law and how the evidence that you anticipate the witnesses will give either establishes guilt if you are the Crown, or raises a reasonable doubt if you are defence. Then, your closing arguments should refer back to the evidence the court heard, and again put it in the context of the law.

Remember that the mock trial is really about making good arguments: whether they actually succeed in achieving a "verdict" of guilty or not guilty makes no difference to the scores.

You will likely find it helpful to do some further reading to refine your understanding of the law and how it applies to this case. Key cases are noted below. Keep a few things in mind:

- Case summaries, or "briefs", which you can find online (even on Wikipedia), can be very helpful in explaining the key points of a legal judgment. The cases themselves can all be found on the website of the Canadian Legal Information Institute: canlii.org

- Legal judgments can make for dense reading, even for lawyers. Start by reading the summary at the beginning (called the "headnote") so you know what the judgment is about and what points are relevant to this case, then read parts of the judgment itself if you think you need more detail. Judges do not always agree with each other. The majority opinion – the judgment written by the judge who most judges agreed with, is the best statement of the law. However, dissents (the view of a minority of judges) may help you understand the majority opinion by comparison.

- There is no need, and the rules do not allow, for you to reference cases by name. Simply state what you believe the law requires in the case at hand.

Key Cases:

- R. v. Beatty, [2008] 1 SCR 49, 2008 SCC 5 (CanLII), <http://canlii.ca/t/1vrp5>*

- R. v. Creighton, [1993] 3 SCR 3, 1993 CanLII 61 (SCC), <http://canlii.ca/t/1fs09>*

- R. v. Naglik, [1993] 3 SCR 122, 1993 CanLII 64 (SCC), <http://canlii.ca/t/1fs0h>*

Other Reading:

- "Who Are the 'Parents of the Nation'? Thoughts on the Stephan Case and Section 215 of the Criminal Code", by Lisa Silver. Posted on the University of Calgary, Faculty of Law's ABLawg.ca blog: <ablawg.ca/2016/05/24/who-are-the-parents-of-the-nation-thoughts-on-the-stephan-case-and-section-215-of-the-criminal-code>*

* Retrieved Nov. 23, 2018

OBA OJEN COMPETITIVE MOCK TRIALS

Tournament Case 2019

R v Delaney

APPENDIX II: EXHIBITS

OJEN ROEJ
ONTARIO JUSTICE EDUCATION NETWORK
RÉSEAU ONTARIEN D'ÉDUCATION JURIDIQUE

ONTARIO BAR ASSOCIATION
L'ASSOCIATION DU BARREAU DE L'ONTARIO
A Branch of the Canadian Bar Association
Une division de l'Association du Barreau canadien

FINAL VERSION

List of Exhibits

1. Curriculum Vitae of Dr. Blair Chao (2 pages)

- To be entered by: the Crown
- Foundation laid by: Dr. Blair Chao
- **Entering this exhibit is <u>required</u> to qualify Dr. Chao as an expert witness**

2. Photos of Bruises (1 page)

- To be entered by: either the Crown or the defence
- Foundation laid by: Dr. Blair Chao
- **Entering this exhibit is <u>optional</u>**

3. Photos of Staircases (4 pages)

- To be entered by: either the Crown or the defence
- Foundation laid by: Any of Det. Cst. Robin Lestrade, Skye Delaney or Quinn Parker
- **Entering these exhibits is <u>optional</u>**
- Teams can choose to enter some or all of the photos. Teams may decide whether to enter each page of photos as separate exhibits or together as a single exhibit

Note: To lay the evidentiary foundation for a photo, a witness does not need to be the person who took the photo. The witness only needs to be in a position to testify to what the photo shows because they know what is in the photo (e.g. they have seen it themselves).

CURRICULUM VITAE

Name:	DR. BLAIR CHAO
Date of Last Update:	January 1, 2019
Date of Birth:	June 18, 1973
Office:	Mariposa General Hospital 1000 Tecumseh St. Mariposa, Ontario Q4N 3M5
Telephone:	555-480-6770
Fax:	555-867-5309
Personal Information:	Email: blair.chao@mgh.ca

EDUCATION

Degrees, Diplomas, Licensures and Certifications

Sep 1995 - Jul 1999	M.D.C.M., McGill University Montreal, Quebec
1999	LMCC, McGill University Montreal, Quebec
1999 - 2003	The Hospital for Sick Children, Division of Paediatric Surgery Toronto, Ontario Subject: Residency Program
2006	RCPSC Specialist, General Surgery
2008	RCPSC Specialist, Paediatric Surgery
2008	FRCS(C), The Hospital for Sick Children Toronto, Ontario

APPOINTMENTS

University Appointments

2008 - 2019	Instructor, Department of Paediatric Surgery, Mariposa General Hospital, Mariposa, Ontario
2008 - 2013	Lecturer, Department of Paediatric Surgery, Mariposa General Hospital, Mariposa, Ontario
2013 - 2019	Assistant Professor, Department of Paediatric Surgery, Mariposa General Hospital, Mariposa, Ontario

Hospital Appointments

2008 - 2019	Surgical/Emergency Department Hospital Privileges**,** Mariposa General Hospital, Mariposa, Ontario

Appointments

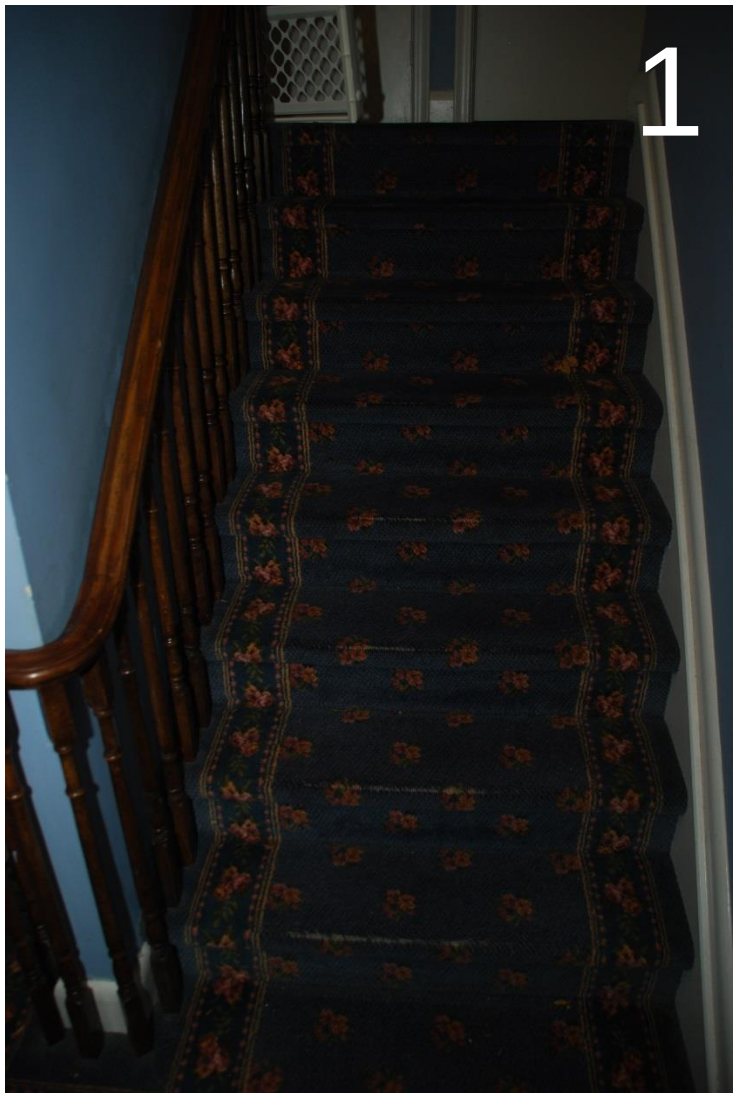
2010 - 2019	Paediatric Surgical Consultant, National Ballet of Canada, Mariposa
2009 - 2013	Paediatric Surgical Consultant, Phantom of the Opera Cast, Mariposa

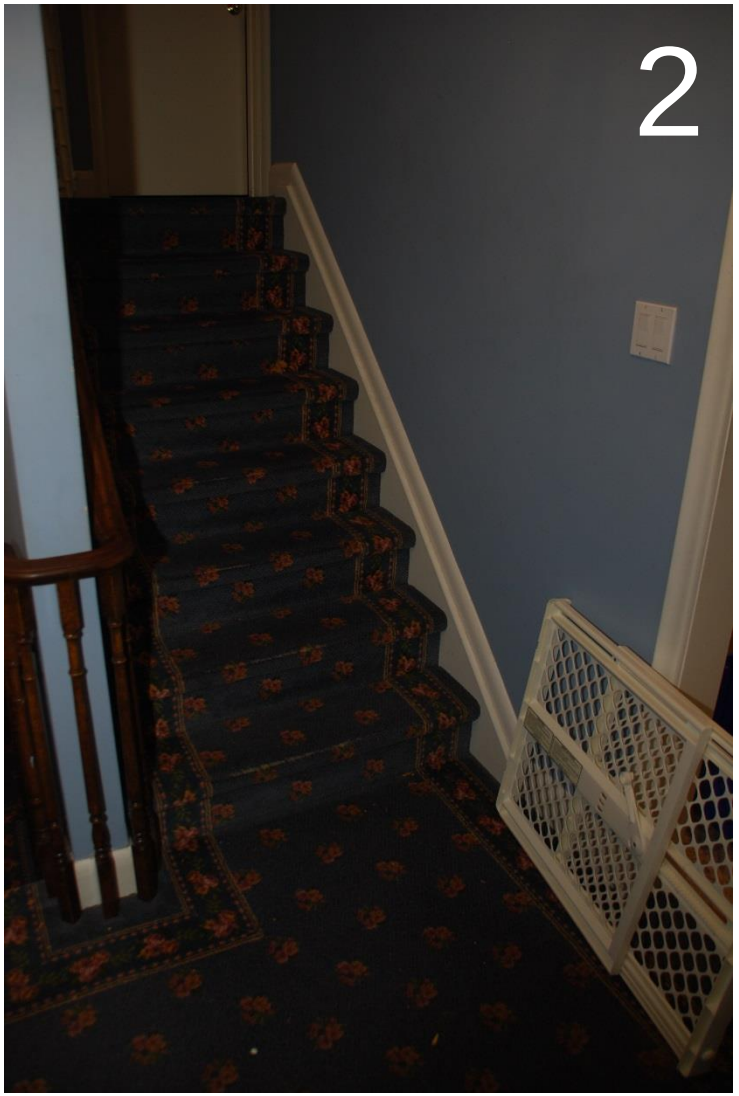
R. v. Delaney

Photos taken by Dr. Blair Chao at Mariposa General Hospital: Bruises observed on Jack Delaney-Parker on August 27, 2018

R. v. Delaney

Photos taken at 8277 Blue Ridge Rd: Staircase from main floor to bedrooms as observed on entry by Mariposa Police on August 27, 2018





R. v. Delaney

Photos taken at 8277 Blue Ridge Rd: Staircase from main floor to first basement level, as observed on entry by Mariposa Police on August 27, 2018

R. v. Delaney

Photos taken at 8277 Blue Ridge Rd: Staircase from main floor to first basement level, baby gates removed for examination on August 27, 2018

R v. Delaney

Photos taken at 8277 Blue Ridge Rd: Staircase from first basement level to sub-basement, as observed on entry by Mariposa Police on August 27, 2018