

OBA/OJEN

Competitive Mock Trials

Role Preparation Manual



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

Role Preparation for Crown and Defence Lawyers

- As a defence lawyer you represent the accused.
- As a Crown attorney you represent the government and the public.
- During the trial, lawyers for both sides give:
 - Opening and closing statements;
 - Direct examination of your own witnesses; and
 - Cross-examinations of the other side's witnesses.
- The Crown will make its opening statement and call its witnesses first. The defence goes next with its opening statement and witnesses.
- The defence gives its closing arguments first. The Crown goes second.

How to prepare an opening statement:

- Become familiar with your witnesses' fact sheets.
- Select which facts should be included in the opening statement. Include the central facts to your case that are not likely to be challenged by the other side.
- Stick to facts. The facts are what will paint the picture for the judge.
- 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.
- This is your chance to paint a picture of your side of the case, so remember to present your *theory* of the case (i.e., what you say happened and why). If you're defence, you can present an alternative theory of what happened, as opposed to what the Crown says happened.

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?”). But, be sure not to waste too much time with unnecessary “colour”. You only have a few minutes to cover all your points.
 - 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.
- Ask short, leading questions that move toward 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, rather than asking just the questions you intended to ask. Listening to the witness and following up based on what they have just said to get your points out is very important.
- Some lawyers have a list of questions they want to ask, but you make sure you don’t just go down your list. Listen to the witness and ask new questions if that will help your case.
- Another effective strategy is to focus on what evidentiary points you want to bring out from the witness, e.g. they were distracted, they didn’t get a good look at the assailant, they have a bias, etc. Ask questions that will get your desired points out, and once they are out, move on.

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’s mind, but be prepared to adjust them. It is not a good idea to pre-script your closing word-for-word.

The person giving the closing should be the person on the team who is best able to speak off the cuff.

- When delivering the closing arguments, try to speak in short, clear sentences. Be brief and to the point.
- Only summarize evidence that actually was given at trial. This may mean you have to drop and add some points, but this will keep your closing focused on reviewing the evidence that was actually presented, and putting it in context with your theory of the case.
- Where a witness for the other side admitted something important to your case, point that out. For example: "The witness says she identified Mr. Smith as the man who broke into the car. However, she admitted that she was standing three blocks away from the car when she made the identification. She admitted that it was dark out. There is a real doubt that the witness actually could have identified anyone, let alone someone she had never met before, in the circumstances."
- Some rhetorical flourishes can be effective, but stay away from too much TV lawyer-speak and drama. The best closings will be sharp, focused and leave a clear impression in the judge's mind of what this case boiled down to, what were your key arguments, and why they should find for your side based on the *evidence*.

Courtroom Etiquette and Protocol:

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

- If the courtroom has a jury box, the Crown sits on the side closest to the jury box. If the prisoner's box is on the side of the room, rather than in the centre, the defence sits closest to the prisoner's box. If neither of those are true, the defence can sit on the left and the Crown on the right, but these are not hard-and-fast rules.
- When the judge enters, all counsel, and everyone else in the courtroom, must stand-up. Counsel then bow to the judge. Sit down when the clerk instructs everyone to do so.
- When you are getting ready to address the judge, either stand at your table, or by the podium (if there is one). Wait until the judge seems ready to proceed. The judge may nod or may say that you can proceed. If you are not sure, ask the judge if you may proceed.
- Do not be afraid to ask the judge procedural or preliminary questions. For example, if you forgot to give your team roster (list of names) to the clerk prior to the judge entering, just ask if you can give it to the clerk now.
- The first person to speak should introduce the other members of their team. It's not necessary to introduce the witnesses as the judge will have your team roster, but you may do so if you wish.

- Every other counsel should introduce themselves again before starting to address the Court, but do not go overboard – you don't need to say your name more than once.
- If it is not your turn to address the judge, pay attention to what is happening. Take notes that you can use during your submissions or closing statements.
- Try not to distract the judge. If you need to talk with your co-counsel, write a note.
- Stand every time you are addressing or *being addressed* by the judge.
- Refer to your co-counsel as “my colleague” or “my co-counsel”. Opposing counsel should be referred to as “my friend” or “counsel for [Crown or name of accused]”.
- It's not common in Canadian courtrooms to refer to the accused as “my client” if you are defence. Just say “Counsel for Mr./Ms. [name of accused]”. If you're the Crown, you are “counsel for the Crown”; the Crown is *not* your “client”.
- Refer to each judge as “Your Honour” or “Your Honours” if there is more than one.
- 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.
- If you have an objection, stand and wait for the judge to recognize you. If they do not recognize you right away, then say “Objection, Your Honour” or “Your Honour, Objection”. The judge will ask you what your objection is and will ask opposing counsel to respond. If you are the counsel conducting an examination, and opposing counsel objects, stay standing at the podium. The judge will ask for your response. Listen to the objection and think about it. Don't rush, and don't just withdraw your question unless *you* know it was wrong. You are entitled to offer your side, and the judge will rule. No one can object during an opening or closing statement

Remember to:

- **Speak clearly**
- **Use an appropriate volume**
- **Try not to say “um”, “ah” or “okay”**
- *Do not go 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 statement 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.
- As a team, you can decide if some members will play witnesses exclusively, or play a lawyer on one side of the case and then a witness when your team plays the other side.
- Witnesses *may not* use notes when being questioned.

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 lawyer asking you questions as far as the mock trial is concerned.
- The lawyer 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 wouldn’t make sense for you to throw your examining lawyer any “curveball” answers, nor for the lawyer 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 lawyer to improvise somewhat.
- The more you practise 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 “consistently” according to the Tournament Guide. This means that you when you get asked a question which 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 which 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. You cannot create new facts that significantly change the nature of the testimony written in your affidavit. If you do this you can expect some tough questions from opposing counsel, damage your credibility as a witness, and hurt your team’s score.

How to prepare for cross-examination:

- Whether you are acting as a Crown or a defence witness, this is where you are on the opposing side as the lawyer asking you questions as far as the mock trial is concerned.
- Unlike the cross-examination, you won't be able to know ahead of time just what the examining lawyer will ask you. You can, however, get a pretty good idea from your team preparations, as you need to prepare to play both Crown and defence.
- Remember that this time the lawyer 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 a "curveball" question. Take your time to think about the question and your affidavit. 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 affidavit. 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.
- Just as in direct examination, you need to answer consistently with your affidavit. "Consistently" does not mean you can't add or expand on what your affidavit says, but you can't contradict or change it.
- Give answers that help your side's case. Don't just agree with counsel's questions if they hurt your case. You can put your own spin on things, and you can dig in your heels if counsel is trying to get you to admit or agree to something that hurts your case and isn't plainly in your affidavit. But don't try to stall or waste counsel's time unnecessarily, as that would be unfair to the other team.