

LAW DAY
2002
MOCK TRIAL

Created By:

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MOCK TRIAL TOURNAMENT 2002

INTRODUCTION

This year's case is Her Majesty v. Chris Okesmay and the accused is being charged with both the offence of possession of a substance, for the purpose of trafficking and possessing property that was obtained as a result of trafficking in a controlled substance.

The applicable law is detailed in these materials under the heading "Applicable Law". You may assume for the purposes of this case that the accused's rights under the Canadian Charter of Rights of Freedom have been complied with. Note that this case is based upon an actual case.

The Ontario Tournament organizer is Jacqueline Armstrong Gates of Gowling LaFleur Henderson LLP in Kitchener. The writers of the mock trial scenario are Paul Calarco, Barrister & Solicitor of Toronto and Jacqueline Armstrong Gates. We thank our Mock Trial committee for their assistance.

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MOCK TRIAL CODE OF PROFESSIONAL CONDUCT

Lawyers in Ontario and in most other jurisdictions are governed by a code of professional conduct that makes certain actions that a lawyer takes subject to disciplinary sanctions by the Law Society of Upper Canada. For example, if a lawyer lies or misrepresents himself or herself to the court, that lawyer could be subjected to disciplinary review and ultimately lose their right to practice law.

The lawyers' duty of professionalism, integrity and promoting the administration of justice is a fundamental part of the Mock Trial Tournament. Accordingly what follows is a Mock Trial **Code of Professional Conduct** that will apply to all students, teachers and participants in the Mock Trial Tournament.

It is our ultimate goal that the **Code of Professional Conduct** will assist the participants in the tournament in receiving the full educational benefit of participating in the tournament.

NEW** *As always, the purpose of Law Day is to introduce students to how the law is applied in practice. Students are encouraged to work diligently on the problem, but the object is not to obtain a conviction if you present the Crown or an acquittal if you represent the Defence. Instead, students will be judged on how well they present their positions. Part of a good presentation will involve a proper application of the law but you are not expected to have the same knowledge that practising criminal lawyers possess.*

Our experience over the past 17 years is that the participants are extremely enthusiastic about the Tournament. We believe that this enthusiasm is based in part on the competitive element of the Tournament. The competitive element, if left unchecked can lead to a negative experience for some participants. As a result we have implemented the **Code of Professional Conduct**. 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. All 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 the judges' ruling.

All participants are responsible for promoting conduct that is consistent with this code.

II. THIS YEAR'S ONTARIO TOURNAMENT AND ADDITIONAL RULES

This year's Kit is being made available during the month of November 2001.

Teams must be prepared to play the role of counsel for the Crown and the Accused. Teams will be assigned their roles on the basis of a coin toss preceding each round of the competition. Students portraying the witnesses must be familiar with two roles each, so that they can switch depending on the coin toss.

A. Participation and Eligibility

All students on a team must be full-time students at a high school in Ontario. Students who have participated in a past tournament as counsel in inter-school competition are ineligible to compete again in a current tournament. Students who have participated as witnesses may compete again.

A1. Coaching and Support

It is encouraged that teams utilize the assistance of a coach with some legal knowledge. In the past it has appeared that a higher quality mock trial has been presented by those teams which utilize such assistance. While we suggest that the coach be a lawyer and/or police officer thereby understanding criminal law, a civil litigator would also be recommended. If teachers do not know of any lawyers that can assist them, please contact Michelle Williams and the OBA office for a referral.

B. Round One

Round One consists of a local in-school mock trial competition within the teacher's class or between classes within the same school. This will allow the teacher to form the best school team consisting of six students; four lawyers and two witnesses. At the end of Round One, the school should have selected a team to represent it if it wishes to continue further in the Tournament. At this stage, the teacher may feel that the educational objectives have been met and that he/she does not wish to proceed further. (We would of course encourage all schools to continue to the next round!).

Should the teacher wish to continue on to Round Two, he/she must notify Michelle Williams at the OBA of such intention in writing or by e-mail (see our Law Day web site participation form) on or before 4:00 p.m. Friday, January 25, 2002. Please note that this deadline is firm, and no exceptions can be made.

NEW ** Therefore, it is YOUR responsibility to confirm that your request to participate is received by Michelle Williams at OBA. From time to time things happen and e-mails or faxes are not received for one reason or another! Double check by asking for confirmation when you e-mail or by calling if you are faxing your participation letter.

C. Round Two

Round Two consists of regional inter-school competitions. The geographical boundaries of the regions will be arranged by the Committee following receipt of all notices of intention to proceed to Round Two. The teachers of the participating schools will be responsible for arranging the time, location and format of the regional play-offs, while adhering to the rules set out herein.

NEW Please note due to varying problems it will be the responsibility of the host school to locate their own judges. However, assistance will be provided if necessary. It is anticipated that the precise boundaries of each of the north, south, east and west regions may vary from year to year depending on the numbers and locations of schools interested in participating in Round Two.**

The winners of the regional play-offs will advance to Round Three in Toronto.

Round Two must be completed on either **Thursday, March 21, Friday, March 22 or Saturday, March 23, 2002** and Michelle Williams advised as to the regional winners on or before 4:00 p.m. on **Monday, March 25, 2002**. Again, no exceptions will be made with respect to timing. Strict adherence to the deadline will be required in order that the necessary arrangements may be made for travel and accommodations in Toronto for Rounds 3 and 4. Keep in mind that school holidays may impose certain scheduling difficulties.

REMINDER WINNERS OF ROUND THREE AND FOUR WILL BE EXPECTED TO HOST THE 2003 ROUND II COMPETITION. IF FOR SOME REASON YOU CANNOT HOST, YOU WILL BE RESPONSIBLE FOR FINDING SOMEONE ELSE TO DO SO. Because of the size of the central area, a host for central east and central west will be required, unless the central host wishes to hold one competition with all central schools.**

D. Round Three

Round Three consists of the semi-finals in Toronto on the morning of Law Day, Thursday, April 17, 2002. The four best teams from the regional inter-school competitions will compete in a courtroom in Toronto before Judges of the Ontario Court of Justice.

E. Round Four

Round Four consists of the finals in Toronto on the afternoon of Law Day. The two winning teams from the morning semi-finals will compete again before the presiding judges. All four teams will receive awards at the Law Day Banquet on the evening of April 17, 2002, which all four semi-finalist teams are invited to attend along with various local and provincial dignitaries and members of the Ontario judiciary and legal profession. The winning team will take home the Ontario High School Mock Trial Tournament trophy for the year.

F. Expenses

Schools participating in the Tournament MUST look after their own expenses in Round One (local in-school competition) and Round Two (regional inter-school competition). There are usually no costs associated with Round One and Round Two. Round Two competitions should occur on a Saturday in order to ensure full participation. Teachers might approach local Boards of Education for financial support if there are transportation or other costs.

Limited financial assistance from the Ontario Bar Association may be available for Round Three (semi-finals) and Round Four (finals) for accommodation and transportation, particularly for those schools having to travel some distance to Toronto, but **assistance is limited to the six-member team (NO ALTERNATES) and the teacher.**

G. Law Day Re-Enactments

It is hoped that teachers whose teams have not reached the semi-finals and finals in Toronto will nevertheless re-enact their mock trials at school assemblies on Law Day, (April 17, 2002) so that other students and teachers will become aware of the significant benefits of both the mock trial activity and the study of law at the secondary school level.

H. Inconsistencies in Materials

In the event of any inconsistencies between the Mock Trial Tournament Guide and the Format of Tournament and Specific Case, the Format of Tournament and Specific Case will take precedence and all participants should observe its rules.

I. References to Gender

Students of either sex may play the witnesses. All references in the witness statements to a specific gender may be modified as the particular situation dictates.

III. FACT SHEET FOR HIGH SCHOOL MOCK TRIAL TOURNAMENT 2002

This section of the materials contains role descriptions for the accused and the various witnesses. Teachers should make these fact sheets available to the students early in the process and the students should be encouraged to find out as much as possible about the character of the role(s) that they will be representing. Note, however, that **students should NOT deviate from the role descriptions, in a manner that constitutes "unfair deviation" as described below.**

We would ask all participants to remember that the object of the Mock Trial Program is educational, it evaluates the students' ability to learn the facts, understand the issues raised in the problem and to practice their advocacy skills. These are the considerations being evaluated by the judges. Please remember that the mock trial is an exercise in advocacy; your ability to present a convincing case and to react to situations which you did not anticipate is the essence of the exercise.

We encourage the witnesses to "get into character", whether by way of role-playing and/or by way of dressing the part. Although witnesses will attempt to prepare for every possible question that may be asked of them, they must be prepared to respond, on the spot, to questions, which were not anticipated. As a result, witnesses must be flexible. On the other hand, if the testimony is not consistent, a Judge may begin to doubt the truth of the statements. Establishing credibility will, therefore, present a challenge to every witness at the trial. In order to carry out the witness role successfully, the two Crown witnesses (Gerry Reeferton and Officer Robin Ganjaman) should meet before trial. Similarly, the two defence witnesses (the accused Chris Okesmay and Lou(ise) Sky-Diamonds) need to work out details together. Please note, that while we encourage students to develop the characters of the witnesses and to fill in the gaps in their personalities, teams will be penalized for deviating from the fact sheets. For the purposes of the mock trial, the following definition of "unfair deviation" includes, but is not limited to:

- a. Changing relevant facts,
- b. Refusing to admit, in cross-examination, a fact which is included in a fact sheet, and
- c. The addition of any fact, including personal characteristics of a witness, which might unfairly influence the result of the case.

The Ontario Bar Association would like all of the participants to be aware that it is the judge, and the judge alone, who is the truer of fact. It is the judge's role to determine whether there has been a deviation from the facts, to determine whether the deviation was "unfair", and to determine whether the deviation affected, in any material way, his/her determination of the case. There will be no specific objections to bringing the deviation to the notice of the judge, nor will there be specific penalties for deviations; the existence of, effect of, and penalty for, any deviation, is strictly within the discretion of the judge.

In your presentation, we would ask all teachers and students, and their advisers, to remember that, in an effort to ensure a "level playing field" for all of this year's participants, you are directed to strictly adhere to the facts and law as given to you; do not add additional facts, do not use case law, case books or any statute law extraneous to the problem. All of the relevant and material facts and law have been provided to you in the materials.

If there are any questions regarding the foregoing, please refer to the Introduction found at Part I of these materials.

CONSTABLE GERRY REEFERTON

Description of Witness

Constable Reeferton is employed by your town Police Service and has been for the past three years. S/he holds the rank of Constable Second Class. During this time, s/he has been involved in general policing duty including highway traffic offences and accident investigation. S/he has only had training at the Police College regarding drug cases and has not been involved in drug cases him/herself before this matter.

Statement of the Witness

On September 18, 2001, I was on general patrol duties with my escort, Senior Police Constable, Robin Ganjaman. Upon turning onto Main Street, I observed a single car accident. The accused, Chris Okesmay, was the driver of the vehicle and appeared to have been slightly injured as s/he was a bit dazed and had a small cut on his/her forehead.

The vehicle was badly damaged. The front end was up against a light standard, which was also damaged. I radioed for ambulance personnel to attend to the accused and for municipal workers to secure the pole. If it had fallen, the roadway would have to be closed and there could have been serious injuries. Due to the angle of the car, part of the roadway was blocked. I decided it would be best to move the vehicle, but I did not want the accused to do so as s/he was dazed and might not be able to control the car.

I was about to get into the vehicle when I saw that a tire was flat. The city workers had not yet arrived and I thought it would be best to use the time to move the car. I opened the trunk and pulled out the spare tire from the tire well. Under the tire, I saw a bag, which caught my eye. It seemed strange that there should be anything there. I certainly did not see anything just looking in the trunk.

I looked in the bag and found a sealed zip lock type bag containing a green, leafy, plant-like substance, which I believed to be marijuana. Also in the bag was money, but I did not count it.

I called to my partner who had been directing traffic around the accident scene. S/he is an experienced drug investigator.

My partner seized the item and maintained control of it. I had no further involvement with that item.

I did, however, check for drug paraphernalia, such as scales or other smaller plastic bags which would be used to sell smaller quantities of the drug, but did not find any.

I intended to ask the accused about the item, but s/he had been taken from the scene by ambulance personnel by the time I made the discovery.

I continued the accident investigation and reported off duty at the end of my shift.

Helpful Suggestions

In order to carry out your role successfully, you will have to meet with the Crown counsel before trial to work out other details about your character. You should not discuss what the evidence of other witnesses will be. This will taint your evidence and lessen its effectiveness. Opposing counsel will be able to inquire if you did discuss your evidence with anyone. Remember, a witness should only be testifying as to his/her personal knowledge and observations.

During your testimony, you may be asked by the Crown to identify certain exhibits. (Such exhibits could include photograph of the damaged car, the marijuana and the money.) As the Crown hands you each exhibit, examine it and confirm that it is what it is said to be. The Crown must prove that the item in court is the same as the item, which was seized from the car.

It is important that you be prepared for your testimony. Not being prepared may make the judge think that you are making up your evidence as you go along. Similarly, major inconsistencies in evidence will tell against your credibility. On the other hand, minor inconsistencies may be hallmarks of truth, since people will often see things differently, even when describing the same event.

Your credibility is central to this case.

CONSTABLE ROBIN GANJAMAN

Description of the Witness

Officer Ganjaman has been a member of Yourtown Police Service for just over ten years and holds the rank of Senior Police Constable. S/he has recently returned to uniform duties. Before that, s/he spent five years in Yourtown Police Drug Squad. In that capacity, s/he has been involved in well over one hundred drug investigations, involving many different drugs. S/he has purchased marijuana as an undercover officer on at least thirty occasions. Officer Ganjaman has never been qualified as an expert witness in a court case before, but the Crown may attempt to do so now. *There are a number of questions that should be asked of an expert to qualify them. Defence counsel will have an opportunity to question Officer Ganjaman on his/her background.

Statement of the Witness

On September 18, 2001, I was on general patrol duties with my partner, Officer Reeferton. We observed a single vehicle accident where the accused, Chris Okesmay, was the driver of the car. My partner attempted to move the vehicle while ambulance personnel attended to the accused. S/he was taken to hospital after I determined her name and address.

When my partner went to the trunk of the car, I was directing traffic around the scene of the accident. My partner called out that he found some stuff that I should see. I went to the vehicle trunk and observed a bag of what appeared to me to be marijuana. I have purchased the drug many times as an undercover officer.

I seized the bag and saw that there were many bills in it. Rather than count the money or deal with the item at the roadside, I initialed the bag and put my badge number on it. I then put it in the trunk of the police car.

When my partner and I returned to the station, I removed it from the trunk. I took the bag and weighed it. It weighed some seven and a half ounces, including the bag itself. The bag would have weighed only a few grams, so it made no real difference to the overall weight of the item. I also counted the money and found that it was some \$500 in twenty dollar bills.

Based on my experience as an undercover officer and drug investigator, it is my view that anyone who had this much marijuana and money must have had it for trafficking. The presence of debt lists, scales and other materials, such as small baggies to be used in selling the drug in small amounts, would solidify my opinion, but the lack of these items does not change my view. There was simply too much of the drug to be for personal use, even over a long time.

As well, I believe that any money found with the drugs must have come from drug trafficking. Drugs and money from drugs are often kept together by traffickers.

Helpful Suggestions

In order to carry out your role successfully, you will have to meet with the Crown before trial to work out other details about your character. You should not discuss what the evidence of other witnesses will be. This will taint your evidence and lessen its effectiveness. Opposing counsel will be able to inquire if you did discuss your evidence with anyone. Remember, a witness should only be testifying as to his/her personal knowledge and observations.

During your testimony, you may be asked by the Crown to identify certain exhibits. As Crown Counsel hands you each exhibit, examine it and confirm that it is what it is said to be. The Crown must prove that the item in court is the same as the item which was seized from the car and given to you by the other officer. In your case, the Crown may seek to qualify you as an expert witness in order to prove that the accused had the drugs for the purpose of trafficking and/or the origin of the monies found. As an expert, you can give an opinion if properly qualified. If you are not accepted as an expert, you cannot give an opinion. Therefore, the Crown will have to prove that, on balance, you have special knowledge which the ordinary person does not have and which is necessary to help the court decide this case properly.

It is important that you be prepared for your testimony. Not being prepared may make the judge think that you are making up your evidence as you go along. Similarly, major inconsistencies in evidence will tell against your credibility. On the other hand, minor inconsistencies may be hallmarks of truth, since people will often see things differently, even when describing the same event.

Your credibility and expertise are central to this case.

Expert Qualifications. (This is meant as a guide only. Students can think of questions that they think will establish the fact that this officer has more knowledge than that of an ordinary person.)

You will want to ask their background, how long in that role, their training, their professional experience, their type of specialty and how often involved drugs cases etc.

Note to Crown. As the Crown you will want to prove whether the accused is guilty of possession on the basis of intending to control the substance. If you can prove that, you will then want to prove that the accused intended to traffick the controlled substance. You will also want to prove that the accused was guilty of possessing proceeds of crime as a result of monies being found with the drugs. Lastly you will want to consider whether you can establish the case without using an expert witness or whether you will try and get by without the expertise.

CHRIS OKESMAY

Description of Witness

Chris is a 43-year-old divorced parent of one child, Jay, who lives with him/her. Chris is steadily employed by Apple Corps Ltd., an internationally known music corporation that specializes in the marketing of Beatle Records and other products. S/he has no criminal record. S/he may state that s/he does not use any form of drugs and considers him/herself to be a good person and member of the community, often doing charitable work for a community project, Habitat for Humans.

Statement of the Accused

I have been very concerned lately about my son/daughter, Jay. S/he is eighteen and is starting studies at Yourtown University. S/he has not been the same person in the past few months, basically since s/he finished or was in his/her last months of high school. I do not know if it is the adjustment to University, just growing pains or if s/he was getting involved in drugs.

On September 18th, I was going to go to work and do some follow up on the marketing plan for a new CD that was set for release in November. I usually drive. Jay can use the car when s/he wishes and sometimes I let other people at work drive it for work related duties.

I had opened the trunk and was going to go back inside the house to get my lap top computer when I saw something in the wheel well. I looked at it and saw the money and drugs. I don't use drugs, but some people I know have in the past. I knew it was marijuana. Then, I panicked. I thought what would happen? What if Jay was using drugs?

I really did not know what to do, so I called Lou(ise) Sky-Diamonds. S/he is a community counselor I know from my charitable work. We have spoken in the past about my concerns for Jay. I just wanted to figure out what to do. I did not want to call the police because if Jay was involved I thought s/he needed help, not criminal charges. No one wants to turn in your own child.

I was on my way to Lou(ise)'s place when I got into the accident. I guess that I was going to turn the drugs over to him/her so s/he could figure out what to do with them. I know I did not want them around me. I guess I should have gone right to the police, but I just did not think of it at the time.

I did not tell the police about the drugs at the time because I was still in a state of upset and was not sure what to do. Also, I was pretty groggy from the accident and was not thinking straight.

The ambulance attendants took me to the hospital and I was released after a few hours. My head hurt for several days. I did not ask Jay about the drugs after the police came and charged me because I figured s/he would just deny it if s/he was involved.

Helpful Suggestions

In order to carry out your role successfully, you will have to meet with the Defence counsel before trial to work out other details about your character. You should not discuss what the evidence of other witnesses will be. This will taint your evidence and lessen its effectiveness. Opposing counsel will be able to inquire if you did discuss your evidence with anyone. Remember, a witness should only be testifying as to his/her personal knowledge and observations.

It is important that you be prepared for your testimony. Not being prepared may make the judge think that you are making up your evidence as you go along. Similarly, major inconsistencies in evidence will tell against your credibility. On the other hand, minor inconsistencies may be hallmarks of truth, since people will often see things differently, even when describing the same event.

Your credibility is central to this case.

As an accused person, you have special protections.

First, The Crown cannot force you to testify, only the defence can call you.

Secondly, the Crown cannot attack your character unless you, through your defence, have put your good character in issue. Simply providing background information does not put character in issue.

Third, you are under no duty to make any statement to the police and if you exercise your right to remain silent, the Crown cannot use this against you.

However, if you offer an explanation as to why you did not do something, then the Crown can seek to rebut your explanation. Therefore, how the defence presents its argument may influence the Crown in its presentation of evidence and the cross-examination of witnesses. As well, the Crown cannot use past associations with other persons to try to show that you are more likely to have committed this offence, unless you lead evidence which would open this area for the Crown, or if you give testimony which could be contradicted by evidence of past associations (such as stating that you have never been aware of any person who has used drugs - this could be contradicted by the Crown, subject to certain rules of evidence not essential for this Mock Trial).

LOU(ISE) SKY-DIAMONDS

Description of Witness

Lou(ise) is a forty-year-old community counselor with Yourtown Department of Social Services. S/he has been doing this work for ten years. Much of this involves counseling families with parent/child conflicts. S/he is also trained as a psychiatric nurse and in that capacity has dealt with persons who have abused drugs. S/he has seen many scores of cases of drug abuse and feels able to determine if a person has a drug dependency. Lou(ise) has never been qualified as an expert witness in a court case before, but the Defence may attempt to do so now. *There are a number of questions that should be asked of an expert to qualify them. Crown counsel will have an opportunity to question Lou(ise) on his/her background.

Statement of the Witness

I have known Chris Okesmay for several years. We are not close, but we have both been involved with the Habitat for Humans project which builds housing for low-income people in the community. I know that he/she is in the music business and he/she is aware of my profession.

In the summer of 2001 I first received a call from Chris who was worried about his/her child, Jay. I was told that Jay seemed to be acting differently over the past few months. Chris was not at all sure what it was, so I suggested that it might be due to changes in going to university or age adjustment. I did not see Jay then.

Later, I guess just before school started, I took another call from Chris. S/he was really upset about Jay, so I arranged to meet them, both one-on-one and as a group. There was certainly some tension between the two of them, but it was only an hour group session so I could not make any definitive analysis.

When I met with Jay, there was something more than growing pains that had to account for his/her situation. I thought counseling might help, but Jay insisted nothing was wrong. I often find that getting a person to accept that they may need some help is the biggest hurdle to helping them. I thought that Jay may be involved with drugs, but I could not tell for sure. Based on what I saw, there was no clear drug dependency, but I certainly could not rule out experimentation. I would have to do more study to be sure.

In mid-September, I took another call from Chris, but he/she did not state what it was about, just that he/she would like to see me. I cannot recall if he/she was in a particular state of anxiety or not. He/She never came for the meeting and I later learned about the Criminal charges.

I have not had any contact with Jay since Chris was charged.

Helpful Suggestions

In order to carry out your role successfully, you will have to meet with the defence before trial to work out other details about your character. You should not discuss what the evidence of other witnesses will be. This will taint your evidence and lessen its effectiveness. Opposing counsel will be able to inquire if you did discuss your evidence with anyone. Remember, a witness should only be testifying as to his/her personal knowledge and observations.

It is important that you be prepared for your testimony. Not being prepared may make the judge think that you are making up your evidence as you go along. Similarly, major inconsistencies in evidence will tell against your credibility. On the other hand, minor inconsistencies may be hallmarks of truth, since people will often see things differently, even when describing the same event.

Your credibility and expertise are central to this case.

In your case, the defence may seek to qualify you as an expert witness in order to demonstrate that it is more likely that Jay was involved with drugs and thus the drugs found belonged to him/her, not Chris. As an expert, you can give an opinion if properly qualified. If you are not accepted as an expert, you cannot give an opinion. Therefore, the defence will have to prove that, on balance, you have special knowledge which the ordinary person does not have and which is necessary to help the court decide this case properly.

Note to Defence. First start by reading the note to Crown as that is what they must establish. You will also want to determine whether you will need an expert to help raise a reasonable doubt as to the ownership of the drugs found in the car. You will also want to determine if the crown has provided any basis for claiming that the monies found are proceeds of crime.

IN THE NAME OF HER MAJESTY THE QUEEN

Canada

Province of Ontario

Judicial District of Yourtown

This is the Information of

ROBIN GANJAMAN (hereinafter the informant)

Of Yourtown Police Service, Peace Officer.

The informant says that s/he believes on reasonable grounds that:

- 1. Chris Okesmay, on or about the 18th day of September in the year 2001, at the City of Yourtown in the Judicial District of Yourtown, did possess a substance, to wit: Cannabis (marijuana) for the purpose of trafficking, contrary to Section 4 of the *Controlled Drugs and Substances Act*;**
- 2. And further that the said Chris Okesmay did, on or about the 18th day of September in the City of Yourtown in the Judicial District of Yourtown, did possess property, to wit: five hundred dollars in Canadian currency, more or less, knowing that all or part of the property was obtained as a result of the commission in Canada of the offence trafficking in a controlled substance, contrary to the *Controlled Drugs and Substances Act*.**

**SWORN BEFORE ME AT
the City of Yourtown in the
Judicial District of Yourtown
this 18th day of September, 2001**

.....
Robin Ganjaman

.....
A Justice of the Peace in and for
Province of Ontario

*Note to students. You should not be concerned, for the purposes of this demonstration, about which schedule marijuana falls into or any similar matter. It can simply be taken to be an illegal substance. The relevant sections of the Criminal Code and the Controlled Drugs and Substances Act are in this mock trial package for your reference.

CLERK/DEPUTY OF THE COURT 2002

The clerk's and the deputy's jobs are to help the judge run the courtroom. The clerk is responsible for timing the teams. To begin with, you should be familiar with the general trial script summary which is set out below:

A. Trial Script Summary

- i. Court deputy escorts judge to Bench and calls order; court clerk formally opens court.
- ii. Counsel stand to identify themselves (Crown followed by defence).
- iii. Court clerk reads the indictment and accused pleads to charges.
- iv. Crown counsel makes opening statement.
- v. First Crown witness called and sworn in by court clerk.
- vi. Crown examines witness (direct examination).
- vii. Defence examines witness (cross-examination).
- viii. Steps 5-7 are repeated for each Crown witness.
- ix. Defence makes opening statement.
- x. Steps 5-7 are repeated for each defence witness with defence conducting direct examination and Crown conducting cross-examination.
- xi. Defence presents closing arguments.
- xii. Crown presents closing arguments.
- xiii. Judge leaves.
- xiv. Court adjourns briefly to await return of judge.
- xv. Judge returns and tells the accused that he or she is "guilty" or "not guilty".
- xvi. Judge evaluates teams.
- xvii. Court is adjourned.

The specific duties of the Court Clerk and Deputy will now be explained.

1. Announce the Opening of Court:

When all participants have taken their places, you will usher in the judge and announce:

Court Deputy: "Order, all rise"

It is also good to introduce the judge, by saying:

"Mr. Justice/Madame Justice _____ presiding".

Court Clerk: "Oyez, Oyez, Oyez, Anyone having business before the Superior Court of Justice for the Province of Ontario and come now forward attend upon Her Majesty the Queen".

2. Read the Information to the Accused:

After the Crown and Defence lawyers have identified themselves, you will read the charge as it is set out in the information. A copy of the information is in these materials. You will stand and say.

1. Chris Okesmay, you stand charged that on or about the 18th day of September in the year 2001, at the City of Yourtown in the Judicial District of Yourtown, you did possess a substance, to wit: Cannabis (marijuana) for the purpose of trafficking, contrary to Section 4 of the Controlled Drugs and Substances Act;
2. How say you to this charge? Do you plead guilty or not guilty?
3. And further that you, on or about the 18th day of September in the year 2001, in the City of Yourtown in the Judicial District of Yourtown, did possess property, to wit: five hundred dollars in Canadian currency, more or less, knowing that all or part of the property was obtained as a result of the commission in Canada of the offence trafficking in a controlled substance, contrary to the Controlled Drugs and Substances Act.
4. How say you to this charge? Do you plead guilty or not guilty?

3. Swear in the Witnesses:

After the accused pleads not guilty to the charge, the Crown will begin its case. They will call their first witness to the stand, Gerry Reeferton. You will be responsible for swearing in Gerry Reeferton and all subsequent witnesses.

One way of doing this is to approach the witness with a book (Bible) for him/her to swear on. You then say:

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

After the name is given, the oath is given:

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

or

"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?"

"Do you solemnly affirm to... etc." (for those who object to swearing an oath to 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:

Deputy: "All rise"

Clerk: "Court will now adjourn (or recess) for 10 minutes"

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

Clerk: Court is now resumed, please be seated.

The judge will then announce the verdict (guilty or not guilty) as well as which team delivered the best performance. When all is finished, you rise and say:

Deputy: "All rise"

Clerk: "Court is adjourned"

5. Miscellaneous Duties.

There may be other jobs, which you can perform for the judge, such as providing pens and paper, and a glass of water. It might also be wise to photocopy some "performance sheets" in case the judge forgets to bring one.

MOCK TRIAL TOURNAMENT TIME CHART 2002

1.	Call to order, read charge, enter plea, introduction of teams		2 - 3 min
2.	Crown - opening statement		4 min
3.	Crown Witnesses		
	Constable Gerry Reeferton	- direct examination	6 min
		- cross-examination	4 min
	Constable Robin Ganjaman	- direct examination	6 min
		- cross-examination	4 min
4.	Defence opening		4 min
5.	Defence Witnesses		
	Lou(ise) Sky-Diamond	- direct examination	6 min
		- cross-examination	4 min
	Chris Okesmay	- direct examination	6 min
		- cross-examination	4 min
6.	Summations		
	Defence		5 min
	Crown		5 min
7.	Short Recess at Judge's discretion for deliberation		
8.	Judge - verdict and team assessment		10 - 12 min
9.	Judge - delivery of verdict and team assessment		10 - 12 min

N.B. FOR THE PURPOSES OF THE MOCK TRIAL PROGRAM, PLEASE BE ADVISED THAT THERE IS NO RIGHT OF RE-EXAMINATION. SHOULD A JUDGE SUGGEST THAT RE-EXAMINATION WOULD BE A GOOD IDEA, PLEASE ADVISE THE JUDGE THAT THERE IS NO SCOPE FOR IT WITHIN THE CONTEXT OF THE PROBLEM. IT IS ALL COUNSEL'S RESPONSIBILITY TO ADVISE THE COURT IF THE MATTER SHOULD ARISE.

THIS CHART WILL CHANGE WHEN DEALING WITH A TRIAL THAT HAS FRENCH AND ENGLISH COMPETITORS DURING THE SAME TRIAL. PLEASE MAKE SURE THAT THE CLOCK IS STOPPED FOR THE PURPOSE OF THE TRANSLATION AND THEN RESTARTED TO MEET THE ABOVE NOTED TIME REQUIREMENT.

APPLICABLE LAW

CRIMINAL CODE

[POSSESSION]

Section 4

Section 4(3) For the purposes of this Act.

- a) a person has anything in possession when he has it in his personal possession or knowingly,
 - i. Has it in the actual possession or custody of another person, or
 - ii. Has it in any place, whether or not that place belongs to or is occupied by him, for the use or benefit of himself or of another person; and
- b) where one of two or more persons, with the knowledge and consent of the rest, has anything in his custody or possession, it shall be deemed to be in the custody and possession of each and all of them.

CONTROLLED DRUGS AND SUBSTANCES ACT

Section 2

‘traffic’ means, in respect of a substance included in any of Schedules I to IV,

- a) to sell, administer, give, transfer, transport, send or deliver the substance,
- b) to sell an authorization to obtain the substance, or
- c) to offer to do anything mentioned in paragraph a) or b),

otherwise than under the authority of the regulations.

[TRAFFICKING]

Section 5

Section 5(1) No person shall traffic in a substance included in Schedule I, II, III, or IV or in any substance represented or held out by that person to such a substance.

(2) No person shall, for the purpose of trafficking, possess a substance included in Schedule I, II, III, IV.

(3) Every person who contravenes subsection (1) or (2)

- a) subject to subsection (4), where the subject matter of the offence is a substance included in Schedule I or II, is guilty of an indictable offence and liable to imprisonment for life;
- b) where the subject matter of the offence is a substance included in Schedule III
 - i. is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, or
 - ii. is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months; and
- c) where the subject matter of the offence is a substance included in Schedule IV,
 - i) is guilty of an indictable offence and liable to imprisonment for a term not exceeding three years or,
 - ii) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding one year.

(4) offence is a substance included in Schedule I or II in an amount that does not exceed the amount set out for that substance in Schedule VII, is guilty of an indictable offence and liable for imprisonment for a term not exceeding five years less a day.

(5) For the purposes of applying subsection (3) or (4) in respect of an offence under subsection (1), a reference to a substance included in Schedule I, II, III, IV includes a reference to any substance represented or held out to be a substance included in that Schedule.

(6) For the purposes of subsection (4) and Schedule VII, the amount of the substance means the entire amount of any mixture or substance, or the whole of any plant, that contains a detectable amount of the substance.

Section 8

8 (1) No person shall possess any property or any proceeds of any property knowing that all or part of the property or proceeds was obtained or derived directly or indirectly as a result of

- a) the commission in Canada of an offence under this Part except subsection 4(1) and this subsection;
- b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence referred to in paragraph (a); or
- c) a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counseling in relation to, an offence referred to in paragraph (a) or an action or omission referred to in paragraph (b).

(2) Every person who contravenes subsection (1)

a) if guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, where the value of the property or the proceeds exceeds one thousand dollars;

or

b) is guilty

i. of an indictable offence and liable to imprisonment for a term not exceeding two years, or

ii. of an offence punishable on summary conviction and liable to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding six months, or

where the value of the property or the proceeds does not exceed one thousand dollars.

(3) A peace officer or a person acting under the direction of a peace officer is not guilty of an offence under this section by reason only that the peace officer or person possesses property or proceeds of property mentioned in subsection (1) for the purposes of an investigation or otherwise in the execution of the peace officer's duties.