



2014-2015

OBA/OJEN LAW DAY SECONDARY SCHOOL MOCK TRIAL Role Preparation Manual

Celebrating Charter Values Throughout the Year



ONTARIO BAR ASSOCIATION
L'ASSOCIATION DU BARREAU DE L'ONTARIO
A Branch of the Canadian Bar Association
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PREPARING FOR A MOCK TRIAL

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

Now is your moment to try out playing one of the many important roles in the criminal trial process. Get into character and have fun with it.

LDSSMT TIME CHART & TIME STOPPAGE RULES 2014-2015

1. Clerk calls to order	1 min
2. Clerk asks the accused, Crown and Defence to stand, reads charge, enters plea, and introduces parties	2 mins
Crown Case	
3. Crown - opening statement	4 mins
4. Crown - direct examination Crown witness 1	10 mins for both Crown witnesses, divided at counsel's discretion
5. Defence - cross-examination	10 mins for both Crown witnesses, divided at counsel's discretion
6. Crown - direct examination Crown witness 2	
7. Defence - cross-examination	
Defence Case	
8. Defence - opening statement	4 mins
9. Defence - direct examination Defence witness 1	10 mins for both defence witnesses, divided at counsel's discretion
10. Crown - cross-examination	10 mins for both defence witnesses, divided at counsel's discretion
11. Defence - direct examination Defence witness 2	
12. Crown - cross-examination	

Closing Arguments	
13. Defence - summation (closing arguments)	5 mins
14. Crown - summation	5 mins
15. Judge - deliberation of verdict and team assessment (judge may recess)	10-12 mins
16. Judge – delivery of verdict and team assessment	10 mins

For the purposes of the LDSSMT program, 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 advise the Court if the matter should arise.

Time Stoppage Rules

The following instances will require stopping the clock:

1. Objections: The clock shall stop when an objection is raised 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.
2. Judicial Interventions: The clock shall stop whenever the judge intervenes in the proceedings, and remain stopped while counsel respond directly to the judge's intervention, if they do so. The clock shall resume as soon as counsel resumes regular submissions.
3. Translation: In the event that translation is required (as teams may compete in either English or French), timekeepers will receive special instructions tailored to the translation facilities available (i.e. depending if translation is simultaneous or non-simultaneous)

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.
- Check with the lawyer writing the closing arguments for your side, to make sure that both the opening and closing arguments are very similar, and cover the same 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 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 during the trial.

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 mind.
- When delivering the closing arguments, try to speak in short, clear sentences. Be brief and to the point.
- Only summarize evidence that actually was given at trial. This may mean you have to re-write your closing arguments on the spot during the trial.

- Where a witness for the other side admitted something important to your case, point that out. For example: "The witness says she identified Mr. Smith as the man who broke into the car. However, she admitted that she was standing three blocks away from the car when she made the identification. She admitted that it was dark out. There is a real doubt that the witness actually could have identified anyone, let alone someone she had never met before, in the circumstances."
- Check with the lawyer writing the opening statements for your side, to make sure that both the opening and closing statements are very similar, and cover the same 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. Here are some pointers:

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

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.

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 wouldn’t 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 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 “on the spirit of the facts” according to the Tournament Guide and Code of Conduct. 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. 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 attorney 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 attorney 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 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 a "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.