

Crown counsel's file

To complete this file you need to add:

Basic information about the trial (from Chapter One):

- General trial script
- Rules of examination and evidence
- Trial script summary

Specific case materials:

- Relevant law
- Indictment
- Exhibits
- All witness role sheets (for both Crown and defence)
- Additional material for Meeting with Witnesses
- Additional material for Questioning Witnesses
- Strengths and weaknesses of the Crown's case



Crown counsel's role

Introduction

You are going to be a Crown counsel in this mock trial. Your job is to organize and present all the evidence the government has gathered against the accused.

A Crown counsel is normally a lawyer who is employed by the Ministry of Attorney General and paid an annual salary to handle all cases assigned to him or her. Occasionally a lawyer from private practice is hired by the Crown to prosecute one case, but that is the exception rather than the rule.

The Crown counsel plays a very important role in a criminal trial. Before a case ever gets to court, a Crown counsel will have examined the evidence against the accused and decided what charges to proceed with. He or she may have spoken with the defence counsel regarding the nature of the Crown's case, and even entered into discussion on pleas with the defence counsel (note that the judge plays no part in any of these processes).

In court, the Crown prosecutes the case on behalf of the Queen. The Crown's role is somewhat harder to understand than the defence counsel's role. While the defence counsel has a client whose interest he or she must advance at all times, the Crown has no interest in obtaining a conviction or an acquittal. In other words, the Crown neither wins nor loses the case. Rather, it is the job of the Crown counsel to bring the evidence before the court in a fair manner and to let the court decide whether the evidence proves beyond a reasonable doubt that the accused is guilty or not.

Therefore, when making closing arguments to the jury, be careful to avoid such statements as, "You should find the accused guilty," or "This proves beyond reasonable doubt that the accused is guilty." Make it clear to the jury that it is their job to determine the innocence or guilt of the accused. There is a reason why the accused was arrested and is standing trial, and there is evidence against the accused. Your job is to present that evidence to the jury.

The onus is on the Crown to prove the case. If the evidence that you produce does not convince the jury beyond a reasonable doubt that the accused is guilty as charged, the accused will be found not guilty.

As Crown counsel, you must know your case well. To prepare yourself for the role, read all the role sheets of the people who will be called as witnesses. Also read the suggestions for your opening and closing statements.

Write out a list of questions you want to ask each of your witnesses so that their evidence will come out during the trial.

Crown counsel's role

In a real trial the Crown counsel does not know who the defence lawyer will call as witnesses, nor what the defence will be. You should try to analyze the strengths or weaknesses of your case and try to figure out what defences are likely to arise. For the purposes of the mock trial, however, you will be allowed to read the role sheets for the defence witnesses to help you prepare.

When the trial begins, you must call all Crown witnesses to testify before the defence calls its witnesses. Your witnesses must prove the case against the accused. If they fail to do so, there may be no need for the defence to call any witnesses. Make sure that you clearly understand the case you are going to present. If you don't understand it, you'll never make the jury understand it.

Before calling your witnesses, you should address the jury. The purpose of this address is not to state all Crown evidence that is coming up, but rather to give a general framework of the Crown case so the jury will know who the witnesses are and why you are calling them.

Look up and read through the relevant sections of the law which outline the offence the accused is charged with. Make sure that your case is directed to proving the charge as given in the law. In order to secure a conviction, the Crown must prove all the elements of a particular charge beyond a reasonable doubt. Read through the "General Trial Script" so that you know how the trial will be conducted and when you should speak.

After all the evidence has been heard, you will present a closing argument for the Crown. During this summation you should restate the highlights of the Crown's case. If you think that the defence raised is questionable, you may state your doubts to the jury. But remember, emphasize that it is their job to determine innocence or guilt, not yours.

Read through the rules of evidence which are provided in this file.

When you ask questions, stay within the rules of evidence. If the defence asks questions or receives answers which you feel fall outside the rules of evidence, then object, stating your reasons, and let the judge rule on those questions.

The approach

Presenting your case is somewhat like painting a picture. Before the trial, imagine yourself as a painter who has to slowly fill in all the pieces of a picture. Start by sketching an outline for the jury and gradually and carefully colour in the various parts of it. Remember: you are starting with a blank canvas. The jury knows nothing about this case. Ask yourself—are all the elements of the picture contained in my question? Are there any blank spots? Do I know which witnesses are going to produce the colour for a certain part of the picture? Am I presenting them in the proper order? When you have finished this, pretend that you are a juror who knows nothing about this case. Examine your presentation from that perspective and see if it paints an orderly and clear picture.

Crown counsel's role

Preparing your case

One of the best strengths you can have in preparing a case is a thorough understanding of not only your own case but the other side's case as well. Put yourself in the place of the opposing side—what is their theory of the case? Who are they calling as witnesses and why? When you have considered these questions it will be much easier for you to prepare your own case. Methods of case preparation vary from lawyer to lawyer. As this is probably your first case you might find it helpful to use the following eight steps as an outline for preparing your case.

1. **Examine the indictment.** You need to be clear about the charges against the accused. How many are there? How do they differ from each other? In which ways are they related?
2. **Prepare an outline of the Crown's case.** After you have finished reading your file, prepare a detailed outline of the Crown's case against the accused. In it, describe the Crown's theory of this case and then summarize the important evidence which will be presented by each Crown witness.

When you list the evidence of a witness, try to figure out how this evidence is important to proving one or more of the charges against the accused person. In a separate column list what you see to be the weaknesses of the evidence that each witness will present. This is important. This information will form the basis for defence counsel's cross-examination of each Crown witness. To be prepared for trial, Crown and defence lawyers should know both the strengths and weaknesses of each of their cases.

3. **Prepare a separate outline of the defence's case.** List the defence's theory and all the defence witnesses, with a brief summary of their evidence. In a separate column, list what you see to be the weaknesses of each defence witness.
4. **Fill in the pieces.** You and the other lawyers for your side should meet with your witnesses to fill in the pieces of the stories and to begin developing your questions.
5. **Meet with the other side.** Crown and defence counsel should meet to exchange additional information that was developed during meetings with the witnesses.
6. **Organize your notes for trial.** Be as methodical and clear as possible.
7. **Test your witnesses.** Meet with your witnesses and question them thoroughly on their stories. Afterwards, play devil's advocate and cross-examine them on the weak sides of their stories.
8. **Prepare speeches.** The final step is to prepare your opening statement, your closing argument and your speaking to sentence speech.

Crown counsel's role

Sample outline format

NAME OF CASE:

Charges:

1

2

3

THEORY

WITNESS

EVIDENCE

WEAKNESSES

Witness #1

Witness #2

Witness #3

You will find it necessary to use a larger sheet. When you are finished, prepare a similar outline for defence witnesses.

Crown counsel's role

Meeting with your witnesses

The success of your presentation depends, in part, on how well you have coordinated your witnesses. It is important that you meet with your witnesses to ensure that they understand their roles.

As you will notice the witness role sheets are only basic outlines. The information contained in them is not sufficient to allow you to question a witness properly. Therefore, you will have to "fill in all the pieces" you need to develop the personal background of each witness.

As Crown counsel, you must meet with the Crown witnesses to develop their background. There are many details that need to be worked out. You must ensure that the evidence of the Crown witnesses does not clash in any way.

It is important that these counsel/witnesses meetings be used to formulate an outline of the types of questions to be asked and the additional information which will be required by the witnesses to answer the questions. Spend some time anticipating what questions will be asked in cross-examination of each witness by the other side. All witnesses need to be ready to answer questions asked in cross-examination without contradicting themselves or their evidence. You should practise some direct and cross-examination questioning techniques with the witnesses for your side before the trial.

The success of the trial depends on how well both Crown and defence counsels have developed their case. Use the basic outline and your sessions with your witnesses to develop as solid a case from your point of view as you can. Avoid using tricks. Do not insert surprises designed to confuse the other lawyers.

Meeting with defence counsel

After you have finished preparing for your case, you should meet with the defence counsel to share with them the additional information which you have developed. You should not tell them about your approach to questioning or any of your major arguments. Rather, in these meetings you should make sure that both sides understand the basic evidence of this case and agree upon it. After your discussion you should not introduce any major changes in your evidence. If you do, you must obtain the agreement of the other side.

Crown counsel's role

Taking notes

It is important that you keep notes. Make a list of all the questions you want to ask Crown witnesses before the case begins. Take your notebook with you when you stand to ask questions and tick off the questions that you ask, one at a time, so you don't forget any. You can also take the witness role sheets with you and cross off information from them as it is heard from the jury. In this way you make sure that nothing is missed. Make sure the answers are clear and understandable before moving on. It's a good idea to have both a blue and a red ink pen with you. Record all questions and answers in blue ink and note any questions you have about those answers in red ink so that you will remember to ask them in cross-examination.

Take your time when questioning witnesses. Remember that the judge is also taking notes, so go slowly enough to allow for this. The thoroughness of your presentation is more important than the speed.

How to organize your notes

Each lawyer has his or her own system of keeping notes during a trial. You should work out whatever system is easiest for you.

The main thing about keeping notes is that you must be able to check back on them very easily and quickly. Therefore, make your writing quite large and legible and don't be afraid to use different colours of ink, etc.

Make sure you have a good supply of paper with you when the trial starts.

The illustration below shows one of the most common systems used by lawyers to keep notes during trials. The page is divided into two columns for questions and answers. Make sure that you identify the witness who is speaking and whether the questions are being asked by the Crown or the defence.

Because you must take notes quickly, just write down the most important words in a question and answer, rather than trying to write the whole thing word for word.

In your summation to the jury you will probably want to refer to your notes and to the testimony given by various witnesses. If you are going to restate the testimony of a witness in closing arguments, make sure that you state the evidence correctly. Also when the other side is restating evidence, consult your notes to make sure that the evidence is being stated correctly.

Crown counsel's role

WITNESS: Officer Mary Smith (Direct Ex)

Questions	Answers
1. how long police officer	1. 8 yrs
2. how long drug squad	2. 5 yrs
3. where were you on July 21st 10:00 p.m.	3. Main St. Mall

The opening statement and closing argument

After the judge has made his or her opening address to the jury you, as Crown counsel, will be required to make an "opening statement" to the jury. The opening statement should be quite brief.

In it, you introduce the case to the jury. You explain what the charge is and outline your "theory" of the case. Your theory briefly indicates what you will be trying to prove through the Crown witnesses. For example, in a drug case you could say that the Crown believes that the accused sold drugs for a profit and that she/he sold them to one of the witnesses on the day in question. In other words, you give a brief outline of your case without going into much detail.

After doing that, tell the jury who your witnesses will be and what their roles are. For example, you can say, "I will be calling a witness whom I expect will tell you that he brought drugs from the accused on the day in question." In this way, the jury will have some idea of who each witness is as you call him or her.

When you have finished your opening statement, call your first witness and begin presenting evidence.

After all the witnesses for both sides have completed their testimony, both lawyers give their closing arguments to the jury. In this case, the defence counsel goes first. The Crown counsel follows.

Make your closing arguments fairly brief, although not as brief as your opening statement. In your closing arguments, you should review the evidence which has been presented by your Crown witnesses and compare it with the evidence of the defence witnesses. Point out the highlights of the evidence which tend to support your theory of the case, and point out problems with the defence's theory of the case.

Crown counsel's role

As Crown counsel, you must be careful during your closing arguments to be fair to the accused. Remember, in theory you have no interest as to whether the accused is convicted or not. You have presented the evidence to the jury. You argue only about whether the evidence supports the Crown theory of the case or not. Do not say such things as, "You must find the accused guilty," or "The Crown has proven beyond a reasonable doubt that the accused is guilty." Tell the jury that they have heard the evidence. Mention that it is up to them to decide if you have proven the case beyond a reasonable doubt.

Questioning the witnesses

One of the hardest things for you to adapt to in your role as counsel will be how to ask questions. From your "Rules of Examination and Evidence" you already know that you may not ask "leading" questions during direct examination, but you may ask these kinds of questions during cross-examination. These are formal rules, but just as important to you is to develop a way to ask questions effectively.

The first thing to remember is that neither the judge nor the jury knows anything about the case until the evidence is presented. Therefore, anything that you want them to know must be brought out through the witnesses by the questions you ask. Don't be afraid to be picky—make sure all the little details come out so that the jury has a complete picture.

When you conduct direct examination of one of your witnesses, take the appropriate witness role sheet to the podium with you and follow it along line by line, and make sure that the jury gets every bit of information which is contained in the role sheet.

For example, suppose you are involved in a drug case and your first witness is a police officer, John Lee. You may examine Officer Lee in this way:

Q. Officer _____, what police force are you with?

A. Local police, My Lord/My Lady.

Q. And for how long have you been a member of that force?

A. _____ years.

Q. What division have you been assigned to?

A. The drug squad, My Lord/My Lady.

Q. And you were employed in that capacity on _____ (date)?

A. Yes, I was.

Crown counsel's role

Notice that nothing is taken for granted. You do not assume that the jury knows who this witness is, what police force he's with, that he works on the drug squad, or anything else. He's a complete stranger to them.

When you are preparing for cross-examination, go over the witness role sheets of the other side's witnesses and think of questions you would like to ask about their stories. Remember, the defence counsel will try his or her best to discredit the Crown witnesses as much as possible. As Crown counsel, you should try to bring into question the defence witnesses' stories and challenge their credibility.

You may also want to introduce exhibits during the trial. In order to do this, you must question the appropriate witness about the exhibits. Supposed you ask the police officer what he found on the accused. Suppose he says he found a bag containing cocaine. Ask the court clerk to produce the exhibit containing the drugs. Ask the officer to identify the bag.

Q. Is this the bag of drugs you found on _____ (the accused).

A. Yes it is, My Lord/My Lady.

Q. How do you know it's the same bag?

A. I placed my initials on it and handed it to the crime laboratory. I see the initials on it now.

Then suppose that the crime laboratory has a certificate of analysis that says that the substance in the bag is cocaine. You want to introduce that certificate of analysis as another exhibit.

Q. Did the crime laboratory give you a certificate of analysis?

A. Yes.

Ask the court clerk for the certificate.

Q. Is this it?

A. Yes it is.

Q. What does it say?

A. (Officer will read the appropriate parts.)

Each exhibit must be introduced in this way. Be thorough and careful. When you ask the court clerk to produce an exhibit, present it to the defence counsel who will indicate the approval of the exhibit.

The golden rule is: If you don't ask it, the jury won't know it.

Speaking to Sentence

If the accused is convicted, you will need to speak to sentence. In doing so, you should make sure that the needs of society are not forgotten. Before the judge passes sentence he or she will ask you to present an argument as to what the best sentence for the accused should be.

In deciding what sentence to impose, the judge must consider several things:

1. The judge must ensure that the punishment fits the person. The judge will ask the defence counsel to tell him/her about the background of the accused. The judge must consider the age, past criminal record, family life and the job status of the accused.
2. The judge's sentence must be fair. Similar offences should get similar kinds of sentences. You should check with a local judge or lawyer to find out what the range of sentences could be for someone convicted of the offence in question. Judge's are expected to apply the law evenly.
3. The judge will consider whether this case should be made an example to others. If the offence is a common one in the community, the judge may feel that the most important consideration should be that the sentence be harsh enough to deter others from committing similar offences.
4. The judge will take into account the desire of society to help a convicted person rehabilitate himself or herself. What type of sentence will help the accused reform his or her ways?
5. The judge will consider the seriousness of the offence when deciding the sentence. For example a robbery conviction is more serious than a theft conviction, and the sentence should reflect this.

Some of the points listed above reflect society's desire to protect itself, punish offenders and deter future offenders. Others reflect a desire of society to help reform the accused. The judge will weigh these considerations and decide which ones should be most important in determining the sentence.

Although you represent the interests of society in general, you are also concerned that the accused, as a member of society, be treated fairly. When speaking to sentence, design your presentation to address those principles listed above which you feel the judge should emphasize in this case.

Crown counsel's role

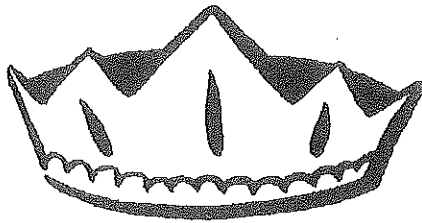
Dividing the work

You and your partner will divide the work. How many steps there are depends on how many witnesses you have.

If your mock trial has three Crown witnesses and three defence witnesses, the steps would look like this:

1. Opening statement to the jury. This is a short statement that tells the jury what you plan to prove and what witnesses you are going to call. (Lawyer #1)
2. Questioning Crown witness #1. (Lawyer #2)
3. Questioning Crown witness #2. (Lawyer #1)
4. Questioning Crown witness #3. (Lawyer #2)
5. Cross-examining defence witness #1. (Lawyer #1)
6. Cross-examining defence witness #2. (Lawyer #2)
7. Cross-examining defence witness #3. (Lawyer #1)
8. Closing statement to the jury. This is a short statement telling the jury what the most important evidence is. (Lawyer #2)
9. Speaking to Sentence, if necessary. (Lawyer #1)

The "Trial Script Summary" tells you when each task should be done.



Crown counsel's role

How to get started

This section contains some tips on how to get your lines of questioning started.

PREPARING QUESTIONS FOR YOUR WITNESSES

1. Review all the witness sheets and think about what the Crown and defence witnesses are each trying to prove.
2. Look at the Crown witness role sheets and make up a list of questions.
 - a) Prepare some questions to show the jury who your witness is.
 - b) Prepare some questions to show the jury what your witness did or saw or heard. Make sure it is clear where your witness was, how it happened or why it happened.
 - c) When you have finished making your list, check to see that the questions are in the right order and that you haven't missed anything. The questions should make it easy for the jury to understand what you want to prove.

PREPARING QUESTIONS FOR THE DEFENCE WITNESS

Your job is to point out to the jury the weaknesses in the stories of the defence witnesses.

1. Read the stories of the defence witnesses again.
2. Think of some questions you can ask each person. Try to think of about four or five questions. Practise these questions on your partner to see if they work.

During the trial

1. Introduce yourself to the judge as follows:

"May it please My Lord/My Lady, _____ (your name) appearing for the Crown."

2. When you call your witnesses, you say:

"My Lord/My Lady, the Crown wishes to call _____ (name of Crown witness) to the stand."

3. End your questions by saying:

"No further questions, My Lord/My Lady."