

## Judge's file

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To complete the judge's 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
- All witness role sheets
- Exhibits



# Judge's role

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## Introduction

The judge in a Canadian court plays a neutral role during a trial. Trials are conducted under an "adversarial system," which means that two sides present their cases to a neutral judge or jury for a decision. It also means, among other things, that the judge does not take an active part in questioning or cross-examining witnesses.

As judge, you will sit and listen to the evidence presented by the witnesses in response to questions asked by counsel. The only questions you ask would be designed to clarify a witness' answer. Both you and the jury should be as clear as possible about the evidence and you must not show bias in any way.

As you listen to the questioning of witnesses by counsel, you will need to make notes of what is said. These notes will be useful in your review of the evidence for the jury. If you need to ask any questions to clarify a witness' answer, ask them after each counsel has finished questioning so that you don't interrupt a line of thought.

As the judge, you have some very important functions. You are in charge of the courtroom and the trial. It is up to you to ensure that the trial is conducted fairly and properly and in accordance with the law. You must be familiar with the "General Trial Script." You need to know how the trial is to proceed, and who should speak and when. Have the "General Trial Script" with you in the courtroom.

Before any evidence is called, you must give a short opening address to the jury. In this address you introduce counsel to them, briefly explain the procedure of the trial and explain the role of the jury. Much of the information you will need to prepare for this opening address will be found in your file in the section entitled "Opening statement to the jury."

During the trial, either counsel may object to a question being asked or an answer being given, on the grounds that it violates the rules of evidence. If this happens, you should hear the arguments from both counsel as to why you should or should not allow the questions or answers. Then make a judgment, giving your reasons. Obviously, it is important that you review the "Rules of Examination and Evidence" in your file.

After all the evidence has been presented and both counsel have addressed the jury, you must "charge" the jury. In your "charge" you will read out the relevant section of the law (i.e. the section of the Criminal Code or the Act that has allegedly been violated) and instruct them as to what elements of the indictment must be proven in order to convict the accused. You may choose to review important parts of the testimony with the jury and outline what you see the issues to be. Avoid expressing opinions about the guilt or innocence of the accused.

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When you have finished the charge, the jury leaves the courtroom to deliberate. When they return with the verdict, you must accept it. You may disagree with it, but keep that to yourself. It is the jury's job to determine innocence or guilt.

If the verdict is "not guilty" then you will discharge the accused--he or she will be free to go. If the decision is "guilty", thank the jury, discharge them, and then sentence the accused.

Sentencing is usually the most difficult part of a judge's job. Often the judge will order that a pre-sentence report be prepared by a probation officer before passing sentence. Sentencing could be delayed for several weeks while that report is being prepared. In this trial, however, you would sentence immediately.

In preparation, talk to a local judge or lawyer about the appropriate sentence in these circumstances. There is a section entitled "Sentencing" in this file. Before you pass sentence, ask both counsels (starting with the defence) to speak to sentence. This means they will present their arguments as to what the best sentence would be. Consider their arguments in your decision.

## Judge's opening statement

*(Note to the judge: use this to construct your opening address to the jury.)*

"As members of the jury, you are the judges of the facts of the case, and any inferences to be drawn from the facts. You will be making the final decision as to the guilt or innocence of the accused person on the charges put before you.

"A fundamental principle of our law states that every accused person is presumed to be innocent until the opposite is proven. It is the duty of the prosecution in this case to prove beyond a reasonable doubt that the accused person is guilty as charged. Before you can bring a verdict of guilty, your decision must be based upon logical reasoning and upon the evidence that you accept as proof of the facts leading to that conclusion. If, after considering all the evidence, you feel that you have a reasonable doubt, then you must find the accused person not guilty. On the other hand, if you feel convinced of the guilt of the accused person, then you should convict.

"Many people have difficulty understanding what reasonable doubt means. Basically, it means what it says: it is a doubt for which you can give reasons. When you are deliberating to reach your verdict, you should focus on what you have heard in the courtroom. Don't speculate. Don't make up "what ifs" or "could haves." That is not your job. Your responsibility is to consider what the Crown and the defence place before you and to make your judgment based upon whether the Crown has carefully established its case and whether the defence has established reasonable doubt in your mind.

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"During the trial, both the Crown and defence lawyers will make opening statements about their cases to you. When all the evidence has been presented, both lawyers will also make closing summations about their cases. Then, before you go to decide, I will formally "charge" you. In this "charge" I will instruct you on the law as it relates to this case, and you must accept the law as I give it to you.

"At the end of the trial, you will be taken to the jury room. In a real criminal trial, you would all have to arrive at the same conclusion to get a verdict (guilty or not guilty). Your decision would have to be unanimous. If you couldn't agree, then you would be a "hung jury" and the case would be dismissed and another new jury might be started by the Crown. In this trial, because of time limitations, you need only to reach a majority verdict.

"When you return to the courtroom, your foreperson will be asked to present your verdict in court. The foreperson will say either "guilty" or "not guilty" and no reason will be given."

## Judge's charge to the jury

After all the evidence has been presented in a trial and the lawyers for both the Crown and the defence have finished their summations to the jury, the judge must "charge" the jury. This means the judge instructs the jury on the law and the evidence. Part of the charge is a general one, and would be used in any case. The other part of the charge is particular to the case being tried. During this second part, the judge sums up the evidence that the jury should consider when deliberating on the guilt or innocence of the accused.

The following "charge" outlines the general section. Take it with you and read it to the jury. You will also be responsible for writing the section that sums up the evidence in this case. You will take that and read it too.

### Charge to the Jury:

"Now, Mr/Madame Foreman, ladies and gentlemen of the jury, there are principles on which all juries must be instructed according to the law before they can retire to a jury room to deliberate and arrive at any conclusion, and it is my duty to instruct you on these principles. Now, before going into the facts and the law regarding this particular case, there are general principles on which I must instruct you and which you must take into account when you are considering the verdict and the evidence.

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"You as the jury and I as the judge have certain functions to perform. Putting it briefly, the facts are for you and for you alone, the law is for me. You are supreme in the realm of finding what are the facts. It is my duty to explain the law to you and you will take from me the law as I give it to you and you will apply the law to the facts as you find them. It is for you to draw all proper inferences you think should be drawn from the facts which you consider to have been proven.

"Such observations as I make to you or any opinions I may express as to the facts may or may not meet with your approval. If they do not meet with your approval, then it is your privilege and your duty to disregard them, because, as I have indicated to you, you and you alone will rely on the facts in your interpretation of the evidence. You must be guided only by the evidence which you have heard in the courtroom and clear your mind of anything other than that.

"There is a fundamental principle in our law that every accused person is always presumed to be innocent until the opposite is proven. It is the duty of the prosecution to prove guilt beyond a reasonable doubt, and that burden stays with the Crown throughout the trial and it does not shift. Bear in mind that it is not for the accused to prove innocence.

"I have spoken about reasonable doubt. It is not an easy thing to define, but it is more or less what it says. Whenever an allegation of a crime is made, it is the duty of the jury to give the accused the benefit of any reasonable doubt, not, be it noted, of every doubt, but only a doubt for which reasons can be given.

"If, after considering all the evidence both for the Crown and the defence, you feel in your mind you have a reasonable doubt as to the guilt of the accused, then you must find the accused not guilty. If, however, what you have heard raises in your mind definite conviction of the guilt of the accused, then you should convict.

"Dealing with the evidence, you must consider the whole of the evidence. You are entitled to accept the evidence of one witness and reject the evidence of another witness, or reject part of the evidence of one witness. A witness may be perfectly honest, but mistaken. You have seen various witnesses in the box before you. Ask yourself: What was their demeanour? Did they impress you as to whether they were telling the truth to the best of their recollection and ability? Were they honest or evasive, partial or impartial? Had any one of them an interest to serve? Just use your own good common sense and experience that you have gained as men and women of the world. Consider the evidence of one witness against another before you decide on the credibility of any particular witness.

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"At this point I will briefly review the evidence of this case and describe the law to you as it relates to this case."

Here you need to describe the law that is relevant to the charge. (See the section in this file, entitled "Relevant law.") Then add some points about the evidence presented by the Crown against the accused and evidence presented by the defence. You can use the witness role sheets to help you prepare this part.

Don't be too detailed. And don't be too prepared. You must be ready to incorporate things that you hear in the courtroom into your presentation.

Conclude with: "So, in summary, if you find upon the evidence that you are convinced beyond a reasonable doubt that the Crown has proven the charges, you must find the accused guilty. If the Crown has failed to prove any essential element of the case, then it has not proved its case to you and you must acquit.

"Go now into the jury room and deliberate. You may take a copy of the indictment and the exhibits of the trial with you. While juries in criminal trials must reach a unanimous verdict in our criminal law, for the purposes of our trial here and because of the lack of time which may be needed to reach a unanimous decision, I am asking that you conclude your deliberation in about a twenty-minute period and conclude with a vote on guilty or innocence—a majority vote will suffice for our trial."

## Sentencing

If the jury returns a verdict of guilty, you will need to pass sentence on the accused. In doing so, you will ask both the defence and the Crown to speak to sentence. This means that they present arguments about what the sentence should be. The defence speaks to sentence first.

In deciding what sentence to impose, you should examine the arguments put forward by both the defence and the Crown. You should balance them with the following considerations:

1. You must ensure that the punishment fits the person. This means you must consider the age, past criminal record, family life and job status of the accused.
2. Your 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. You are expected to apply the law evenly.

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3. You should consider whether this case should be made an example to others. If the offence is a common one in the community, you may decide that the most important consideration should be that the sentence be harsh enough to deter others from committing similar offences.
4. You should take into account the desire of society to help a convicted person rehabilitate himself or herself. What type of sentence will best help the accused reform his or her ways?
5. Your sentence should fit the offence. For example, a robbery conviction is more serious than a theft conviction, and the sentence should reflect this.

