

MOCK TRIAL TOURNAMENT

1993

I. INTRODUCTION

This year's case is Her Majesty the Queen v. Von Chovi and the accused is charged with the indictable offence of second degree murder. The applicable law is detailed in these materials under the heading "Applicable Law". You may assume for the purposes of this case that the arresting police officer complied fully with the Canadian Charter of Rights and Freedoms. The accused has been granted permission to be tried without a jury.

The Ontario Tournament organizers are David J. Goodman of Smith, Lyons, Torrance, Stevenson & Mayer, Susan Heakes of Blake, Cassels & Graydon and Michael Martosh of the Municipality of Metropolitan Toronto, Legal Department. The Tournament is administered by the Law Day Committee of the Canadian Bar Association - Ontario. All communications regarding this tournament should be with Janice Richardson of the Canadian Bar Association - Ontario. Her address is:

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II. THIS YEAR'S ONTARIO TOURNAMENT AND ADDITIONAL RULES

This year's Kit is being distributed during the month of October, 1992. By October 15, 1992, interested teachers must notify the Eleventh Annual Ontario High School Mock Trial Tournament Committee of their interest in receiving the Kit. Attempts will be made to arrange for local lawyers to provide assistance to all teachers requiring such assistance. Attention is drawn to the rules set out in the "Mock Trial Tournament Guide" as well as to the rules herein.

Teams must be prepared to play the role of either the Crown or the Accused. Teams will be assigned their roles on the basis of a coin toss preceding each round of the competition. The 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 a team member in inter-school competition are ineligible to compete again in a current tournament.

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 Janice Richardson at the CBAO of such intention in writing on or before 4:00 p.m. Monday, February 1, 1993. Please note that this deadline is firm, and no exceptions can be made.

C. Round Two

Round Two consists of four 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. Assistance will be provided by the Committee where necessary; however, it is expected that teachers and local lawyers will be able to assume responsibility for the Round Two play-offs. 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 four regional play-offs will advance to Round Three in Toronto.

Round Two must be completed by Saturday, March 27, 1993 and Janice Richardson advised as to the regional winners on or before 4:00 p.m. on Monday, March 29, 1993. 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. Accordingly, we strongly recommend completing Round Two well in advance of the deadline.

D. Round Three

Round Three consists of the semi-finals in Toronto on the morning of Law Day, Thursday, April 15, 1993. The four best teams from the regional inter-school competitions will compete in a court room 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. These two teams will receive awards at the Law Day Banquet on the evening of Thursday, April 15, 1993, 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). Except for transportation to the regional inter-school competitions, there should be no costs associated with Round One and Round Two. Round Two competitions should occur on a Saturday in order to ensure full participation. Local Boards of Education might be approached for financial support by teachers if there are transportation or other costs. Limited financial assistance from the Canadian Bar Association - Ontario will 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 15, 1993) 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 high 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 its rules should be observed by all participants.

III. FACT SHEETS FOR HIGH SCHOOL MOCK TRIAL TOURNAMENT 1992

This section of the materials contains the role descriptions for the accused and the witnesses. Teachers should make these Fact Sheets available to students early on in the process and the students should be encouraged to find out as much as possible about the character of the role they represent. Note, however, that students must not deviate from the role descriptions.

In order to carry out the "witness" role successfully, the two Crown witnesses (Constable A. Rose and Nicky Jagger) should meet before trial to work out other details about their characters. Similarly, the two defence witnesses (Don Von Chovi and Fran Goodheart) need to work out some details together. **Please Note:** While we encourage students to develop the characters of the witnesses and to elaborate on their personalities, teams will be penalized for unfair deviation from the fact sheets. "Unfair deviation" includes, but is not limited to changing relevant facts, the refusal to admit a fact which is included in a fact sheet when asked about it in cross-examination, and the addition of any fact including personal characteristics of a witness which might unfairly influence the result of the case.

Although witnesses will attempt to prepare for every possible question that may be asked of them, they must also be prepared to respond, on the spot, to questions which were not anticipated. Witnesses must be flexible. On the other hand, if the testimony is not consistent, the Judge may begin to doubt the truth of the statements. Establishing credibility will present a challenge to every witness in this trial.

CONSTABLE A. ROSE

CROWN WITNESS #1

Constable A. Rose is a 55 year old police officer, and a 30 year veteran of the Metropolitan Police Force. He/She has significant police experience attending rock concerts and was specifically assigned to this concert, in uniform, due to the band's history of inciting riots and his/her experience with crowd control duties. Constable Rose intended to retire with a full pension within three months of the concert but has delayed retirement until after this trial. Constable Rose will testify that he/she was not happy with this dangerous and loud assignment which would normally be reserved for younger and less experienced officers.

Constable Rose will testify that on Saturday, August 15, 1992, he/she attended at a rock concert at the FlyDome. Immediately after the band announced its retirement and discontinuation of the concert, the crowd began to chant obscenities and surge forward towards the stage. This caused Constable Rose to have immediate concern for the safety of the group of people seated in the front row next to the railing, including the Accused and the Deceased (Constable Rose later identified the Deceased as Sean Penney).

Constable Rose will testify that he/she was standing in the aisle fifteen rows behind where the incident occurred and saw what appeared to be the Accused pushing the Deceased over the railing, although he/she turned his/her head just before the Deceased went over the railing. Constable Rose will testify that following the incident, he/she investigated and questioned the Accused; any and all of the accused's comments to Constable Rose were made voluntarily. He/She will testify that the Accused's only comment during the investigation was that the Deceased "got what was coming to him".

Constable Rose will testify in cross-examination that it is an extremely dangerous job to be a uniformed police officer at a rock concert and that it is common for crowds to take out their hostilities on uniformed police officers. As such, he/she was extremely concerned for his/her own safety when the hostilities began and was paying more attention to the surging crowd than to the people in the front row.

Constable Rose will admit in cross-examination that the whole incident took only a few seconds and that it coincided with the surging of the crowd. While he/she was 15 rows back, he/she claims that his/her view of the alleged crime was not impeded. He/She will admit what he/she saw happened in a split second and "looked" like a push but he/she can't be positive. He/She did not see a punch thrown but can't say that it didn't happen.

Under cross-examination, Constable Rose will testify that an autopsy report was performed on the Deceased and it was discovered that the Deceased had a blood/alcohol content of three times the legal limit for driving. In addition, Constable A. Rose will testify that the Accused voluntarily took a breathalyser and tested just under the legal limit for driving.

Constable Rose will testify that he/she knew the Deceased. In fact, two weeks earlier, he/she had to break up a fight between the Deceased and a dissatisfied customer. No charges were laid.

Following the incident, Constable Rose interviewed dozens of potential witnesses. Unfortunately, given the speed with which the incident occurred and the hectic scene only Nicky Jagger had any information. Fran Goodheart was questioned by Constable Rose but indicated that she did not see exactly what happened. Constable Rose will also testify that Fran was extremely upset at the time.

Constable Rose arrested Nicky that evening for possession of two marijuana cigarettes. Those charges were dropped on the understanding that Nicky would be available to testify at Von Chovi's trial.

Constable Rose has drawn a diagram (Exhibit 1) for the court which shows the layout of where the parties were located at the concert.

NICKY JAGGER

CROWN WITNESS #2

Nicky Jagger is 23 years old and is an avid Pistolz 'N Daisyz fan. In fact, Nicky has been to 53 of their concerts in his/her life and has attended concerts in 25 cities across North America.

Nicky will testify that he/she saw the Accused push Sean Penney over the rail during the course of a belligerent and hostile exchange of words apparently initiated by the Accused. Nicky does not recall what those words were but thinks it had something to do with a large amount of money. Nicky is certain that both the Accused and Sean Penney were angry and were yelling at each other.

Nicky will testify that at the rock concert he/she consumed some alcohol and marijuana and used these substances frequently in the past. Nicky does not recall how much marijuana or alcohol he/she consumed but will testify under cross-examination that he/she was feeling "quite happy and relaxed".

Nicky will testify that when the band announced that the concert was over, the crowd began to surge behind him/her. He/She immediately turned around to face the crowd in an effort to protect himself/herself. Nicky turned around again to face the Accused and Sean at the sound of their hostile exchange of voices. He/she will testify that, at that time, the crowd was surging forward, that he/she did not see Sean throw a punch at the Accused, and that the Accused definitely pushed Sean over the railing, using both hands.

Nicky Jagger was not asked to submit to a breathalyser but does not remember how he/she returned home that night.

Nicky knew Sean and would describe him as an acquaintance as opposed to a "friend". Nicky had bought tickets from Sean in the past and found the Deceased to be courteous, polite and had access to the best last minute seats in the house.

Nicky will admit under cross-examination that he/she was arrested for possession of a small quantity of marijuana (two joints). He/She will state that those charges were dropped on the understanding that Nicky would testify at trial.

DON VON CHOVI (THE ACCUSED) DEFENCE WITNESS #1

Don Von Chovi is 23 years old and in his last year of a music degree. He has recently sold the rights to his first song entitled "Love Your Neighbour" for \$600 which represents the extent of his wealth.

August 8, 1992 was to be a special occasion for the Accused, Don Von Chovi and his fiancée, Fran Goodheart. The couple had just announced their engagement which they planned to celebrate by attending the Pistolz 'N Daisyz concert at the FlyDome in Toronto. This was to be an extra special evening as they had met two years earlier at a similar concert in Buffalo.

Unfortunately, tickets for the concert had sold out so quickly that they had been unable to purchase tickets in advance. As a result, they decided to take their chances and buy a pair of tickets from a scalper, outside the FlyDome, on the night of the concert. The Accused will testify that he bought a pair of front row, balcony tickets from the Deceased for \$450.00 (\$225.00 each) and that each ticket's face value was \$35.00.

The Accused will further testify that this was an extremely expensive price to pay for the tickets and that the money had been set aside for their honeymoon expenses. Instead, the couple agreed that the event was so special to them that they would spend the money on the concert tickets and, as a result, the couple would not have enough money to afford an engagement ring. Don attempted to negotiate a much more reasonable price for the tickets with the scalper, but the Deceased immediately became belligerent and hostile towards the couple, and intimidated them into purchasing the tickets at the higher price.

The couple took the tickets and went to their seats which were impressively located directly in front of the stage on an overhanging balcony. The Deceased entered the concert shortly after it began and sat immediately beside the Accused. The Accused had no idea that the Deceased was going to be sitting in these seats and was concerned for his safety and for the safety of his fiancée as a result of the earlier extremely unpleasant episode but decided to say nothing at the time.

The Accused will testify that after two songs, the lead singer for the band announced that his voice was failing and that the concert would be cancelled. In fact, he also announced that the group would be breaking up and would never play again. At this point the audience became loud and unruly and began to surge forward as they chanted obscenities at the stage.

The Accused will testify that upon hearing that news he immediately turned to the Deceased and requested a refund. The Deceased refused and in a more hostile manner than he had exhibited earlier, told the Accused to "...collect the \$70 from the ticket agency...and if you

don't like that, you know what you can do." The Accused admits to responding "If you don't give me my money back, I'm gonna call the cops," and stood up to face the Deceased who was already standing. Von Chovi will then testify that the Deceased threw a punch in the direction of Von Chovi's head, but the Accused ducked and the force of the punch and the surging of the crowd forward resulted in the Deceased losing his balance and falling over the rail to his death on the stage below.

The Accused was later questioned by Constable A. Rose who charged the Accused with second degree murder.

The Accused recalls the concert in Buffalo but does not recall beating anyone up. He will admit having an argument.

The Accused will admit telling Constable Rose that the Deceased "got what was coming to him". At the time, he was still angry about the hostile exchange of words and the punch thrown at his head.

FRAN GOODHEART

DEFENCE WITNESS #2

Fran is in her final year of college studying child care. She is scheduled to start work at a prominent day care facility in three weeks.

Fran will testify that the attendance at the rock concert was a replacement for their honeymoon. It was to be a very romantic evening which they had both been anticipating and they had gone out for a romantic dinner prior to the start of the concert. Fran will admit that the couple had shared a bottle of cheap red wine at dinner and that Don Von Chovi, in fact, had consumed most of it, and in his excited state had hardly touched his food.

Fran will testify that the couple had intended to spend a maximum of \$250.00 on the tickets and that the remaining \$200.00 was going to be used to pay the costs of a hotel suite on their wedding night. This was all the money they had saved and they could not even afford an engagement ring. Fran recalls that during the negotiations with the scalper, the couple had decided to pay the increased price, as they had originally met at a Pistolz 'N Daisyz concert two years earlier and they could not think of anything more romantic than celebrating their engagement on the anniversary of their meeting.

Fran will also testify that following the negotiations, on the way to the seats and after the commencement of the concert, the Accused was extremely upset at paying such an exorbitant price for the tickets and had stated that "I'd really like to get my hands on that scalper if we ever see him again." Fran will testify that when the concert was cancelled she recalls her fiancé asking the Deceased politely for the return of their money, however, Fran was then distracted by the surging crowd behind her. She heard her fiancé and the Deceased screaming at each other but could not hear what was being said.

She then turned around and saw out of the corner of her eye her fiancé duck a punch being thrown by the Deceased and then observed the Deceased tumble over the rail to his death. She will testify that her fiancé did not touch the Deceased.

On direct examination, Fran will state that her fiancé was too loving and caring to ever hurt anyone let alone kill them. On cross-examination, however, Fran will admit that Don becomes very nervous in large crowds. In fact, at the concert in Buffalo where they met Don had got into a fist fight with someone who had pushed him and punches were thrown but nobody was injured.

Fran will testify that immediately after the incident, she was questioned by Constable Rose. Unfortunately, given her emotional state at the time she cannot remember exactly what she said.

V. APPLICABLE LAW

Here are the relevant sections of the Criminal Code under which Don Von Chovi is charged:

Section 222(5) defines murder:

MURDER.

222(5) A person commits culpable homicide when he causes the death of a human being;

- (a) by means of an unlawful act;
- (b) by criminal negligence; and
- (c) by causing that human being, by threats or fear of violence or by deception, to do anything that causes his death.

Section 229 defines murder:

229. Culpable homicide is murder

A. where the person who causes the death of a human being

- (i) means to cause his death, or
 - (ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;
- (b) where a person, meaning to cause death to a human being or meaning to cause him bodily harm that he knows is likely to cause his death, and being reckless whether death ensues or not, by accident or mistake causes death to another human being, notwithstanding that he does not mean to cause death or bodily harm to that human being, or
- (c) where a person, for an unlawful object, does anything that he knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that he desires to effect his object with causing death or bodily harm to any human being.

Section 231 defines the difference between first and second degree murder:

231. (1) Murder is first degree murder or second degree murder.
- (2) Murder is first degree murder when it is planned and deliberate.
- (7) All murder that is not first degree murder is second degree murder.
232. (1) Culpable homicide that would otherwise be murder may be reduced to manslaughter if the person who committed it did so in the heat of passion caused by sudden provocation.
- (2) A wrongful act or insult that is of such a nature as to be sufficient to deprive an ordinary person of the power of self control is provocation for the purposes of this section if the accused acted on it on the sudden and before there was time for his passion to cool.
- 235 (1) Every one who commits first degree or second degree murder is guilty of an indictable offence and shall be sentenced for life.

There are differences in law between first degree murder, second degree murder, and manslaughter. The important element of difference is the intent involved. First degree murder is planned and deliberate. Second degree murder is not planned, but is intentional. For the purposes of this case, manslaughter is the killing of another person by an unlawful act such as an assault at a time when the Accused was provoked according to s. 232(1) and (2) of the *Criminal Code*.

The Crown is required to prove all elements of the offence beyond a reasonable doubt.

For the purposes of this case you need not consider the possibility of the Accused being found guilty of first degree murder or relying on the defence of self-defence.

In conclusion, the following are the only legal issues that need to be resolved in this case:

1. If the Crown can prove beyond a reasonable doubt that Don Von Chovi pushed Sean Penney over the railing with the intention of causing death or bodily harm which could result in death, then Von Chovi is guilty of second degree murder.
2. If it can be proven that Von Chovi was provoked into pushing Sean Penney in the heat of passion and that resulted in the death of Sean Penney then Von Chovi is guilty of manslaughter. **Note:** that once the Accused raises the defence of provocation the Crown must then prove beyond a reasonable doubt that the Accused was not provoked.
3. If neither of the above can be proved beyond a reasonable doubt then Von Chovi is to be found not guilty.

VI. ENTERING EXHIBITS

The Crown counsel will want to introduce exhibits during the trial. In order to do this, the Crown will question the appropriate witness about the exhibit(s) involved. These questions will be asked mainly of Constable Rose.

For example, the Crown will ask Constable Rose as follows:

Q: Is this the diagram you drew shortly after the incident occurred?

A: Yes it is, and I can tell it's mine because it has been initialled and dated by me.

Q: Does it fairly and accurately depict the scene as you recall it?

A: Yes, it's not drawn to scale but it shows where people were seated and their locations.

V. MOCK TRIAL TOURNAMENT TIME CHART 1993

	Maximum
1. Call to order, read charge, enter plea, introduction of teams	2 - 3 min
2. Crown - opening statement	4 min
3. Crown Witnesses	
Constable Rose - direct examination	6 min
- cross examination	4 min
Nicky Jagger - direct examination	6 min
- cross examination	4 min
4. Defence - opening	4 min
5. Defence Witnesses	
Don Von Chovi - direct examination	6 min
- cross examination	4 min
Fran Goodheart - 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

The clerk's job is to help the judge run the courtroom. To begin with, you should be familiar with the general trial script summary which is set out below:

A. Trial Script Summary

- (i) Court clerk escorts judge to bench and calls order.
- (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 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:

"All rise, this court is now in session."

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

"Mr. Justice/Madame Justice _____presiding".

2. READ THE CHARGES TO THE ACCUSED:

After the Crown and defence lawyers identify themselves, you will read the charge as it is set out in the Indictment. A copy of the Indictment is in these materials. You will stand and say:

1. "Don Von Chovi, you stand charged that on or about the 15th day of August, 1992, in the City of Toronto, in the Municipality of Metropolitan Toronto, you did unlawfully commit murder in the second degree of the Deceased, contrary to the provisions of s. 235(1) of the *Criminal Code of Canada*."
2. "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, Constable A. Rose. You will be responsible for swearing in Constable Rose 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 you are about to give to the court between our Sovereign Lady the Queen and the prisoner at the bar 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:

"All rise, court will now adjourn (or recess) for 10 minutes"

When the judge is ready to return, you will call the courtroom back to order as you did at the beginning of the trial:

"All rise, this court is now in session"

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:

"All rise, 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 xerox some "performance sheets" in case the judge forgets to bring one.

EXHIBIT 1

STAGE

BALCONY

NICKY
JAGGER

DECEASED
SEAN PENNEY

ACCUSED
DON VON CHOVI

FRAN
GOODHEART

AISLE

CONSTABLE A.R. ROSE

DATED: August 16, 1992