



## Module 3: What is the Judge's Role in the Justice System?



### ➤ Case Study: Teacher Sued for Assaulting Student

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## Module 3: What is the Judge's Role in the Justice System?

The desired outcome for Module 3 is encapsulated in the following paragraph:

“Well done. Socrates would be proud. Now you know what a judge does—and doesn’t do—when a legal dispute comes before the courts. Judges act as a neutral umpire—they ensure hearings and trials run smoothly, interpret the law, and decide whether civil claims or criminal charges have been proven.”\*

(\*audio feedback to each student from the judge after the successful completion of the online task at [www.tryjudging.ca](http://www.tryjudging.ca))

*NB: all lettered Sections identified in the overview are referenced within the body of each of the 5 modules, with each module being located directly after each suggested lesson plan(s), and will be found at [www.tryjudging.ca](http://www.tryjudging.ca).*

### Module Learning Outcomes: Module 3, Section (A)

Students will:

- Learn how Canada’s courts are structured;
- Demonstrate an understanding of the adversarial system of justice and the role of the judge and other players;
- Understand the judge’s role in enforcing the rules of procedure and deciding whether evidence is admissible;
- Explore the various stages of criminal and civil trials.

### Provided Resources for Module 3

#### I. Resource Materials: Module 3, Section (B)

*(Note: information on the first five sections below is in Module 3 (B) of the teacher’s guide and can also be accessed at [www.tryjudging.ca](http://www.tryjudging.ca). Click on “Teacher Resources”. )*

1. The Structure of Canada’s Courts
  - a) Supreme Court of Canada
  - b) Superior Courts
  - c) Provincially Appointed Courts
  - d) Other Courts and Tribunals

2. The Adversarial System of Justice
  - a) The Role of the Judge
  - b) Judges and Juries
  - c) Lawyers and Prosecutors
3. Procedural Rules
4. Rules of Evidence and Admissibility
5. How a Trial Unfolds
  - a) Civil Cases
  - b) Criminal Cases
6. Posed Questions Handout Sheet (refer to Appendix A—teacher's copy and Appendix B—students' copy)
7. Handout Sheets (refer to Appendices C, D, E, and F)
8. Video: Case Study #3  
—Teacher Sued for Assaulting Student (<3 minutes) available at [www.tryjudging.ca](http://www.tryjudging.ca)
9. Video: Background and Script available at [www.tryjudging.ca](http://www.tryjudging.ca)
10. Try Judging  
online interactive program for students is available at [www.tryjudging.ca](http://www.tryjudging.ca)
11. Quiz  
(embedded within the online interactive student program)
12. Additional Exercises for Classroom Use and Assignments  
(these are found in Module 3 (D) of the teacher's guide and at [www.tryjudging.ca](http://www.tryjudging.ca))
13. Internet Links to More Resources  
(these are found in Module 3 (E) of the teacher's guide and at [www.tryjudging.ca](http://www.tryjudging.ca))

## 2. Case Study: Module 3, Section (C)

*To be used in conjunction with the video and the online interactive site*

### Case Study: Teacher Sued for Assaulting Student

*The case study can be accessed at [www.tryjudging.ca](http://www.tryjudging.ca). It is designed as an interactive exercise that can be adapted for an in-class activity and/or a written assignment. The website, furthermore, provides all resource materials for teachers in PDF format.*

### 3. Additional Exercises for Classroom Use and Assignments: Module 3, Section (D)

*(all the following are elaborated upon at [www.tryjudging.ca](http://www.tryjudging.ca))*

- 1) Classroom Visit by a Trial Participant
- 2) Courthouse Visit
- 3) Role-Playing Exercise
- 4) Role of the Judge: Class Discussion
- 5) Rules of Evidence: An Exercise
- 6) Analysis of a Media Report of a Court Case
- 7) Understanding Appeal Court Decision-Making: An Exercise
- 8) Suggested questions for class discussion and/or written assignments:

### 4. Internet Links to More Resources: Module 3, Section (E)

*These links, found at [www.tryjudging.ca](http://www.tryjudging.ca), provide information on the following: role of judiciary, overviews of the court and justice systems, role of the prosecutor, parallels with the American justice system, primer on criminal law, policing, and corrections, etc.*



## Module 3: What is the Judge's Role in the Justice System?

### Suggested Lesson Plans

#### Teaching Objectives and Learning Outcomes

Students will:

- Learn how Canada's courts are structured;
- Demonstrate an understanding of the adversarial system of justice and the role of the judge and other players;
- Understand the judge's role in enforcing the rules of procedure and deciding
- whether evidence is admissible;
- Explore the various stages of criminal and civil trials.

# Teacher and Student Learning Materials and Resources

(Note: information on the first five sections below is in Module 3 (B) of the teacher's guide and can also be accessed at [www.tryjudging.ca](http://www.tryjudging.ca). Click on "Teacher Resources".)

## 1. The Structure of Canada's Courts

- a) Supreme Court of Canada
- b) Superior Courts
- c) Provincially Appointed Courts
- d) Other Courts and Tribunals

## 2. The Adversarial System of Justice

- a) The Role of the Judge
- b) Judges and Juries
- c) Lawyers and Prosecutors

## 3. Procedural Rules

## 4. Rules of Evidence and Admissibility

## 5. How a Trial Unfolds

- a) Civil Cases
- b) Criminal Cases

## 6. Posed Questions Handout Sheet

(refer to Appendix A—teacher's copy and Appendix B— students' copy)

## 7. Handout Sheets

(refer to Appendices C, D, E, and F)

## 8. Video: Case Study #3-Teacher Sued for Assaulting Student

(<3 minutes) available at [www.tryjudging.ca](http://www.tryjudging.ca)

## 9. Video:

Background and Script available at [www.tryjudging.ca](http://www.tryjudging.ca)

## 10. Try Judging

online interactive program for students is available at [www.tryjudging.ca](http://www.tryjudging.ca)

## 11. Quiz

(embedded within the online interactive student program)

## 12. Additional Exercises for Classroom Use and Assignments

(these are found in Module 3 (D) of the teacher's guide and at [www.tryjudging.ca](http://www.tryjudging.ca))

## 13. Internet Links to More Resources

(these are found in Module 3 (E) of the teacher's guide and at [www.tryjudging.ca](http://www.tryjudging.ca))

# Teaching Plan and Strategy

## I. Use Appendix A

[all appendices are below] to introduce this module's topic. Appendix B can be used as a handout for students to complete or for an oral class discussion. Either way, it acts as a diagnostic assessment of the class' understanding of the role of judges.

## 2.

In this major part of the lesson, all of the 5 sub-topics that are presented in the Module 3 guide, Section (B) should be taught. Pertinent information is provided in Section (B) of the guide and acts as the foundation of knowledge for completion of Appendices C, D, and E. Note that if Appendices C and D are to be used, as distinct from Appendix E, then do not provide information about the Role of Judges—an attempt at inductive group brainstorming learning is applied here; if Appendix E is to be used, then students can have direct access to the information about judges found in Module 3 of the teaching guide, Section (B).

Information pertaining to the 5 sub-topics could be presented through a lecture approach, a power point presentation, or even as the result of a student research assignment.

The 5 sub-topics are:

- The Structure of Canada's Courts
- The Adversarial System of Justice
- Procedural Rules
- Rules of Evidence and Admissibility
- How a Trial Unfolds

## 3. Critical learning materials and resources 8, 9, 10, and 11

Will enable students to fully analyse Module 3's Section (C) Case Study: Teacher Sued for Assaulting Student.

*The online video (approximately 3 minutes in length), subsequent online interactive programme, and associated online quiz (all found at [www.tryjudging.ca](http://www.tryjudging.ca)), provide an excellent student-centred learning activity for teachers to use.*

## 4. Using the Supreme Court of Canada website, [www.scc-csc.gc.ca](http://www.scc-csc.gc.ca)

Students can complete the assignment found in Appendix F. Students are to identify the nine supreme court justices, and then choose one judge in order to write a biography. As a concluding task, the student is to list and describe three necessary attributes of a supreme court justice.

## 5. Follow up activities

Such as those outlined in Module 3 of the teacher guide's Section (D), using the Internet links listed in Section (E) of the Module guide, can be considered for further study.

## Evaluation/ Assessment

1. Any of the following appendices (see Materials and Resources #7 above): Appendix C (any of the columns 1-5), Appendix D (just Column 3), Appendix E, Appendix F.
2. Quiz for online interactive exercise (see Materials and Resources #11 above)
3. Exercises or assignments associated with Module 3, Section (D) and Section (E) (see Materials and Resources #12 and #13 above)

# Appendix A For teachers

## The Role of the Judge: An Introduction

### Teacher sued for assaulting student

A teacher who coaches a minor hockey team argues with one of his players. The coach grabs the player and holds him against a wall. The player and his parents sue, claiming he has been assaulted and seeking an award of money as damages. (See the video at [www.tryjudging.ca](http://www.tryjudging.ca).)

During the trial, which decisions will the judge be expected to make?

- 1) Is the player's testimony about the scuffle admissible? [Yes]
- 2) Should the coach's lawyer call witnesses? [No]
- 3) Have all procedural rules for filing documents with the court been met? [Yes]
- 4) Should the player's parents accept a last-minute compensation offer from the coach that would settle the case? [No]
- 5) Has the player's claim for damages been proven? [Yes]
- 6) Should a witness be required to answer questions? [Yes]

(Each of these questions is designed to help students understand the role of the judge when a legal dispute comes before a court. Under our adversarial system of justice, the parties involved in a case are responsible for determining how their case will be presented and which witnesses will be called. Judges decide whether evidence is admissible, whether procedural rules have been followed, if a witness should answer a particular question, and whether the Crown (in criminal cases) or the plaintiff (in a civil case) has proven its case. If the case has been established, the judge then imposes sentence in a criminal case and, in a civil case, orders the defendant to pay damages or take other action to make amends. Judges *do not* decide whether the parties will settle the case out of court or which persons a party will call as witnesses.)

## Appendix B For students

### Teacher sued for assaulting student

A teacher who coaches a minor hockey team argues with one of his players. The coach grabs the player and holds him against a wall. The player and his parents sue, claiming he has been assaulted and seeking an award of money as damages. During the trial, which decisions will the judge be expected to make?

- 1) Is the player's testimony about the scuffle admissible?
- 2) Should the coach's lawyer call witnesses?
- 3) Have all procedural rules for filing documents with the court been met?
- 4) Should the player's parents accept a last-minute compensation offer from the coach that would settle the case?
- 5) Has the player's claim for damages been proven?
- 6) Should a witness be required to answer questions?

### Try Judging

The online interactive program that gets you thinking like a judge

If you have access to the internet, view this scene at [www.tryjudging.ca](http://www.tryjudging.ca). Do you want a real challenge? Go through the whole program on understanding the judge's role in the justice system. You'll get to deal with the evidence of this case. In order to deal with the evidence and ultimately balance the scales of justice, you'll need to apply appropriate judicial principles and research.

The **meter of justice** will tell you if you have made the correct choices.

Like a judge, once you have applied the correct **judicial principles, evidence, and research** to the case, you will **balance the scales of justice**.

What does the judge say to you when you complete the program?

### A final challenge—do the quiz.

The quiz has some trick questions... You can print out your score and show your teacher.



# Appendix C For students

## Part I: The Role of Courts in our Justice System

As you gather information about the first five roles below, fill in the following columns:

(Note: For information on the courts and the role of judges, go to [www.tryjudging.ca](http://www.tryjudging.ca). After you have completed the first five roles, brainstorm in groups of 3-4 what you believe to be four or five roles associated with judges. Place your answers in column 6.)

1. <i>Role of The Supreme Court of Canada</i>	2. <i>Role of Superior Courts</i>	3. <i>Role of Provincially Appointed Courts</i>	4. <i>Role of Federal Courts</i>	5. <i>Role of Military Courts</i>	6. <i>Role of Judges</i>

# Appendix D For students

## Part II: Role of Judges

As you gather information about the role of Judges, identify under Column 1 those that your group brainstormed correctly in the previous handout. Identify those that your group identified incorrectly under Column 2 (again from the previous handout). Write down those that you now know as being correct, under Column 3. How well did your group's brainstorming do?

Column 1	Column 2	Column 3

# Appendix E

## For students

### The Structure of Canada's Courts

1. What is the role of the Supreme Court of Canada?
2. What is the composition of the Supreme Court of Canada?
3. What cases are heard by the Supreme Court?
4. What is the highest court of appeal in your province called?
5. What is the role of the provincially appointed courts?
6. What Is the federal court?
7. What are military courts?
8. What are administrative tribunals?

### The Adversarial System of Justice

1. What is it necessary to have an adversarial system.
2. What is the role of the judge?
3. What is the role of the appeal court judge?
4. What is the role of the jury?
5. What is the role of the crown attorney?
6. What is the role of the defence attorney?

### Procedural Rules: Evidence and Admissibility

1. Why is it necessary to have procedural rules?
2. What does probative evidence refer to?
3. What is circumstantial evidence and can it ever be used?
4. What is hearsay, and can it ever be used?
5. What is the name of the Law that identifies what information can or cannot be used in a court of law called?

### How a Trial Unfolds

1. In a civil trial—describe the steps that are taken during a trial.
2. In a civil trial, how are damages determined?
3. In a criminal trial, describe the steps that are taken during the trial?
4. When is a mistrial declared?

# Appendix F For students

## Biography Assignment

Using the Supreme Court of Canada's website, [www.scc-csc.gc.ca](http://www.scc-csc.gc.ca):

### 1. Identify the nine supreme court justices,

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

5. \_\_\_\_\_

6. \_\_\_\_\_

7. \_\_\_\_\_

8. \_\_\_\_\_

9. \_\_\_\_\_

### 2. Choose one of the judges

Name: \_\_\_\_\_

and then write a 1 to 2 page biography of that person, and,

### 3. As a conclusion, list and describe 3 necessary attributes of a supreme court justice. The 3 necessary attributes are:

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_



## Module 3: What is the Judge's Role in the Justice System?



### Case Study: Teacher sued for assaulting student

#### Contents

#### A. Learning Outcomes

#### B. Resource Materials

##### 1. The Structure of Canada's Courts

- a) Supreme Court of Canada
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- d) Other Courts and Tribunals

##### 2. The Adversarial System of Justice

- a) The Role of the Judge
- b) Judges and Juries
- c) Lawyers and Prosecutors

##### 3. Procedural Rules

##### 4. Rules of Evidence and Admissibility

##### 5. How a Trial Unfolds

- a) Civil Cases
- b) Criminal Cases

#### C. Case study: Teacher Sued for Assaulting Student

#### D. Additional Exercises for Classroom Use and Assignments

#### E. Internet Links to More Resources



## A. Learning Outcomes

*Students will:*

- ⊕ Learn how Canada's courts are structured;
- ⊕ Demonstrate an understanding of the adversarial system of justice and the role of the judge and other players;
- ⊕ Understand the judge's role in enforcing the rules of procedure and deciding whether evidence is admissible;
- ⊕ Explore the various stages of criminal and civil trials.



## B. Resource Materials

### I. The Structure of Canada's Courts

Canada's constitution creates two interrelated court systems, each with distinct powers and jurisdiction over specific types of cases. The federal government is responsible for courts of superior jurisdiction, the highest echelons of our courts. These consist of the nation's highest court, the Supreme Court of Canada, provincial courts of appeal and the superior court—the top level of trial court—in each province. The federal government appoints and pays the judges who serve on these courts. The provinces and territories are responsible for inferior courts, which have limited powers and jurisdiction and form the lower tiers of the court system. Inferior courts deal, for the most part, with minor crimes, offences under provincial statutes and civil claims involving small amounts of money. Judges of these courts are appointed and paid by the provincial or territorial government.

Provinces and territories are responsible for the day-to-day operation of all courts, superior and inferior, within their borders, and provide court facilities and support staff. As a result, superior and inferior courts are often housed within the same courthouse and may share courtrooms. [A chart showing the structure of Canada's courts is available on the Justice Canada website, at <http://canada.justice.gc.ca/en/dept/pub/trib/page3.html>]

#### a) Supreme Court of Canada

The Supreme Court of Canada is the last stop in Canada's justice system. It can hear cases involving any area of the law and is the final court of appeal for cases originating in other courts. This

The Supreme Court of Canada is the last stop in Canada's justice system. It can hear cases involving any area of the law and is the final court of appeal for cases originating in other courts.

Ottawa-based court consists of a chief justice and eight judges. At least three of its judges must come from Quebec and, by tradition, three come from Ontario, two from western Canada and one from the

Atlantic Provinces. Its members are usually judges promoted from a provincial court of appeal. The Supreme Court hears between 75 and 100 cases a year—only those of national significance or where the law is evolving or unclear. Most parties must apply to the court for leave, or permission, to have an appeal heard. Through a procedure known as a reference, the federal government may ask the Supreme Court to interpret whether a law is consistent with the constitution.

#### b) Superior Courts

Each province and territory has two levels of superior court—one to hear trials, the other to handle appeals. The court of appeal, sometimes known as the appeal division, is the highest court within the province or territory. One tier below is the trial court of superior jurisdiction, which has various names—in Quebec, it is referred to as the Superior Court and, in Ontario, as the Superior Court of Justice; in Nova Scotia, Prince Edward Island, Newfoundland, British Columbia, the Northwest Territories and The Yukon, it is known as the Supreme Court; it is called the Court of Queen's Bench in New Brunswick, Manitoba, Alberta and Saskatchewan; in Nunavut, it is the Court of Justice. Superior trial

courts have inherent jurisdiction, which means they can deal with any case not specifically assigned to a lower court. They conduct trials in most serious criminal offences and civil cases, and hear constitutional challenges to laws or government policies. In most provinces, a specialized division known as a unified family court deals with divorces and other family law matters. Judges of the superior trial court also hear appeals from some decisions of lower courts and administrative tribunals.

### c) Provincially Appointed Courts

Courts made up of judges appointed by provincial or territorial governments form the entry level of the justice system. The Provincial Court handles pre-trial proceedings and hearings in all criminal cases and can conduct trials in any case except murder. This court can also deal with narcotics offences and charges laid under federal and provincial laws. Judges of this court hear trials without juries. The Small Claims Court hears civil claims involving modest amounts of money. Youth Courts deal with minors between the ages of 12 and 18 who charged with crimes, applying special procedures set out in the *Youth Criminal Justice Act*. In provinces that have not established a unified court to deal with family law cases, a Family Court deals with issues such as child custody and access and applications to have children at risk put into foster care.

### d) Other Courts and Tribunals

The **Federal Court** is an Ottawa-based superior court that deals with issues that arise under federal laws. It has a trial and an appeal division and hears disputes between Ottawa and the provinces, immigration and tax cases, allegations that copyright or patent laws have been violated, and cases involving federal Crown corporations or departments. It also deals with disputes over ships and salvage claims and reviews the decisions of federal boards, commissions and tribunals. **Military courts** preside over the trials of anyone charged under the military's *Code of Service Discipline*, the law that governs the conduct of Armed Forces members as well as civilians who accompany the forces on missions.

While the *Code of Service Discipline* includes criminal offences, armed forces members accused of serious offences like murder, manslaughter or sexual assault are dealt with in the civilian courts if the crime has been committed in Canada. The federal and provincial governments have created **administrative tribunals** to settle disputes outside the court system. Tribunals are known as quasi-judicial bodies and, like courts, they convene hearings, review evidence and make rulings. Disputes over employment insurance benefits, claims of refugee status and allegations of human rights violations are among the issues dealt with by federal tribunals. Tribunals at the provincial level specialize in matters such as workplace standards, claims for workers' compensation, power rate increases and police misconduct.

An independent examination of evidence presented by each party involved in a dispute is seen as the best method of uncovering the truth. The Supreme Court of Canada has said this "adversarial" approach "helps guarantee that issues are well and fully argued by parties who have a stake in the outcome."

## 2. The Adversarial System of Justice

**U**nder our system of justice, criminal and civil cases are resolved through a contest between opposing sides. An independent examination of evidence presented by each party involved in a dispute is seen as the best method of uncovering the truth. The Supreme Court of Canada has said this "adversarial" approach "helps guarantee that issues are well and fully argued by parties who have a stake in the outcome." Each party and its lawyers decide how their case will be pursued, what evidence and legal arguments they will seek to present to the court, and how witnesses will be questioned.

### a) The Role of the Judge

In this contest between adversaries, the judge acts as a neutral umpire. The judge is the central figure in the courtroom and decides how the law applies,



whether *Charter* rights have been breached, how a case or trial should proceed and whether evidence is admissible in court. In cases heard without a jury, the judge must assess whether there is enough evidence to prove defendants guilty of a crime or, in civil cases, whether plaintiffs have established their claims. The judge decides which witnesses are believable and how much credence should be given to documents and other pieces of evidence put before the court. This role is known as the “trier of fact.” When a person is convicted of a crime, it is the judge’s duty to impose punishment. When a civil action is successful at trial, the judge decides the amount of damages or other measures required to compensate the plaintiff.

The judge also oversees the proceedings. He or she maintains order in the courtroom and ensures hearings and trials run smoothly and efficiently. Judges rarely question witnesses and avoid commenting on testimony or the strength of a litigant’s case until all the evidence has been heard, so no one questions their impartiality. Section 11(d) of the *Charter* enshrines the right of persons accused of crimes to have their cases heard “by an independent and impartial tribunal.”

For centuries, juries have given citizens an opportunity to play a role in the administration of justice.

Judges, like anyone else, can make mistakes. In the course of a hearing or trial, the judge is called upon to make any number of decisions. Is certain evidence admissible? Have procedural rules been followed? How does a law or precedent apply to the issues before the court? Were someone’s *Charter* rights breached? Was the jury properly instructed about how the law applied to the allegations before the court? The losing party has the right to file an appeal in an effort to have the decisions reversed or a new trial ordered.

The role of appeal court judges is to review such decisions and to decide whether they are sound in law. An appeal is not a second trial—appeal courts

review the trial judge’s rulings, transcripts of the trial or hearing, and the legal arguments of the lawyers for each side. Appeal courts hear additional evidence only if the information could affect the outcome of the case and was not discovered until after the trial was held. It is the job of the trial judge (or the jury, in jury cases) to decide what happened and whether witnesses have told the truth. Appeal courts rarely disturb such findings.

In this contest between adversaries, the judge acts as a neutral umpire. The judge is the central figure in the courtroom and decides how the law applies, whether *Charter* rights have been breached, how a case or trial should proceed and whether evidence is admissible in court

If a serious error has been made, an appeal court has the power to overturn a criminal conviction or verdict in a civil case and to order a new trial. The court also may conclude that the error is not serious enough to affect the outcome, and allow the verdict or decision to stand. In criminal cases, if the court finds there is not enough evidence to support a conviction, it has the power to acquit the defendant. But if the Crown appeals a verdict of not guilty, the appeal court must either uphold the acquittal or order a new trial; an appeal court does not have the power to convict a person who has been acquitted at trial.

## b) Judges and Juries

For centuries, juries have given citizens an opportunity to play a role in the administration of justice. Serving on a jury is a civic duty and helps members of the public to better understand the justice system and the trial process. Jurors are not expected to know the law and, in fact, lawyers and law students are disqualified from serving. The jury system developed in Britain as a way to balance the power of governments to prosecute individuals and the injustices that may occur from a strict interpretation of the law. Jurors bring a commonsense approach to the search for justice, and have the right to acquit someone of a crime if the person’s conduct, while in breach of the letter of the law, does not appear to

Jurors bring a common-sense approach to the search for justice, and have the right to acquit someone of a crime if the person's conduct, while in breach of the letter of the law, does not appear to be sufficiently serious or blameworthy to justify a conviction.

be sufficiently serious or blameworthy to justify a conviction.

The *Charter* guarantees the right to a jury trial to every person charged with a serious crime that can be punished by

five years or more in prison. (Many defendants do not exercise this right and judges hear most trials.) The jury in a criminal case consists of 12 people chosen by the Crown attorney and defence lawyer at the outset of the trial. Juries also hear a limited number of civil actions, including lawsuits alleging defamation and malicious prosecution. Jurors must be Canadian citizens and at least 18 years of age. Besides lawyers and law students, others exempt from jury duty are police officers, court officials, politicians, members of the armed forces and anyone who has served more than two years in prison for a crime. Friends and relatives of anyone involved in a case will be asked to declare such conflicts and will not be allowed to serve on the jury.

Jurors assume the role of triers of fact. They assess all of the evidence to determine what happened and, when there are two versions of events, they decide who is telling the truth. They swear an oath to be impartial and to return a verdict based solely on the evidence presented in the courtroom. Once all evidence has been heard, the judge instructs jurors on the law to be applied to the facts in order to reach a verdict. In criminal cases, the verdict must be unanimous or the case will end in a hung jury and the defendant will stand trial a second time. In civil cases, juries decide if a case has been proven and how much money should be awarded as damages if the plaintiff is successful.

### c) Lawyers and Prosecutors

Crown attorneys or Crown prosecutors are lawyers who prosecute crimes and federal and provincial

offences on behalf of the government. They decide whether it is in the public interest to pursue charges, and must withdraw the allegations if it does not appear there is enough evidence to convict the accused. In British Columbia, Quebec and New Brunswick, prosecutors decide whether criminal charges will be laid. Federal prosecutors and those in the remaining provinces and territories assume control of a case only after the police have filed charges. Prosecutors do not act on behalf of the police or victims of crime and have a duty to conduct cases with fairness and integrity. Despite the competitive nature of the adversarial system of justice, the Supreme Court of Canada has said that the role of prosecutor “excludes any notion of winning or losing.”

Lawyers acting for the plaintiff or defendant in a civil action, or for a person accused of a crime, have a duty to ensure the court hears all evidence and legal arguments that could advance their client's case. The conduct of lawyers is governed by the ethical rules of the legal profession and they cannot mislead a judge, present evidence they know is false, or break the law. People who cannot afford to hire a lawyer may qualify for assistance from a legal aid program, which will provide a lawyer at public expense. Money for legal aid is limited and assistance is usually provided only in criminal cases and for parents whose children have been taken into protective custody. Since many people earn too much money to qualify for legal aid but not enough to cover a lawyer's fee, the number of persons representing themselves in court in civil and criminal cases is increasing.

## 3. Procedural Rules

Civil and criminal cases are conducted according to well-established rules of procedure. These rules govern what documents the parties must file with the court, the form they should take, and when they must be filed. Other rules set out the order in which hearings will take place, when evidence or legal arguments will be heard and how a case will unfold in the courtroom.

For instance, for the most part the documents that formally launch an appeal must be filed with the court no more than 30 days after the date of the ruling that is being challenged, ensuring the appeal is dealt with promptly. In certain civil actions, rules may require a plaintiff to give a defendant advance notice that a lawsuit will be filed. Lawyers must adhere to these rules in pursuing cases on their clients' behalf. If there is a dispute over how the rules apply, or if one party accuses the other of breaking or ignoring the rules, it is up to the judge to interpret and enforce them.

#### 4. Rules of Evidence and Admissibility

**T**he information used as evidence in court must be relevant. A fact, statement or event must have a logical connection to the specific allegations or claims involved in a case. In legal terms, the evidence must be “probative”—it must provide proof of matters that are important to establishing the position of a party involved in the case. This generally means that a defendant’s background or a plaintiff’s reputation is not put before the judge or jury, since the issue to be decided at trial is not *who* is before the court but *what* happened and how it should be dealt with under the law. Judges and juries receive most of their information in the form of direct evidence, which is what each witness saw, heard or experienced. Circumstantial evidence—something that links the accused to the offence—may also be admissible. For instance, a person accused of being involved in a hit-and-run accident may have been seen driving in the area shortly before the accident, and then seen by other witnesses driving away from the area at high speed. This testimony alone may not be sufficient to prove the defendant was involved in the hit and run, but it is circumstantial evidence that a judge or jury may be entitled to consider.

Documents, photographs, weapons, clothing worn by a victim or suspect and other physical items may be used as evidence if they are relevant to the case. A witness will have to identify each item, explain its origins and assure the court it is gen-

uine. Witnesses are not permitted to offer opinions on what may have happened, with the exception of specialists in fields such as medicine, science or forensic techniques. Once a judge reviews their credentials and accepts them as experts, these witnesses can explain the results of scientific tests or offer opinions that are based on the evidence before the court.

Second-hand information, known as hearsay—what a witness overheard other people saying about an incident or someone’s conduct—is generally not usable in court. Parties are required to present witnesses who have first-hand knowledge of events or who actually saw or heard what happened.

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The *Canada Evidence Act*, the law that sets out what kind of information can be used in court, prevents a person from being forced to incriminate themselves or from being forced to testify against their spouse. Judges also undertake a careful review of any statement that a person accused of a crime has made to a police officer or other person in a position of authority. Judges must ensure an interrogation was conducted properly and confessions or other statements were made voluntarily. If a statement is found to have been made as a result of promises or threats, or as a result of prolonged or aggressive questioning, a judge may refuse to allow it to be used as evidence.

#### 5. How a Trial Unfolds

**T**rials unfold in essentially the same fashion at all levels of court, with the exception of the special procedures required if a jury is hearing the case. (In the description that follows, the proce-

ture for a jury case has been added in brackets.)

### a) Civil Cases

Courts in some provinces require the parties involved in civil disputes to take part in pre-trial conferences, chaired by a judge, to explore the possibility of an out-of-court-settlement. If no agreement is reached, the case proceeds to trial.

The plaintiff presents his or her case first. (The plaintiff's lawyer may make an opening statement to the jury). Each witness is called to the stand, takes an oath swearing to tell the truth, and is asked what they know about the allegations before the court. The defence lawyer then has an opportunity to question each witness—a process known as cross-examination—to challenge the evidence presented or to draw out information favourable to the defendant. The questioning procedure is reversed once it is the defence's turn to call evidence.

Once all the evidence has been heard, each side makes a closing address summarizing its case. The final stage of the trial is the verdict. The judge may adjourn the case for days or weeks before returning to court to outline the findings of fact and whether the plaintiff's case has been proven on a balance of probabilities. If the plaintiff succeeds, the judge decides the amount of damages or other remedy awarded against the defendant. (In jury trials, after closing arguments, the judge delivers the instructions or "charge" to the jury, reviewing the evidence and explaining how the law applies to the allegations before the court. At the conclusion of these instructions, jurors leave the courtroom to discuss the evidence in secret as they decide whether the plaintiff's case has been proven. If jurors find for the plaintiff, they are asked to decide on the amount of damages to be awarded.)

### b) Criminal Cases

A criminal trial begins with the reading of the charge or indictment. If the defendant has yet to enter a plea, he or she will plead not guilty at this point. (In jury trials, the prosecutor and defence

lawyer select the jury and then the indictment is read and the defendant pleads not guilty in the jury's presence.)

The prosecution presents its case first. (Before calling witnesses, the prosecutor usually makes an opening statement to the jury outlining the evidence against the defendant.) Each prosecution witness testifies and is cross-examined by the defence lawyer.

Once the Crown rests its case, it is the defence's turn. If the prosecution's case appears to be weak, the defence can ask the judge to find the accused person not guilty, but such motions are rarely made and rarely succeed. While defendants have the right to silence and are under no obligation to present evidence, the defence usually calls witnesses and it is common for the accused person to testify. If the Crown has established a *prima facie* case—evidence that is sufficient, on its face, to prove the allegations beyond a reasonable doubt—a defendant who offers no evidence to contradict those facts is almost certain to be convicted. (Defence lawyers can make an opening statement to the jury outlining their position and introducing the witnesses to be called.) The prosecutor has the right to cross-examine all defence witnesses, including the defendant.

The judge may find it necessary to declare a mistrial if it appears the accused person's right to a fair trial has been compromised. (In jury trials, mistrials are usually declared if jurors have been exposed to inadmissible evidence or prejudicial information about the accused person, either through media reports or improper statements made in the courtroom.) If a mistrial is declared, the accused person will be required to stand trial before a new jury unless the prosecution withdraws the charges. Once all evidence has been presented, law-

The judge may find it necessary to declare a mistrial if it appears the accused person's right to a fair trial has been compromised.

yers for each side give their closing addresses—speeches analysing the evidence and suggesting how it supports the accused person's guilt or innocence. If the defence decides not to call evidence, the prosecutor is the first to present a closing argument. When defence evidence has been called, however, the order is reversed—the defence lawyer goes first and the prosecutor makes the final submission.

The final stage of the trial is the verdict. The judge may adjourn the case for days or weeks before returning to court to outline the findings of fact and whether the defendant has been found guilty or not guilty. (In jury trials, after closing arguments the judge delivers the instructions or “charge” to the jury, reviewing the evidence and explaining how the law applies to the allegations before the court. At the conclusion of these instructions, jurors leave the courtroom to discuss the evidence in secret as they try to reach a verdict. While jurors are allowed to return home each night during the trial, once deliberations begin they are sequestered—kept away from outsiders—and billeted overnight in a hotel, if necessary, until a verdict is reached. Jurors must return a unanimous verdict; a deadlock—known as a hung jury—means that a new trial will be held unless the Crown decides to withdraw the charges.)

A person found not guilty is free to go and can only be tried again on the same charges if an appeal court overturns the verdict and orders a new trial. If the defendant is convicted, the final step in the trial process is for the judge to impose a sentence.





## C. Case study: Teacher Sued for Assaulting Student

The following case study will be created at [www.tryjudging.ca](http://www.tryjudging.ca) as an interactive exercise that can be adapted for an in-class activity or a written assignment. The website will provide teachers with all resource materials in PDF format as well as worksheets that can be downloaded and distributed to students. These worksheets will list the questions posed below and ask students to supply the answers based on their exploration of the website.

### Scenario

A teacher who coaches a minor hockey team argues with one of his players. The coach grabs the player and holds him against a wall. The player and his parents sue, claiming he has been assaulted and seeking an award of money as damages.

During the trial, which decisions will the judge be expected to make?

- 1) Is the player's testimony about the scuffle admissible? [Yes]
- 2) Should the coach's lawyer call witnesses? [No]
- 3) Have all procedural rules for filing documents with the court been met? [Yes]
- 4) Should the player's parents accept a last-minute compensation offer from the coach that would settle the case? [No]
- 5) Has the player's claim for damages been proven? [Yes]

- 6) Should a witness be required to answer questions? [Yes]

*Each of these questions is designed to help students understand the role of the judge when a legal dispute comes before a court. Under our adversarial system of justice, the parties involved in a case are responsible for determining how their case will be presented and which witnesses will be called. Judges decide whether evidence is admissible, whether procedural rules have been followed, if a witness should answer a particular question, and whether the Crown (in criminal cases) or the plaintiff (in a civil case) has proven its case. If the case has been established, the judge then imposes sentence in a criminal case and, in a civil case, orders the defendant to pay damages or take other action to make amends. Judges do not decide whether the parties will settle the case out of court or which persons a party will call as witnesses.*

*To explore the role of the jury, students can be asked to consider which issue or issues jurors would deal with #5, (whether the student's claim for damages has been proven).*



## D. Additional Exercises for Classroom Use and Assignments

### I. Classroom Visit by a Trial Participant

Invite a judge, Crown prosecutor, criminal defence attorney or a civil litigator to visit the classroom to speak to students. Prior to the visit, provide students with information on the person's role in the trial process, drawn from the materials in the teacher's guide. Ask students to write down their question in advance (teachers may want to provide them to the visitor, to help the guest prepare.) A pre-visit classroom discussion of the roles of each player in the trial process may assist students as they decide on their question.

Suggested questions:

How does a judge remain neutral?

How do judges make decisions?

Should judges question witnesses?

Do judges conduct their own investigations to uncover evidence about a case?

Should the judge decide how each side presents its case?

How does a judge decide whether someone is telling the truth?

How does a person become a lawyer/prosecutor/judge?

How does a lawyer represent someone accused of hurting another person or committing a crime?

Why do judges and lawyers use legal jargon?

What does a lawyer look for when choosing persons to serve on a jury?

### 2. Courthouse Visit

Many courts offer class tours of courthouses, including opportunities to observe a trial or other hearing or to meet with a judge. Arrangements can be made through the court registrar's office or the court's communications officer.

### 3. Role-Playing Exercise

Divide the class into four groups. Designate one group as one of the main players in a civil trial—judge, plaintiff's lawyer, defence lawyer, jurors. Ask each group to prepare a list of the duties and responsibilities that accompany their role, then have one student from each group report the results to the class. As each presentation is completed, invite students in the other groups to ask questions or add comments.

### 4. Role of the Judge: Class Discussion

Hold a class discussion to explore the role of the judge. Points for discussion:

Should judges take a more hands-on role in the conduct of a trial? Should the judge, for instance, question witnesses and decide which witnesses will appear in court or which documents will be presented as evidence? What would be the benefits and drawbacks of having the judge assume these

roles? What would be the impact on the fairness of the process and the appearance that the judge is impartial? Would the parties involved in a case believe they are receiving a fair hearing? Would the public have confidence that justice is being done?

## 5. Rules of Evidence: An Exercise

Use the following scenarios as an in-class exercise to help students understand the rules for the admissibility of evidence.

In a criminal trial, is the following evidence relevant to the charges before the court?

- A defendant is charged with armed robbery. The prosecution wants to present evidence that the defendant was expelled from high school a decade ago for fighting on school property. [No]
- Someone is charged with robbing a corner store while wearing a ski mask. The prosecutor proposes to call a witness who will say the person is the outdoors type and likes winter sports. [No]
- The defendant was seen running away from a home at about the time a burglary occurred. [Yes]
- The defendant had, in the past, threatened to kill someone he is now accused of assaulting. [Yes]
- A former teacher says a defendant charged with theft always acted up in class and her classmates once voted her most likely to end up in jail. [No]
- A defendant is charged with forging another person's name on a cheque, and the prosecution wants to present evidence that two of the defendant's neighbours have been convicted of similar crimes. [No]

Ask students to identify which of the following is hearsay (second-hand) evidence and inadmissible in court, and which is direct evidence or circumstantial evidence that would be admissible:

- A witness testifies that she saw the defendant driving the car that collided with the plaintiff's vehicle. [Direct]
- A witness says one of her friends told her that she saw the defendant commit the crime. [Hearsay]
- A school surveillance video shows the defendant using a screwdriver to break into a locker. [Direct]
- Police searched the apartment of a man charged with break, enter and theft and found a rare coin taken from a home that was burglarized. [Circumstantial]
- A teacher testifies that he heard three students discussing the defendant's role in a crime. [Hearsay]
- The suspect was seen hanging around with friends outside a corner store shortly before it was robbed. [Circumstantial]
- The suspect's watch was found at the scene of a crime. [Circumstantial]
- Rumours are circulating at school that a student being sued for damages after a car crash was drinking and driving at the time of the accident. [Hearsay]

## 6. Analysis of a Media Report of a Court Case

Distribute copies of the following newspaper story (or any news story about a recent court case) and ask students to answer the following questions: Is this a civil or a criminal case? What level of court is involved? Is this a trial before a judge or a judge and jury? At what stage is the trial? Which side is presenting evidence? Which side is cross-examining? What types of evidence are being presented—witnesses, documents, or physical items? Ask students to identify which evidence is direct and which is circumstantial. Finally, ask them to outline what is likely to happen next in this trial.



## Witness saw blood on defendant's clothes, court told

CENTREVILLE—A youth being sued for assault was wearing jeans caked with blood on the night a Centreville businessman was swarmed while walking his dog, a witness testified Tuesday in Superior Court.

James McAdam, 18, is accused of assaulting Roger Smith, who was punched in the face and left with a broken and bloody nose after a group of teenagers attacked him on residential street last summer.

The witness, Jane Jones, said she noticed blood spots on McAdam's pants while they were at a friend's house on the night of the swarming. "I could see blood and mud on one leg of his pants," she testified. "He told me he got into a fight with some guy."

The plaintiff's lawyer asked Jones what happened to the jeans. She replied that she saw McAdam wash them several times the following day, but the stains could still be seen. McAdam then threw the jeans in the garbage, she said.

McAdam's lawyer asked how Jones could be certain that the stains were bloodstains. Jones agreed the stains could have been mud or some other dark material. She admitted she did not take a close look at the stains and the room was dark when she noticed them.

Other witnesses have said that McAdam's ballcap was found the following day about a block away from where the swarming occurred. Jones was the last witness for the plaintiff. The judge instructed jurors to return to court today, to hear more evidence when the trial resumes.

## 7. Understanding Appeal Court Decision-Making: An Exercise

*In-Class Discussion: Cast the class in the role of a court of appeal, and ask them to discuss how they would rule on the following cases:*

- A trial judge made an important ruling that does not follow a precedent set down by the Supreme Court of Canada. The defendant, who was found responsible for causing a car accident and ordered to pay damages, appeals in an effort to overturn the verdict and get a new trial. What is an appeal court likely to do? [Overturn the verdict based on the error of law and order a new trial]
- A man being questioned about a string of suspicious fires confessed, but the police ignored his requests to speak to a lawyer before he made the confession. The man was charged with arson but the Crown has no other evidence linking the man to the fires. At trial, the judge ruled the confession could not be used as evidence because the defendant's *Charter* right to consult a lawyer was violated. The man was acquitted and the Crown appealed the ruling, seeking a new trial. What is an appeal court likely to do? [Uphold the acquittal as correct in law]
- The plaintiff and defendant gave contradictory versions of events that were at the heart of a civil dispute. The plaintiff testified he had a verbal agreement with the woman to landscape her property. The woman took the witness stand and denied such a deal was struck, but on cross-examination she admitted to hiring a rival landscaper, at a lower price, a day after speaking to the plaintiff. The judge found in favour of the plaintiff and awarded damages, saying she found the man's version of events to be more believable and supported by other evidence. The defendant appeals. What is an appeal court likely to do? [Uphold the verdict and award of damages, which are based on the judge's finding of fact]

- A man convicted of a crime appeals, complaining that after his trial ended, he discovered the identity of a person who witnessed the crime and saw who was responsible. What is an appeal court likely to do? [Hear the witness's fresh evidence and, if it could affect the verdict, order a new trial]

*Written Assignment: Assign students to write a brief report on one or more of the scenarios set out above, in each case explaining how they think an appeal court would rule and why.*

## 8. Suggested questions for class discussion and/or written assignments:

- a) Describe the role that a judge plays during a trial.
- b) Prepare a chart showing the structure of Canada's courts.
- c) Outline, step-by-step, how a trial unfolds in a criminal or civil case.
- d) Explain what is meant by direct, circumstantial and hearsay evidence.
- e) Discuss the role of the following players in the justice system: judges, jurors, prosecutors, lawyers.
- f) What is the adversarial system of justice and how does it work?



## E. Internet Links to More Resources

**A Compendium of Law and Judges:** A primer on Canadian law, the *Charter* and the role of the judiciary, with a focus on the British Columbia courts.  
[http://www.courts.gov.bc.ca/legal\\_compendium/](http://www.courts.gov.bc.ca/legal_compendium/)

Justice Canada's overview of **Canada's Court System:**  
<http://canada.justice.gc.ca/en/dept/pub/trib/index.html>

Justice Canada's overview of the **Canadian Justice System:**  
<http://canada.justice.gc.ca/en/dept/pub/just/index.html>

**Nova Scotia Public Prosecution Service website: The Role of the Prosecutor**  
<http://www.gov.ns.ca/pps/role.htm>

**Overview of the Criminal Justice System of Canada:** A primer on criminal law, policing, and corrections, with useful parallels to the American justice system.  
<http://www.cjprimer.com/canada.htm>

**Duhaime's Canadian Legal Information Centre:** Background on family, contracts, criminal and other areas of law and links to legal websites in all provinces. Includes an on-line legal dictionary.  
<http://www.wvlia.org/ca-home.htm>

### Links to Canadian legal resources:

#### Canadian Legal Resources on the Web:

<http://www.legalcanada.ca/>

#### Access to Justice Network:

<http://www.acjnet.org/splash/default.aspx>

**Canadian Forum on Civil Justice** site includes links to court, government and other law-related websites.

<http://www.cfcj-fcjc.org/links.htm>