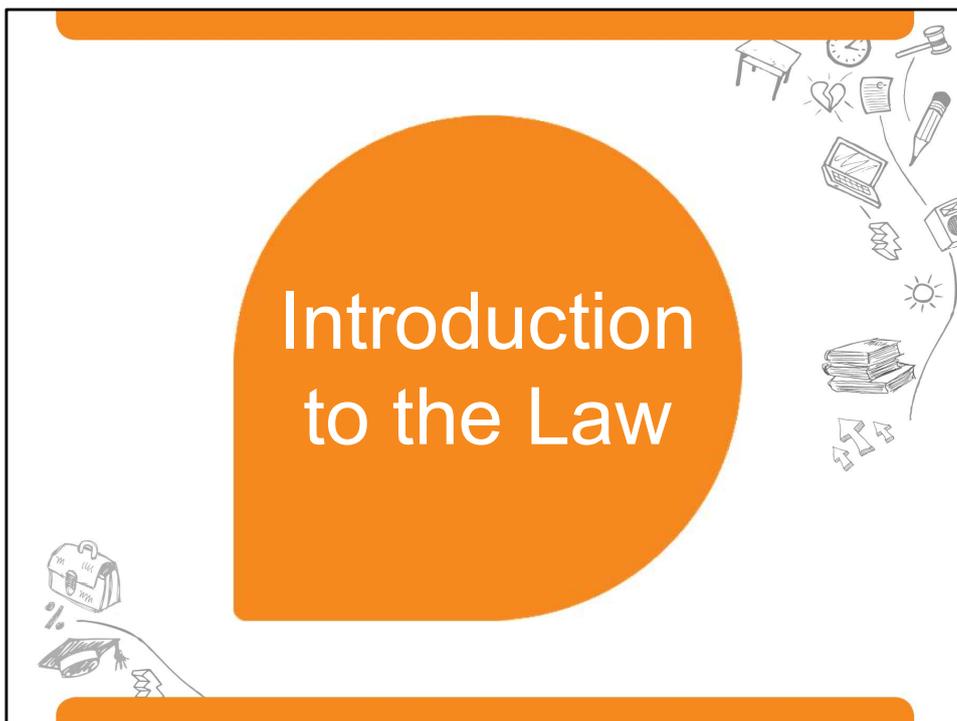


NOTE FOR TEACHERS

- These materials are the exclusive property of Éducaloi. Teachers in Quebec schools can use them, but for non-commercial purposes only.
- None of the information in this teaching guide should be taken to be legal advice.
- Éducaloi places particular importance on the reliability of legal information contained in its materials. These materials must be used in their original form, without modification.
- The law is constantly evolving. The legal information in this document is up to date as of June 1, 2017.



ADDITIONAL INFORMATION FOR TEACHERS

- ❑ You can learn more by visiting Éducaloi's website. To prepare for this teaching guide, we suggest consulting these articles and videos:

ARTICLES

- Introduction to Criminal and Penal Law: www.educaloi.qc.ca/en/capsules/introduction-criminal-and-penal-law
- Differences Between Civil and Criminal Cases: www.educaloi.qc.ca/en/capsules/differences-between-civil-and-criminal-cases
- Rights of a Person Accused of a Crime: www.educaloi.qc.ca/en/capsules/rights-person-accused-crime

VIDEOS

- Differences Between Civil Trials and Criminal or Penal Trials: www.educaloi.qc.ca/en/educaloi-tv/differences-between-civil-trials-and-criminal-or-penal-trials
- The Legal Burden of Proof: www.educaloi.qc.ca/en/educaloi-tv/legal-burden-proof

An infographic with an orange header and footer. The main content is white with orange rounded rectangular boxes. At the top right, there are icons for a desk, clock, gavel, laptop, pencil, and printer. At the bottom left, there are icons for a briefcase, scales, and a graduation cap. The text is as follows:

● In Canada, there are **different categories of law**. Here are two important ones:

Criminal Law
Responsibility of the federal government

Civil Law
Responsibility of provincial governments

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This teaching guide deals with criminal law. It is important to understand the differences between criminal law and civil law

INFORMATION FOR STUDENTS

- ❑ The federal and all provincial governments have the power to make laws. But Canada's Constitution divides what subjects the federal government can make laws on and what subjects the provincial governments can make laws on (division of powers). This is the case with criminal law and civil law.
- ❑ Le droit criminel est donc le même dans toutes les provinces du Canada. Par contre, ce n'est pas le cas du droit civil. Celui-ci est différent au Québec.
- ❑ Bien que le droit civil et le droit criminel soient les deux domaines de droit les plus connus, on en compte beaucoup plus. Par exemple : Le droit constitutionnel, le droit administratif, le droit des affaires, etc.

SOURCES

- *The Constitution Act, 1867 (UK) 30 & 31 Victoria, c 3, s 91(27)*
- *The Constitution Act, 1867 (UK), s 92(13)*

Civil Law

- **What?** Rules that apply to relations between
 - people or organizations, or
 - people and property
- **Where?** Most of the rules are in the *Civil Code of Québec*
- **Who brings the person to court?** One person or organization brings another person or organization to court

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INFORMATION FOR STUDENTS

- ❑ Civil law deals with **many situations** in everyday life. Here are just a few examples:
 - Family matters
 - Estates and successions
 - Contracts
 - Problems between neighbours
 - etc.
- ❑ As a general rule, it is “private” persons who take one another to court in civil law. These “persons” can be people or businesses and other organizations.
- ❑ Civil law is inspired by the **law of France**. In Canada, it is a law **unique to Québec**. It is not used in the other provinces or territories of Canada.
- ❑ Unlike criminal law, the **main purpose** of civil law is not to punish harmful conduct (crimes), but rather **to repair the harm done or compensate a victim for damage caused by another**.

SOURCES

- *The Quebec Act, 1774, 14 George III, c. 83 (UK), s 8*
- *The Constitution Act, 1867 (UK), s 92(13)*
- *Civil Code of Québec, CQLR c CCQ-1991*, preliminary provision
- Hubert REID, *Dictionnaire de droit québécois et canadien*, 5th ed., Wilson & Lafleur, 2015, sub verbo “Droit civil”, consulted on May 12, 2016 (CAIJ)
- André ÉMOND, *Introduction au droit canadien*, Montreal, Wilson & Lafleur, 2012, p. 73 and 82



INFORMATION FOR STUDENTS

- Criminal law in Canada was inspired by **British law**.
- Criminal law serves to **protect** the public against **harmful conduct** and to **preserve the shared values** of a society. For example, theft and murder are prohibited.
- Most of the rules are found in the *Criminal Code*, but there are rules in **other laws** such as the *Controlled Drugs and Substances Act* and the *Firearms Act*.
- There are two sides in a criminal case: the State and the person accused of committing a crime. **In a criminal case, the state takes the accused to court.** The State is represented by a government lawyer called a “criminal and penal prosecuting attorney,” often simply called “the prosecutor.”

THE ROLE OF THE STATE IN CRIMINAL TRIALS:

- In a criminal trial, the victim can be asked to testify, but only as a witness.
- The police officers who intervened at the crime scene or who questioned witnesses or the suspect can also be asked to testify as witnesses.
- It is the State, represented by the criminal and penal prosecuting attorney (often called the Crown prosecutor), that files charges against the accused in criminal cases.
- Since King Charles III is officially Canada’s Head of State, criminal cases are designated as: K v. *Whoever*, with “K” meaning the King, and “v.” meaning versus.

Important! It is not the victim of the crime, or the victim’s family, who takes the accused to court, but the criminal and penal prosecuting attorney. For some crimes, there is no direct victim, for example, drug possession.

SOURCES

- *The Quebec Act*, 1774, 14 George III, c. 83 (UK), s 11
- *Criminal Code*, L.R.C. 1985, c. C-46, s 8(2)
- *Criminal Code*, ss 229 and 322
- *Controlled Drugs and Substances Act*, c. 19, s 4 (1)
- *Act Respecting the Director of Criminal and Penal Prosecutions*, c D-9.1.1, ss 1 and 13(1)
- Hubert REID, *Dictionnaire de droit québécois et canadien*, 5th ed., Wilson & Lafleur, 2015, sub verbo "Droit criminel", consulted on May 12, 2016 (CAIJ)

Burden of Proof

- This refers to the **amount of proof needed** to convince a judge and **who has to make that proof**.

Civil Law

The person who brings another to court must convince the judge that her version is **more likely to be true**.

 50% + 1

Criminal Law

The prosecutor must convince the judge that the accused is guilty **beyond all reasonable doubt**.

The burden of proof is **lighter in civil law** than in criminal law.



INFORMATION FOR STUDENTS

- ❑ In **civil law**, the burden of proof is well represented by a balance scale (scale of justice). It is a “balance of probabilities”: the heavier (or more convincing) side wins.
- ❑ The same action can result in **both a civil case and a criminal case**.
 - ❑ **Example:** If an attendant abuses an older person in a nursing home, the attendant might be accused of the crime of assault and taken to court by the state. In addition, the victim can bring the attendant to court in a civil case to make her compensate for the harm the victim suffered.
- ❑ **Important!** Because the burden of proof is greater in criminal law, a person might be held responsible in civil law but found not guilty in criminal law for the same act.

SOURCES

- *Code civil of Québec*, art 2803 and 2804
- *Criminal Code*, RSC 1985, c C-46, s 6(1)

Beyond Reasonable Doubt

- If the judge or jury has a reasonable doubt, the accused must be **acquitted** (found not guilty).

Cela découle du principe de la Presumption of Innocence

Comme un accusé est présumé innocent, la balance de la justice lui donne un avantage... c'est au procureur de prouver la culpabilité de l'accusé

L'accusé n'est même pas obligé de témoigner! C'est ce que l'on appelle **le droit au silence.**

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INFORMATION FOR STUDENTS

- The accused must be found not guilty if
 - the prosecutor doesn't present enough evidence that the accused is guilty, or
 - if the defence can raise a reasonable doubt about the accused's guilt in the mind of the judge (or jury).

- The burden of proof "beyond a reasonable doubt" comes from the **presumption of innocence**. This means that everyone is **presumed innocent until proven guilty**. So it is up to the state to prove the accused is guilty, and not up to the accused to prove his innocence.

- This right to be presumed innocent until proven guilty is protected by the *Criminal Code*, the *Canadian Charter of Rights and Freedoms* and the *Quebec Charter of Human Rights and Freedoms*.

- The reason for the presumption of innocence is **to make sure that innocent people are not found guilty by mistake**. That's why the presumption of innocence is such an important right in Canadian law.

LE DROIT AU SILENCE :

- La charte canadienne des droits et libertés prévoit que : "*Tout inculpé a le droit de ne pas être contraint de témoigner contre lui-même dans toute poursuite intentée contre lui pour l'infraction qu'on lui reproche.* »
- Cependant, si l'accusé accepte de témoigner lors de son procès, il ne peut pas ensuite invoquer son droit au silence lors de la même procédure. Autrement dit, c'est tout ou rien!

SOURCES

- *The Constitution Act, 1982*, being Schedule B to *the Canada Act 1982 (UK)*, c 11 (UK), ss 2(b) and 11d)
- *Charter of Human Rights and Freedoms*, CQLR c C-12, s 33
- *Criminal Code*, RCS 1985, c C-46, s 6(1)
- *R v Oakes*, [1986] 1 SCR 103, par 2.9
- *R v Lifchus*, [1997] 3 SCR 320, par. 39

The Actors in a Criminal Trial



The Prosecutor

- A government lawyer - represents the state
- Brings the accused to court in a criminal case
- Must prove the accused is guilty beyond a reasonable doubt.

The prosecutor's job is to bring out the truth.



INFORMATION FOR STUDENTS

- ❑ A criminal and penal prosecuting attorney used to be called a “crown prosecutor.” This lawyer is often referred to as “the prosecutor.”
- ❑ Unlike defence lawyers, the prosecutor does not have regular clients. Prosecutors work only for the government and always represent the state.
- ❑ The prosecutor’s main role is to ensure that “justice is properly rendered.” But this doesn’t necessarily mean that her main goal is to win the case at all costs. For example, if she discovers evidence during the trial that shows the accused is innocent, she must inform the judge and the defence, and then withdraw the accusations.

SOURCES

- *Act Respecting the Director of Criminal and Penal Prosecutions*, ss 13 par 1 (1) and 25 par 2
- *Dubois v La Reine*, [1985] 2 SCR 350, par. 10
- *Boucher v The Queen*, [1955] SCR 16, p. 21
- *R. v Kitaitchik*, 2002 CanLII 45000 (ON C.A.), par. 47 : «the truth seeking goal of the criminal trial»
- Erick VANCHESTEIN et Martin VAUCLAIR, « L'éthique et la déontologie en droit criminel », in Collection de droit 2015-2016, École du Barreau du Québec, vol. 1, *Les règles déontologiques*, Cowansville, Éditions Yvon Blais, p. 182.
- Website: Association des procureurs aux poursuites criminelles et pénales, consulted May 13, 2016 : www.appcp.ca/index.php/association (in French only)



INFORMATION FOR STUDENTS

- The defence lawyer's role is to raise a reasonable doubt about the accused's guilt in the mind of the judge (or jurors).
- In addition, even if the accused is guilty, he still has **the right to a fair and just trial**. The defence lawyer acts as a kind of **shield** to protect her client **against possible abuses of the judicial system**, for example, a violation of the accused's rights, mistakes by police officers or an unfair sentence.
- People sometimes think that defence lawyers are "in league" with their clients to help them come up with a false story that will get them acquitted (found not guilty). If the accused admits to committing the crime, the defence lawyer can still represent him, but **cannot lie** to the court **or accept that the accused lies** to the court. Otherwise, the defence lawyer can lose her right to practise law and be charged with the crime of being an "accessory" to perjury.

QUESTIONS FOR STUDENTS

True or False?

The defence lawyer's job is done when the accused pleads guilty or is found guilty?

Answer: FALSE. She must make sure her client receives an appropriate sentence, that is, a sentence that fits the crime, the circumstances and the situation of the accused, and is similar to sentences given to others in similar cases.

SOURCES

- *Canadian Charter of Rights and Freedoms*, s 7 and 10 (b)
- *Charter of Human Rights and Freedoms*, CQLR c C-12, s 29
- *Criminal Code*, ss 131, 718 to 718.2
- *Code of ethics of advocates*, QCLR c B-1, r 3, ss 14 and 116
- *Professional Code*, QCLR c C-26, s 156
- *R. v Legato*, 2002 CanLII 41296 (QC CA), par. 88
- Erick VANCHESTEIN and Martin VAUCLAIR, « L'éthique et la déontologie en droit criminel », in *Collection de droit 2015-2016*, École du Barreau du Québec, vol. 1, *Les règles déontologiques*, Cowansville, Éditions Yvon Blais, p. 161

The Accused



● The person **suspected of committing a crime**.

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INFORMATION FOR STUDENTS

- Everyone accused of a crime has **a right to a fair and just trial**.
- Because of **the presumption of innocence**, it is up to the prosecutor to prove that the accused is guilty.
- The accused has **rights during a criminal trial**, such as the right to remain silent and the right to understand everything that goes on at the trial.

SOURCES

- *Canadian Charter of Rights and Freedoms*, s 7, 11 and 14
- *Criminal Code*, s 530
- *Dubois v The Queen*, [1985] 2 SCR 350, par. 10
- Hubert REID, *Dictionnaire de droit québécois et canadien*, sub verbo “Accusé”

The Witness

- Knows certain facts about the crime
- Must swear to tell the truth

- Witnesses can only tell the court what they **personally know, saw or heard**.
- Usually, witnesses **cannot give an opinion** (but there are some exceptions).



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INFORMATION FOR STUDENTS

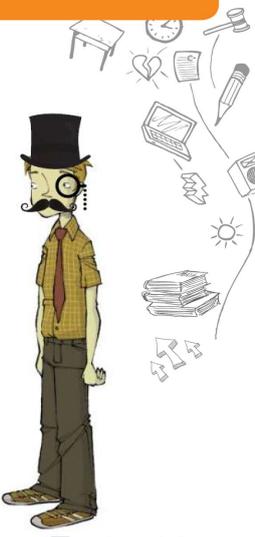
- ❑ The prosecutor and the defence lawyer will ask people who have personal knowledge of facts relating to the case to testify in court. These people are called “witnesses.”
- ❑ Witnesses have a choice of **taking an oath** on a religious book, such as the Bible or the Koran, or **making a solemn affirmation**, that they will tell the truth, the whole truth and nothing but the truth.
- ❑ **Important!** Witnesses can only tell the court what they personally know, saw or heard with their own **senses** (sight, hearing, etc.)
If they don’t have direct, personal knowledge of a fact, what they say about it is **hearsay** and **will not be accepted as evidence** that it actually happened.
Example of hearsay: “I know that X stole the car because Y told me so.”
- ❑ In some situations, witnesses can give their **opinions**. For example, witnesses can give their opinions about things most people are able to judge, such as someone’s approximate age, whether a person was drunk or whether a car was speeding.

SOURCES

- *Canada Evidence Act*, RSC c C-5, ss 14 and 15
- *R. v N.S.*, 2012 CSC 72, par. 53
- Nicolas BELLEMARE, « La preuve pénale », in Collection de droit 2015-2016, École du Barreau du Québec, vol. 11, *Droit pénal: procédure et preuve*, Cowansville, Éditions Yvon Blais, p. 128

The Expert Witness

- Someone who has specialized knowledge in a specific field – an **expert**
- Expert witnesses **can give their opinions.**



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INFORMATION FOR STUDENTS

- Expert witnesses are called to court because they have **specialized knowledge in a certain field**, such as science, technology, medicine.
- Examples:**
 - A fingerprint or dental specialist
 - A ballistics expert
 - A forensic medicine specialist
 - A psychiatrist who, for example, can explain the behaviour of a woman with “battered wife syndrome”
- Unlike ordinary witnesses, expert witnesses can give their **opinions** on facts related to their expertise.

SOURCES

- *Canada Evidence Act*, s 7
- Nicolas BELLEMARE, « La preuve pénale », in Collection de droit 2015-2016, École du Barreau du Québec, vol. 11, *Droit pénal: procédure et preuve*, Cowansville, Éditions Yvon Blais, p. 141
- *Delisle v R.*, 2013 QCCA 952, par. 13-14, 26-30 and 31
In this case, several expert witnesses testified.

In 2013, the appeal of former Supreme Court of Canada judge Jacques Delisle was refused. However, as of May 27, 2016, Mr. Delisle filed an appeal to the Canadian Minister of Justice who can order a new trial or send the case back to the Quebec Court of Appeal if he believes that there was an error of law.

The Jury

Not all trials take place in front of a jury.

- If there is a jury, it is made up of **12 citizens**.
- Each member of a jury is called a “**juror**.”
- Their decision must be made unanimously.



INFORMATION FOR STUDENTS

- ❑ For some **lesser crimes** (possessing a small amount of drugs, theft valued at less than \$5,000, etc.), the trial is never before a jury. But for some **serious crimes** (murder), there is always a jury trial, except in some rare cases.
- ❑ **For all other crimes, the accused can choose** to have a jury trial or not.
- ❑ When there is a jury, it is the jurors, and not the judge, who **decide whether the accused is guilty or not guilty**. We say that the jurors “render the verdict.” The decision must be unanimous, which means that all jurors must agree on the verdict. Since jurors are not legal specialists, they can only decide on the verdict after the judge has explained the law involved in the case. The judge can also answer any questions the jurors might have.
- ❑ But the jurors do not decide the **sentence**. It is only the judge who can decide the sentence the accused will get. This happens at a later step called the **deliberation**.

SOURCES

- *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11, s 11f)*
- *Criminal Code*, ss 469, 471, 473, 469, 536(2), 553, 631(2.1) and (2.2), 643(1), 647, 653
- *Criminal Code*, art. 716 (« tribunal ») et 720(1).
- *R. v Lifchus*, [1997] 3 SCR 320, par.22: an example of directions to the jury – explains the concept “beyond all reasonable doubt.”
- Pierre BÉLIVEAU and Martin VAUCLAIR, *Traité général de preuve et de procédure pénales*, 22^e éd., Cowansville, Éditions Yvon Blais, 2015, par. 534 et 1533
- Nicolas BELLEMARE, « La compétence des tribunaux – acte criminel », in Collection de droit 2015-2016, École du Barreau du Québec, vol. 11, *Droit pénal : procédure et preuve*, Cowansville, Éditions Yvon Blais, p. 31

The Judge

- The **chief organizer** of the trial
- Makes sure **the rules of evidence are followed during the trial**
- **Renders the verdict**, except in trials with a jury



The judge must be **neutral (not take sides).**

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INFORMATION FOR STUDENTS

- ❑ To become a judge, a person must have been a lawyer for at least 10 years.
- ❑ If there is a **jury**, the judge must explain the relevant law and answer the jurors' questions. If there is no jury, it is the judge who renders the verdict.
- ❑ If the accused is found guilty, it is always the judge who **decides on the sentence**. If the trial takes place before a jury, the jury's job is to decide the verdict, i.e., whether the accused is guilty or not guilty of the crime. The jury does not have the power to decide on the sentence.

SOURCES

- *Criminal Code*, ss 718 and 718.2
- *Judicial code of ethics*, CQLR, c T-16, r 1, s 1
- *Courts of Justice Act*, CQLR, c T-16, s 87
- *Judges Act*, RSC, 1985 c J-1, s 3a)
- *Supreme Court Act*, RSC 1985, c S-26, s 5
- *R. v Lifchus*, [1997] 3 SCR 320, par. 22: example of directions to the jury – explains the concept “beyond all reasonable doubt.”
- Pierre BÉLIVEAU and Martin VAUCLAIR, *Traité général de preuve et de procédure pénal*, 22^e éd., Cowansville, Éditions Yvon Blais, 2015, par. 537 and 2455

The Court Usher

- **Makes sure everything runs smoothly** during a trial



INFORMATION FOR STUDENTS

The Court Usher

- ❑ The court usher maintains order in the courtroom. This is called **decorum**. There are **strict rules** that must be obeyed in a courtroom, for example
 - Remain silent
 - Do not use electronic devices, such as cellphones or computers
 - Do not eat
- ❑ When the judge arrives, the court usher makes this well-known statement:
“Silence. All rise. The court, presided by the honourable justice _____, is in session.”

SOURCE

- *Rules of practice of the Québec Superior Court in Penal Matters, c C-25.1, r 5, s 5*

The Court Clerk

- Takes **detailed notes** during the trial



The Special Constable

- A real police officer who **watches over what happens and maintains order** in the courthouse



INFORMATION FOR STUDENTS

The Court Clerk

- ❑ The court clerk asks witnesses to promise to tell the truth. The “promise” is either made by **taking an oath** or **making a solemn affirmation**: “Do you swear (or solemnly affirm) to tell the truth, the whole truth and nothing but the truth?”

SOURCE

- *Courts of Justice Act*, s 219b)

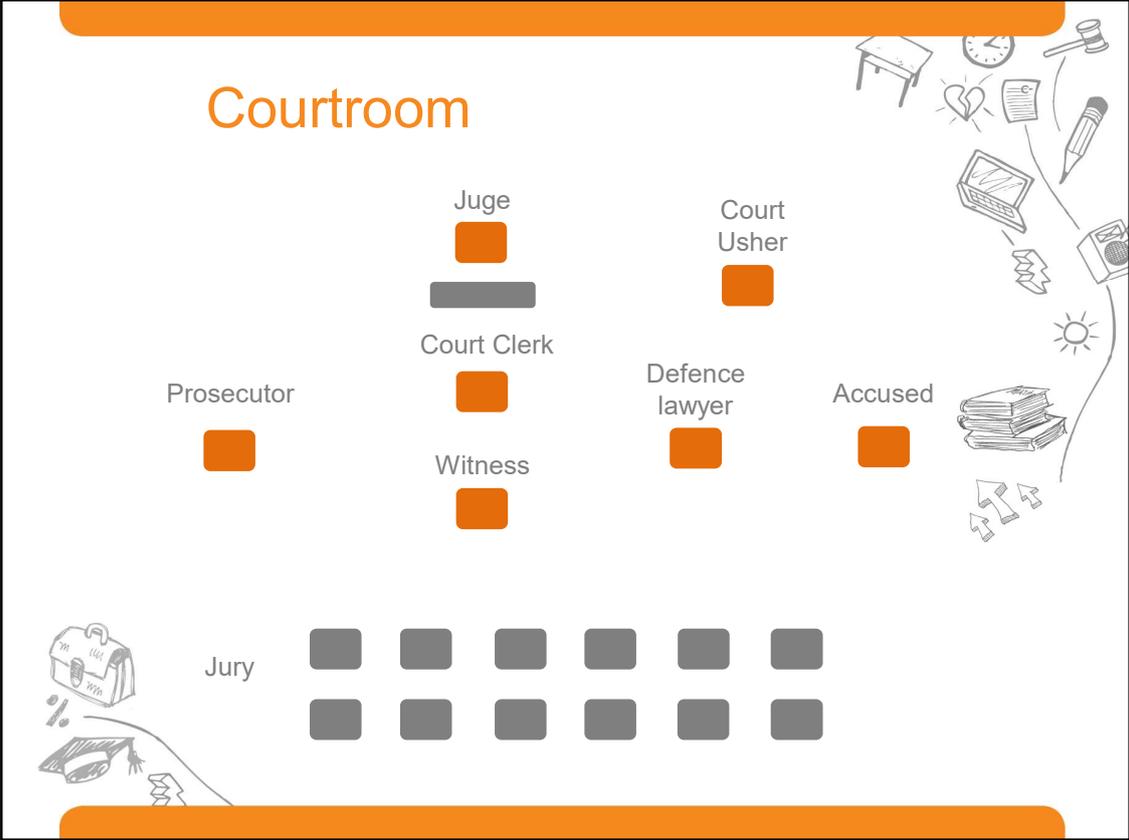
The Special Constable

- ❑ Among other tasks, the special constable makes sure that everyone obeys the rules and ensures that courtrooms are safe.
- ❑ The special constable carries a firearm at his waist.

SOURCES

- *Police Act*, c P-13.1, ss 105-111
- Website: Sécurité publique Québec, consulted on May 16, 2016, www.securitepublique.gouv.qc.ca/police/police-quebec/constables-speciaux.html (in French only)

Courtroom



Steps in a criminal trial



The steps, in brief

- 1 Welcome and courtroom protocol
 - 2 Overview of the case
 - 3 Prosecutor's evidence
 - 4 Cross-examination by the defence
 - 5 Defence's evidence
 - 6 Cross-examination by the prosecutor
 - 7 Closing arguments
 - 8 Deliberation, verdict and sentencing
- } The witness for the Prosecution
- } The witness for the defence



Step 1

Welcome and Courtroom Protocol

- **Who?**

The court usher and the judge.

- **What?**

- Review the rules of decorum
- Entrance of the Judge



INFORMATION FOR STUDENTS

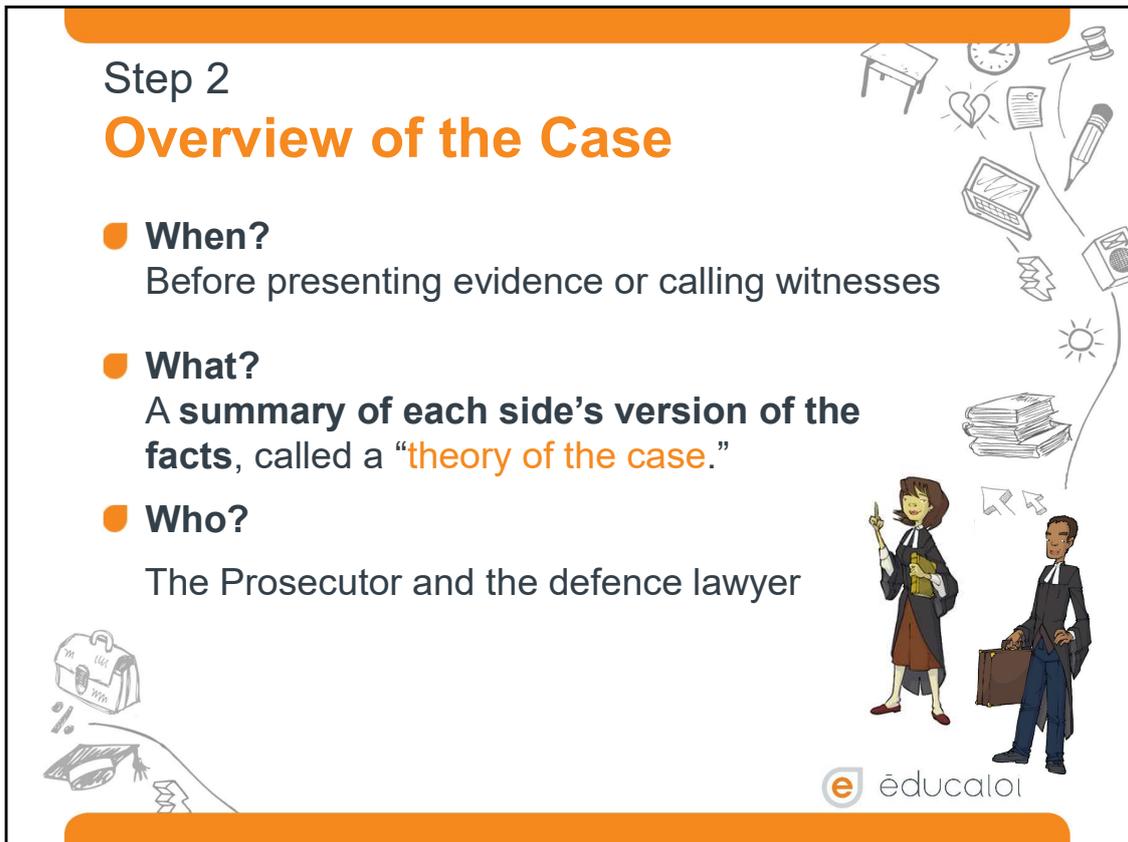
- ❑ In a nutshell, the rules of decorum during a trial are similar to what applies in a classroom. It is prohibited to:
 - Eat or drink anything other than water;
 - Intervene when it is not appropriate or talk to other members of the public;
 - Be on your cellphone;
 - Be poorly dressed (tidy, semi-formal attire is required);
 - Address anyone in the courtroom inappropriately. Be polite. Address the judge as “Your Honour” or “Mr. Justice Smith” or “Ms. Justice Tremblay.”
- ❑ If one of these rules is not respected, the court usher may intervene. However, if someone continues to violate the rules, the special constable will remove them from the courtroom.

SOURCES:

- *Règles de procédure de la Cour supérieure du Québec, chambre criminelle* (2002), TR/2002-46, art. 3-9.

Step 2
Overview of the Case

- **When?**
Before presenting evidence or calling witnesses
- **What?**
A **summary of each side’s version of the facts**, called a “**theory of the case.**”
- **Who?**
The Prosecutor and the defence lawyer



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INFORMATION FOR STUDENTS

- ❑ The **prosecutor** gives a brief summary of the evidence she will present and states what witnesses she will call.
- ❑ Just like an introduction to a text, a lawyer’s “theory of the case” shows how she will lay out the facts to reach her conclusions and justify the verdict she is seeking.

SOURCE

- Pierre BÉLIVEAU and Martin VAUCLAIR, *Traité général de preuve et de procédure pénales*, 22^e éd., Cowansville, Éditions Yvon Blais, 2015, par. 2361

Step 3

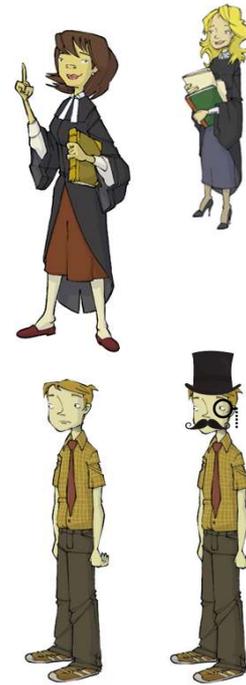
The Prosecutor's Evidence

What?

- **Questions witnesses** called by the prosecutor
- Presents **exhibits**

Burden of Proof:

Must prove **beyond a reasonable doubt** that the accused is guilty



INFORMATION FOR STUDENTS

- ❑ It is the prosecutor's job to prove that the accused is guilty. It is not up to the accused to prove he is innocent.
- ❑ Examples of exhibits:
 - The gun used to commit the crime
 - Photographs
 - Videos
 - Audio recordings
- When lawyers question the witnesses they have called, their questions must not be closed **or suggestive**.
 - Closed question: A question that can only be answered by "yes" or "no." For example:
 - Did you see the witness covered in blood when leaving his home?
 - Suggestive question: A question in which the right answer has already been suggested; in which the witness is being led to say something in particular. For example:
 - Is it not true that Mr. Smith has a reputation for angry outbursts?

SOURCES

- *Canadian Charter of Rights and Freedoms, s11d).*

- *Dubois v The Queen*, [1985] 2 SCR 350, par. 10
- Nicolas BELLEMARE, « Le procès en matière criminelle : les procédures pendant le procès », in Collection de droit 2015-2016, École du Barreau du Québec, vol. 11, *Droit penal : procédure et preuve*, Cowansville, Éditions Yvon Blais, p. 100-101
- L'interrogatoire et le contre-interrogatoire des témoins, Capsule d'information juridique, Directeur des poursuites criminelles et pénales du Québec, Ministère de la Justice du Québec, 2016.

Step 4

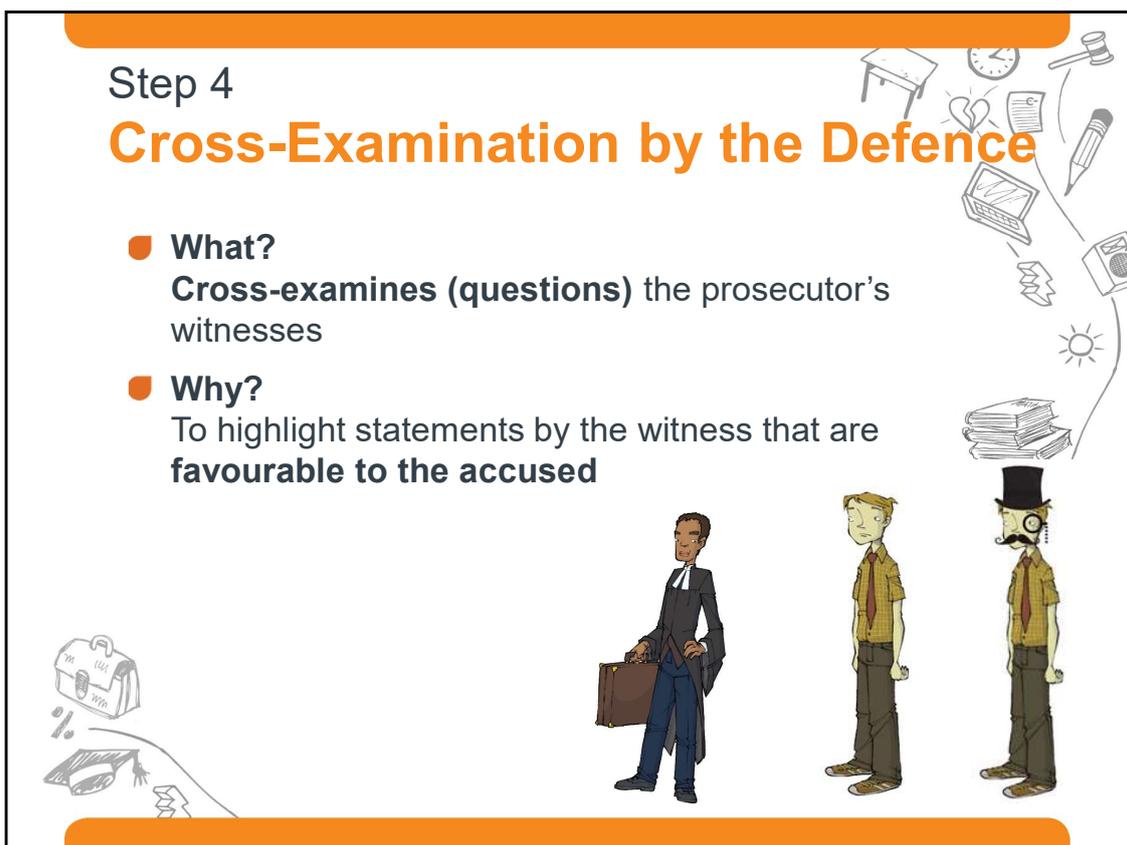
Cross-Examination by the Defence

- **What?**

Cross-examines (questions) the prosecutor's witnesses

- **Why?**

To highlight statements by the witness that are **favourable to the accused**



INFORMATION FOR STUDENTS

- ❑ The defence lawyer can **attack the credibility of a witness, bring out contradictions or lies** in the witness's testimony, etc.
- ❑ Il est à noter que lors des contre-interrogatoires, contrairement à l'étape précédente (l'interrogatoire), il est permis de poser des questions suggestives.

SOURCES

- *Canadian Charter of Rights and Freedoms*, s 7 et 11d)
- Nicolas BELLEMARE, « La preuve pénale », in Collection de droit 2015-2016, École du Barreau du Québec, vol. 11, *Droit pénal : procédure et preuve*, Cowansville, Éditions Yvon Blais, p. 153-154

Step 5
Defence Evidence (if any)

- **Why?**
 Presents evidence, but **does not have to**
- **What?**
 - Gives her **theory of the case**
 - Questions the **witnesses** she called
 - Presents **exhibits**

INFORMATION FOR STUDENTS

- If the defence lawyer presents evidence, she will try to **raise a reasonable doubt** about the guilt of the accused.
- If the accused wants to, he can testify as a witness in his own trial. But an accused is never obliged to do so because he has a right called “the right to remain silent.”

SOURCES

- *Canadian Charter of Rights and Freedoms*, s 11 c) et d)
- *Criminal Code*, ss 650(3) and 651(2)
- *Dubois v The Queen*, [1985] 2 SCR 350, par. 10
- Nicolas BELLEMARE, « Le procès en matière criminelle : les procédures pendant le procès », in Collection de droit 2015-2016, École du Barreau du Québec, vol. 11, *Droit pénal : procédure et preuve*, Cowansville, Éditions Yvon Blais, p. 101

Step 6

Cross-Examination by the Prosecutor

What?

The prosecutor can **question** the witnesses called by the defence.

Why?

To highlight statements that **go against the accused**

- To point out **weaknesses** in the defence's case



INFORMATION FOR STUDENTS

- ❑ This step is the same as **Step 3**, but in reverse. This time it is the prosecutor that is cross-examining witnesses for the defence.
- ❑ The prosecutor can **attack the witness's credibility, bring out contradictions or lies** in the witness's testimony, etc.

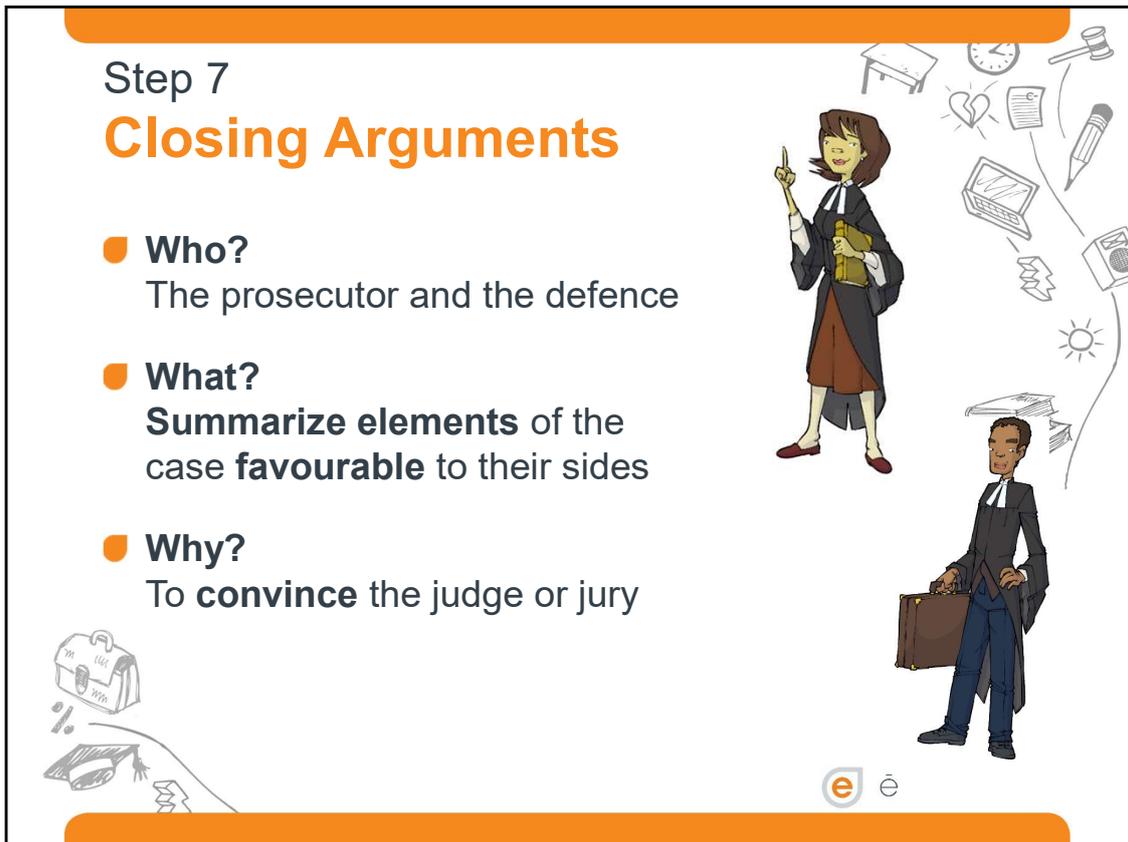
SOURCES

- *Canadian Charter of Rights and Freedoms*, s 7 and 11d)
- Nicolas BELLEMARE, « La preuve pénale », in Collection de droit 2015-2016, École du Barreau du Québec, vol. 11, *Droit pénal: procédure et preuve*, Cowansville, Éditions Yvon Blais, p. 153-154
- Pierre BÉLIVEAU and Martin VAUCLAIR, *Traité général de preuve et de procédure pénales*, 22e éd., Cowansville, Éditions Yvon Blais, 2015, par. 1541-1557

Step 7

Closing Arguments

- Who?
The prosecutor and the defence
- What?
Summarize elements of the case **favourable** to their sides
- Why?
To **convince** the judge or jury



The illustration depicts two lawyers in a courtroom setting. On the left, a female lawyer in a dark blue robe and white collar points upwards with her right hand. On the right, a male lawyer in a dark suit and white shirt carries a brown briefcase. The background is filled with various legal and professional icons, including a gavel, a clock, a laptop, a pencil, a document, a sun, and a stack of books. In the bottom right corner of the illustration, there is a small logo consisting of a lowercase 'e' inside a circle, followed by a tilde symbol (~).

INFORMATION FOR STUDENTS

The aim of the closing arguments is to ensure that all the evidence is clear and remains fresh in the minds of judge (or jury). It's the lawyers' last chance to convince the judge or jury. Once the closing arguments are finished, the trial itself is over.

SOURCE

- Nicolas BELLEMARE, « Le procès en matière criminelle : les procédures pendant le procès », in Collection de droit 2015-2016, École du Barreau du Québec, vol. 11, *Droit penal : procédure et preuve*, Cowansville, Éditions Yvon Blais, p. 101

Step 8

Deliberation and Verdict

What?

The judge **decides** whether the accused is guilty. The **decision is announced**, either

- immediately, or
- after a period of **reflection or deliberation**.



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INFORMATION FOR STUDENTS

- ❑ If there is a jury at the trial, the 12 jurors meet, discuss the evidence and decide whether the accused is guilty or not. The jurors choose someone to speak for them, called the “foreperson.” The foreperson announces the jury’s decision to the judge. The decision must be **unanimous**, meaning all 12 jurors agree with the decision.
- ❑ If there is no jury, then the judge renders the verdict (decides whether the accused is guilty or not guilty).

SOURCES

- *Criminal Code*, s 647
- *R. v M. (C.A.)*, [1996] 1 SCR 500
- Pierre BÉLIVEAU and Martin VAUCLAIR, *Traité général de preuve et de procédure pénales*, 22e éd., Cowansville, Éditions Yvon Blais, 2015, par. 2457
- Nicolas BELLEMARE, « Le procès en matière criminelle : les procédures pendant le procès », in Collection de droit 2015-2016, École du Barreau du Québec, vol. 11, *Droit penal : procédure et preuve*, Cowansville, Éditions Yvon Blais, p. 99-100
- Encyclopédie Larousse, *Thémis*, online
- David GILLES, *Introduction aux fondements philosophiques du droit : Thémis and Dikè*, Cowansville, Éditions Yvon Blais, 2012, p. 4 et 9

Step 8
Sentencing

- **Who?**
The **judge**
- **What?**
Decides what is an **appropriate sentence** for the accused



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INFORMATION FOR STUDENTS

- ❑ Only a judge can give a sentence to an accused found guilty of a crime.
- ❑ When deliberating, the judge must keep in mind **the main principles and purposes of a sentence**. The judge must also take into account the facts about the accused and the crime, that is, whether there are aggravating or attenuating circumstances that justify a more severe or lenient sentence. The judge must always listen to the prosecutor's and the defence lawyer's arguments about the sentence.
- ❑ Apart from a prison sentence, there are other kinds of sentences:
 - A fine
 - Community work
 - Serving the sentence in the community under certain conditions
 - etc.
- ❑ **Important! The judge is not completely free to choose the sentence.** For some crimes, the *Criminal Code* specifies the maximum and minimum sentences that can be given. The sentence must also be similar to those given in previous similar cases, unless there is a reason that justifies a departure from the sentences given in the past.

SOURCES

- *Criminal Code*, ss 718, 718.2, 718.3, 723, 730
- Nicolas BELLEMARE, « Le procès en matière criminelle : les procédures pendant le procès », in Collection de droit 2015-2016, École du Barreau du Québec, vol. 11, *Droit pénal : procédure et preuve*, Cowansville, Éditions Yvon Blais, p. 104-108
- *R. v Nasogaluak*, 2010 SCR 6, par. 43-44

Step 9

Deliberations, Verdict and Sentencing

- **Who?**
The jury.
- **What?**
The jury announces if the accused is guilty or innocent after an **additional** period of reflection (deliberations).



If the accused is found guilty
Determining the sentence

Who?
The judge

What?
In the case of a guilty verdict, the judge must announce the sentence (prison, fines, community work...).



NOTES :

INFORMATION FOR STUDENTS

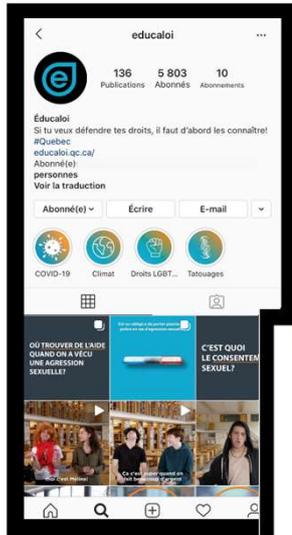
- The information provided during the testimonies of different witnesses are part of the evidence. They serve to determine if the accused did indeed commit a crime. The judge or jury must examine all the evidence, including testimonies, to determine if the accused is guilty or innocent.
- In the case of a trial before a judge and jury, the 12 jurors convene to discuss and decide whether or not the accused is guilty. The head juror (appointed by his or her co-jurors), then announces the decision to the court. The decision must be unanimous, which means that all of the jurors must be in agreement.
- Generally, the jurors have as much time as they need to reach a unanimous decision. To help with the deliberation process, we suggest that you announce how much time the jury has to reach its decision.

SOURCES

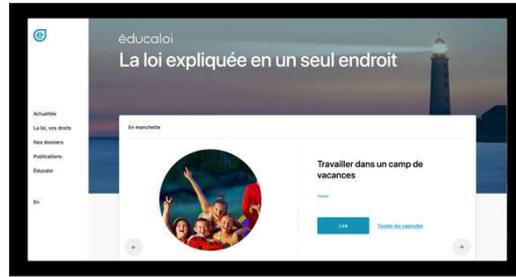
- *Code criminel*, art. 647.
- *R. c. M. (C.A.)*, [1996] 1 R.C.S. 500.
- Pierre BÉLIVEAU et Martin VAUCLAIR, *Traité général de preuve et de procédure pénales*, 22e éd., Cowansville, Éditions Yvon Blais, 2015, par. 2457.

- Nicolas BELLEMARE, « Le procès en matière criminelle : les procédures pendant le procès », dans Collection de droit 2015-2016, École du Barreau du Québec, vol. 11, *Droit penal : procédure et preuve*, Cowansville, Éditions Yvon Blais, p. 99-100.
- Encyclopédie Larousse, *Thémis*, en ligne.
- David GILLES, *Introduction aux fondements philosophiques du droit : Thémis et Dikè*, Cowansville, Éditions Yvon Blais, 2012, p. 4 et 9.

Do you have additional questions?



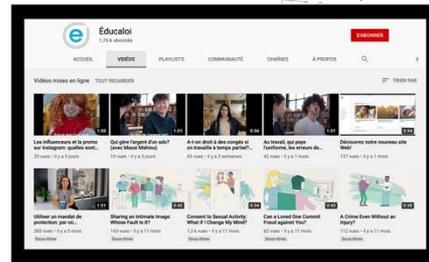
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 [Éducaloï.qc.ca](http://educaloï.qc.ca)

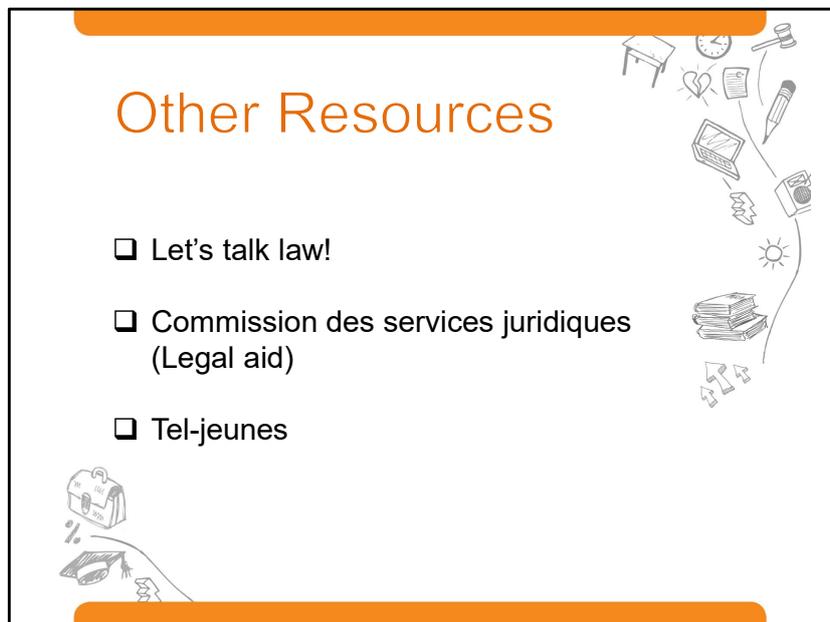


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ÉDUCATION DES DROITS



INFORMATIONS COMPLÉMENTAIRES INTÉRESSANTES À TRANSMETTRE

There are a lot of resources for students who want to learn more about their legal rights and responsibilities or ask a legal professional specific questions. We've listed some of these resources on the slide. But there are many more. If you have ideas for resources that should be added, please pass them on to the students and contact us so we can update our list.

- ❑ The **Young Bar of Montreal** (Association du Jeune Barreau de Montréal - AJBM) offers a free telephone consultation service for 12 to 20-year-olds. It is called "Let's talk law!". If students have legal questions about a personal situation, they can fill out a form on the AJBM's website and a volunteer lawyer will call them back within a week. Priority is given to young people in the Montreal area, but depending on the availability of the volunteer lawyers, the service is also offered in other regions. <https://ajbm.qc.ca/fr/for-the-public/services-available/let-s-talk-law-1074>
- ❑ The **Commission des services juridiques** is the organization responsible for legal aid. For more information on legal aid, please visit their website: <https://www.csj.qc.ca/commission-des-services-juridiques/lang/en>
- ❑ **Tel-jeunes** is a free and confidential bilingual helpline with counsellors who can be reached at all times of the day and night. Tel-jeunes counsellors can suggest resources and provide information on many subjects: bullying and violence, sexuality, work, school, etc. See the website: <https://www.teljeunes.com/en> or call 1-800-263-2266.

