

SCENARIO: A STOLEN WALLET

Your character is: **The Accused**

You made a bad decision, and you're in trouble. You were at the mall with friends, and they dared you to take a wallet. At the time, it seemed like it wouldn't be so bad—you needed a new one, and nobody would get hurt. It's a huge company, they can afford it, right? But security spotted you pocketing the wallet and confronted you outside the store. They detained you in their office, called the police, and arrested you. They took you to the police station, fingerprinted you, charged you with "Theft under \$5,000" and ordered you to report to the courthouse on a specific day for a first appearance.

Today is that day. You've arrived at the courthouse, and the people at the entrance directed you upstairs to the Adult Criminal Docket Court. You're scared, and you don't want to go to jail.

Your character

You are an 18-year-old recent graduate charged with "Theft under \$5,000" for shoplifting. You shoplifted, you regret your decision, and you've decided to take responsibility for your actions. You're worried about how this will affect your future, and **you want to avoid jail time and a criminal record, no matter what.** You've never been in trouble with the law before—you've never even been inside a courthouse. **You have \$600 in savings, and your parents could lend you up to \$5,000.** This is the first time you've ever been arrested, and you're 18 years old, so you've been charged as an adult.

Take some time to think about your character's story. What's their name? Why did they shoplift? Why don't they want to serve time in prison? Having made a big mistake, how can they make things right?

How to play the game

You have to navigate the legal system with the help of other characters you meet. Talk to them, share information, and ask questions.

Your objective: Avoid going to jail and avoid getting a criminal record.

Information to share

- » You don't have a lawyer.
- » You can share details of the offence, as detailed above.
- » You can share your objective (to avoid jail time) with anybody who asks, if you choose to.
- » You can invent details about your character's background to share, if you want to, as long as you don't contradict anything listed above (e.g. this has to be your character's first encounter with the legal system, but you can make up details about what happened—what store you were in, your friends' names, and so on).
- » If somebody asks you a question and you don't have the answer provided above, feel free to make something up that's consistent with the story and your character!

Making decisions

- » You might be presented with some options: for example, pleading guilty or not guilty, doing community service if the Crown agrees to diversion, etc. You can ask for help in making your decision, but the final decision is yours alone.
- » If you are deciding whether or not to accept a fine, ask yourself if your character will be able to pay it!

What's next?

- » **Start by talking to Duty Counsel.** Ask them questions and see if they can help you meet your objective.
- » Duty Counsel might confer with Crown Counsel.
- » At the end of the scenario, you'll appear before the Judge, together with Duty Counsel and Crown Counsel.
- » The scenario ends when your case is resolved in court before a Judge. Good luck!

SCENARIO: A STOLEN WALLET

Your character is: **Duty Counsel**

It is alleged that the Accused was spotted by security pocketing a wallet in the mall. The Accused says they were at the mall with friends who dared them to take a wallet. At the time, it seemed like it wouldn't be so bad—they needed a new one, and nobody would get hurt.

The Accused figured that since the company is huge, it wouldn't miss one little wallet. However, security saw the Accused pocket the wallet and confronted them outside the store. The Accused was detained in the security office, and the police were called. They were taken to the police station, fingerprinted, charged with “Theft under \$5,000” and ordered to report to the courthouse on a particular day for a first appearance.

Today is that day. The Accused arrived at the courthouse, and the people at the entrance directed them upstairs to the Adult Criminal Docket Court. The Accused is scared and doesn't want to go to jail or get a criminal record.

Your character

You are a lawyer who works for Legal Aid in your province. Your job title is Duty Counsel, and **your job is to provide free advice on the spot** for people who come to court without their own lawyer.

Today, you're working out of a small office right beside the courtroom where Adult Criminal Docket Court is being held. You enjoy your job; it's really satisfying to be able to help people out when they might be in one of the roughest spots of their life, when they're scared, when they don't know where to turn.

Take some time to think about your character's story. What's their name? Where did they go to law school? Why did they become a lawyer?

How to play the game

You have to navigate the legal system with the help of other characters you meet. Talk to them, share information, and ask questions.

Your objectives:

1. Find out what the Accused's objective is.
2. Give the Accused information from the list below and legal advice: What are their options? What are the consequences of the different options? What would you recommend the Accused do?
3. Explain their options and get instructions from the Accused. Together, come up with a strategy to achieve their objective. If the Accused self-identifies as Indigenous, Black or racialized, ask them questions about their background and get permission to use this information when negotiating with the Crown and when speaking to the Judge in court.
4. Follow their instructions accurately and try to help them achieve their objective by talking to Crown Counsel and the Judge.

Information to share

- » An **"indictable offence"** is the most serious kind of charge in the Criminal Code of Canada and carries the most severe penalties. These cases often go to trial before a judge, with or without a jury.
- » A **"summary offence"** is a less severe charge, typically punishable by a fine of up to \$5,000 and/or up to two years less a day in prison.
- » A **"hybrid offence"** is one where the Crown can decide whether to proceed as an indictable offence or a summary offence. **Theft is a "hybrid offence."**
- » According to the Criminal Code of Canada, **if the value of stolen goods is more than \$5,000**, theft is punishable by:
 - » up to 10 years in prison, as an indictable offence;
 - » or (typically) a fine of up to \$5,000 or two years less a day in prison, as a summary conviction.
- » **If the value of stolen goods is less than \$5,000**, theft is punishable by:
 - » up to 2 years in prison, as an indictable offence;
 - » or (typically) a fine of up to \$5,000 or up to two years less a day in prison, as a summary conviction.
- » **"Diversion"** means doing some upfront work (e.g. community service, donation, apology letter) for the charges to be dropped ("withdrawn" or "stayed").
- » **"Absolute/Conditional Discharge"** means a finding of guilt but not a conviction. A discharge stays on the person's record for a specific amount of time and should generally not appear on a criminal record check after that time.
- » As Duty Counsel, you can negotiate a resolution with Crown Counsel (a Crown pre-trial). This includes asking the Crown to consider diversion or, alternatively, if the Crown does not agree to diversion and the Accused wants to plead guilty, asking the Crown to agree to a discharge.
- » If the accused decides to plead guilty, they can negotiate a sentence they think would be fair (a "joint sentencing submission"). In Canada, the judge is not bound by a joint sentencing submission—they can decide on a different sentence, especially if they think the recommended sentence isn't fair or would cause people to lose faith in the justice system.

Making decisions

- » You can offer advice to your client, but the final decisions are theirs alone. Your job is to be their advocate and voice in dealing with the Crown and the court, not to decide what's best for them.
- » If you offer to Crown Counsel for diversion or a suggested sentence, make sure you can defend it. Is your suggestion fair? Does it match the severity of the crime? Does it consider the circumstances of the Accused (no criminal record, young, other factors)? You should also consider resolutions to help the Accused avoid a criminal record, such as diversion and discharges.

What's next?

- » **Start by meeting with the Accused.** Ask them questions to find out what their objective is, and share information with them so they know their options. Explain that:
 - » The charges are only allegations, and the Crown must prove the Accused is guilty beyond a reasonable doubt.
 - » Even if the Accused does not go to jail, the Accused can still have a criminal record. A criminal record could limit the Accused's opportunities for employment, housing, schooling, immigration status and family matters (such as child custody). Because this is the first time the Accused is in trouble and they have been charged with "Theft under \$5,000" they might be able to avoid a criminal record.
- » Give the Accused your legal advice and then ask them what they want you to do.
- » You can call Crown Counsel to negotiate, if you want to.
- » In court, you should address the Judge as "Your Honour" and refer to Crown Counsel as "my friend."
- » At the end of the scenario, take the Accused to go see the Judge, with Crown Counsel. The scenario will end when the case is resolved before the Judge. Good luck!

SCENARIO: A STOLEN WALLET

Your character is: **Crown Counsel**

It is alleged that the Accused was spotted by security pocketing a wallet in the mall. Security saw the Accused pocket the wallet and confronted them outside the store. The Accused was detained in the security office, and the police were called. They were arrested, taken to the police station, fingerprinted, charged with “Theft under \$5,000” and ordered to report to the courthouse on a specific day for a first appearance.

Today is that day. The Accused arrived at the courthouse, and the people at the entrance directed them upstairs to the Adult Criminal Docket Court. The Accused is 18 years old and has no prior criminal record.

Your character

You are a lawyer who works for the Ministry of Justice and Attorney General in your province. Your job title is Crown Counsel, and your job is to prosecute criminal cases in provincial court. Today, you’re working in Adult Criminal Docket Court. You enjoy your job; it’s an honour to represent your community and the Crown in court when people are charged with a crime, helping to ensure that cases are prosecuted justly, equitably and in the public interest.

Take some time to think about your character’s story. What’s their name? Where did they go to law school? Why did they become a lawyer?

How to play the game

You must prosecute offences fairly, keeping in mind your role as a minister of justice. You will interact with other characters in the legal system, including Duty Counsel representing the Accused. Talk to them, share information, and ask questions.

Your objective: Decide on the appropriate resolution (your position) in this case. As a Crown, you can decide whether this case is appropriate for diversion (for the Accused to do some upfront work, and you then drop the charge), or whether you will insist on a guilty plea or trial (if the accused pleads not guilty). If you insist on a plea, decide your position regarding the sentence. Will you agree to ask for a discharge? Will you want a conviction (suspended sentence, fine, jail)? Will the decision be in the best interest of society—fair, equitable, objective, proportional, and maintaining public confidence?

What does that mean?

- » **Fair** – you should aim for an outcome that is morally right and just, not overly lenient or overly harsh.
- » **Equity** – you should aim for an outcome that takes differences into consideration (such as the Accused's background, their age, whether they've been in trouble before, whether they are Indigenous, etc.).
- » **Objective** – you should aim for an outcome that is based on facts, not on any feelings you might have about the other players or their characters.
- » **Proportional** – the outcome should match the crime. The seriousness of the crime and the severity of the consequences should line up.
- » **Maintaining public confidence** – will this outcome cause people to lose confidence in the justice system, or build trust in it?

Your options

- » The Accused faces charges of Theft under \$5,000 for shoplifting a wallet. According to the Criminal Code of Canada, you have two options, unless you withdraw the charges:
 - » Proceed as an **“indictable offence.”** This is for more serious crimes and carries harsher penalties. The Judge could impose a sentence of up to two years in prison.
 - » Pursue a **“summary conviction.”** This is for less serious crimes, and the penalties are lighter. The Judge could impose a fine of up to \$5,000, and/or a prison term of up to two years less a day.
- » **Take some time to consider:** Do you have enough evidence to prove that the Accused committed the crime? Could you get a conviction? Is it in the best interest of the public to convict?
 - » If you cannot prove the Accused stole the wallet, you should withdraw the charge. If you can prove the theft and it is in the public interest to prosecute, would you agree to diversion? What would be the most lenient sentence that is still fair, objective, proportional and in the public good, considering what you know about the crime? What would be the harshest sentence that meets your criteria? This gives you a range of sentences that you might consider.
 - » If the Accused or a lawyer acting for them contacts you, you're allowed to negotiate a resolution with them. If they plead “guilty,” you can also negotiate a sentence that both sides think is fair, to recommend to the judge a “joint sentencing submission”. The Judge will decide whether the sentence you recommend is fair and in the public interest. Arriving at a joint submission is one way to negotiate an outcome that will be good for society and for the Accused, too.

What's next?

- » The Accused will start by meeting with Duty Counsel.
- » Duty Counsel might call you to ask questions or to negotiate a joint sentencing submission.
- » At the end of the scenario, you'll go see the Judge together with Duty Counsel and the Accused. The Judge will ask you how you'd like to proceed, and you can let them know if you came to any agreement with Duty Counsel.
- » In court, you should address the Judge as "Your Honour", and refer to Duty Counsel as "my friend".
- » The scenario will end when the Judge reaches a decision about this case. Good luck!

SCENARIO: A STOLEN WALLET

Your character is: **Judge**

It is alleged that the Accused committed the offence of “Theft under \$5,000” by stealing a wallet. The Accused was ordered to report to the courthouse on a specific day for a first appearance.

Today is that day. The Accused arrived at the courthouse, and the people at the entrance directed them upstairs to the Adult Criminal Docket Court.

Your character

You are a judge who works in the Adult Criminal Court in your province. After many years working as a lawyer, you were made a judge a few years ago. Your job is to preside over trials and hearings, ensuring everybody follows the rules and that the process is fair and equitable for everybody involved. Your job is also to make decisions based on the factual information presented in court, and in some cases, you impose sentences. You enjoy your job and are proud of your role in ensuring that the law is applied fairly to everybody throughout an entire trial and afterwards.

Take some time to think about your character’s story. What’s their name? Why did they become a lawyer? Why did they become a judge?

How to play the game

You are a part of the legal system the other players are navigating. Accomplish your objective by making the process as fair to everybody as possible, including the Accused.

Your objective: Make sure that everybody acts fairly, and if imposing a sentence, it is fair and within the Criminal Code guidelines.

Special note: As the judge, your character doesn’t know anything about this case until the others appear before you! You can read the background information on this sheet, but your character doesn’t know anything about the charges, what happened leading up to the arrest, or any other details of the case.

Your options

At the end of the scenario, the other players will appear before you with a recommendation for how to proceed.

First, ask Crown Counsel what's happening with this case. The Crown might say that they will be withdrawing the charge, for example, or that a plea will be entered. If the Accused decides to plead guilty, ask both lawyers (Crown and Duty Counsel) whether a "joint submission" on sentence has been reached.

If no deal has been reached, or the agreement is that the Accused will plead "not guilty":

- » Ask the Accused how they would like to proceed. They may answer "guilty" or "not guilty".
- » If "not guilty" tell them that you are setting a trial date and give them a date a few months from now.
- » If they plead "guilty", ask the Crown Counsel and the Duty Counsel what they recommend as a sentence, and why. You get to choose the sentence; take their arguments into account, but the decision is yours alone. You can impose a fine of up to \$5,000, and/or a prison term of up to two years.
- » Here are a few things you should consider:
 - » Does the sentence bring the administration of justice into disrepute? In other words, if you accept the recommendation, will it make the justice system look bad?
 - » Is the sentence otherwise contrary to the public interest? In other words, does this sentence do any harm to the public?
 - » Is the sentence less than the maximum allowed by law? For this scenario, you can impose a fine of up to \$5,000, and/or a sentence of up to two years in prison.

If a deal has been reached and the Accused is pleading "guilty":

- » If the Accused pleads guilty, you may want to confirm on the record that they know that:
 - » They are giving up their right to have a trial;
 - » They are doing so freely; and
 - » They know that the sentence is up to you as Judge, even if the lawyers will be recommending the same thing.
- » If the Accused still wants to go ahead, don't forget to answer those three questions above when deciding on a sentence, but take both sides' recommendations into account.

If Crown Counsel says that they plan to drop charges:

- » Tell everyone that you "order the charges withdrawn".

What's next?

- » The Accused will meet with Duty Counsel, who may confer with Crown Counsel. At the end of the scenario, all three will appear before you in court. The scenario will end with your decision.
- » You can remind the other characters of the rules of court—in general, everybody takes turns speaking, nobody interrupts, and everybody should treat each other with courtesy. The other players should address you as “Your Honour”, and the lawyers should address each other as “my friend”.
- » Note that in Canada, unlike in the United States, judges do not use gavels!

SCENARIO: A STOLEN WALLET

Viewing Guide

The Accused made a bad decision, and they're in trouble. They were at the mall with friends who dared them to take a wallet. At the time, it seemed like it wouldn't be so bad—they needed a new one, and nobody would get hurt. It's a huge company, it can afford one little missing wallet, right? But security spotted them pocketing the wallet and confronted them outside the store. They were detained in the security office and the police were called. They were arrested, taken to the police station, fingerprinted, charged with "Theft under \$5,000" and ordered to report to the courthouse on a specific day for a first appearance.

Today is that day. The Accused arrived at the courthouse, and the people at the entrance directed them upstairs to the Adult Criminal Docket Court. They're scared, and they don't want to go to jail.

What you will see

The people who have roles assigned to them will be role-playing a day at the courthouse. The Accused is making their first appearance after being arrested for shoplifting.

Note: The Accused has been charged with theft but is presumed innocent. It is up to the Crown to prove the charge against the Accused beyond a reasonable doubt.

Each of the characters has an objective they're trying to achieve. To do this, they need to talk to the other characters, ask questions and exchange information.

The characters are:

- » The Accused, who has been arrested for shoplifting.
- » Duty Counsel, a lawyer who works at the courthouse who can provide free, on-the-spot legal advice to anyone who doesn't have a lawyer.
- » Crown Counsel, a lawyer who works for the Ministry of Justice and Attorney General whose job it is to prosecute cases.
- » The Judge, who presides over what happens in the courtroom, ensuring that everybody acts fairly and according to the rules of the court.

Timeline

- » The Accused will start by talking to Duty Counsel, asking them questions to see if they can help them meet their objective.
- » Duty Counsel will explain the process to the Accused, give the Accused legal advice, and take the Accused's instructions. Duty counsel might then confer with Crown Counsel to discuss a resolution.
- » At the end of the scenario, the Accused will appear before the Judge along with Duty Counsel and Crown Counsel.
- » The scenario ends when the case is resolved in court before the Judge.

Questions to think about

- » What does the presumption of innocence mean? Why is it important? How does it play out in the process for the different characters?
- » How do the circumstances of the Accused impact what's fair for this case? Here, the Accused had no criminal record, was young, and was charged with a minor offence. Would a fair outcome look different if the Accused has a previous record for theft, for example?
- » Do you agree with the decisions that the Accused made at the courthouse? Is there anything they could have done differently?
- » Did the Crown Counsel and Judge make fair decisions?
- » Was the result of the hearing fair? If there was a punishment, did its severity match the seriousness of the offence?
- » What are some obstacles people can face in navigating the justice system? How might the circumstances of the Accused impact the case?
 - » What considerations are appropriate if the Accused identified as Indigenous, Black or racialized? What if they didn't speak English or French well, or had a mental or physical disability?
 - » How might a person's experience differ if they already had a lawyer, or if they couldn't afford legal advice?

SCENARIO: A STOLEN WALLET

Leader's Guide

The Accused made a bad decision, and they're in trouble. They were at the mall with friends who dared them to take a wallet. At the time, it seemed like it wouldn't be so bad—they needed a new one, and nobody would get hurt. It's a huge company, it can afford one little missing wallet, right? But security spotted them pocketing the wallet and confronted them outside the store. They were detained in the security office and the police were called. They were arrested, taken to the police station, fingerprinted, charged with "Theft under \$5,000" and ordered to report to the courthouse on a specific day for a first appearance.

Today is that day. The Accused arrived at the courthouse, and the people at the entrance directed them upstairs to the Adult Criminal Docket Court. They're scared, and they don't want to go to jail or have a criminal record.

Note: Only the Accused knows the background of the charge when they arrive in court. They are presumed innocent, and it's up to the Crown to prove the charge. The Accused may choose to tell Duty Counsel what happened. Duty Counsel would need permission from the Accused to disclose any confidential information (that is, anything the Accused says to Duty Counsel, since it's subject to solicitor-client privilege) to the Crown or the court.

Key Concepts

- » Duty Counsel are legal aid lawyers who provide free, on-the-spot legal advice and representation at criminal, youth and some immigration courts across Canada.
- » Duty Counsel services are provided free of charge in many provinces and territories.
- » In Canada, criminal charges can be indictable offences (the most serious, with the heaviest punishments) or summary offences (less severe, usually punished with a fine or up to two years in prison). Many charges are hybrid offences, for which the Crown can decide whether to proceed as an indictable or summary offence.
- » There are supports in place to help Canadians navigate the justice system.

Character Objectives

» **The Accused.**

- » Objective: Avoid jail time and a criminal record, if possible. (They know they did something wrong and want to take responsibility for their actions. They hope to either be found not guilty or to pay a fine and want to avoid going to jail at all costs.)
- » **Note:** It should be up to Duty Counsel to explain to the Accused that any conviction is a criminal record and will have serious consequences. Given the allegations and the Accused's lack of criminal record, this case should probably be diverted. Duty Counsel should speak to the Crown to try to negotiate diversion. If diversion is not possible, Duty Counsel may want to negotiate a discharge if the Accused still wants to plead guilty.

» **Duty Counsel.**

- » Objectives: Find out what the Accused wants to do (Accused's Objective), provide them with all the info listed on the Duty Counsel character sheet that's relevant to their case, give them legal advice on their rights and options, and follow their instructions in talking to the Judge and Crown Counsel.

» **Crown Counsel.**

- » Objective: Determine a resolution that is in the best interests of society—fair, objective, proportional, and maintaining public confidence.

» **Judge.**

- » Objective: make sure that everybody acts fairly, and if imposing a sentence, that it is fair and within the Criminal Code guidelines.

» **Each character has enough information on their character sheet to understand and achieve their objectives.**

Important information from each character sheet:

- » The Accused has only \$600 in savings, and their parents are able to loan them up to \$5,000. They should take this into account if they're trying to decide whether to agree to a specific fine. They do not already have a lawyer.
- » Duty Counsel's character sheet includes sentencing guidelines for theft, information on the difference between indictable and summary offences, as well as information on joint sentencing submissions ("plea bargains").
- » Crown Counsel's character sheet suggests some considerations for deciding what an appropriate sentence might be, as well as the maximum penalties for "Theft under \$5,000."
- » The Judge's character sheet includes various options for how to proceed depending on what Duty Counsel and Crown Counsel do or do not agree on. They also have some information on court etiquette.

A note on realism

The potential outcomes for the Accused have been simplified for the sake of creating a practical scenario. In real life, there would be other options besides a guilty plea or a trial, and the other sentencing options in Canada include:

- » A peace bond, where the accused promises the court to abide by certain conditions and stay out of trouble, and the charges are withdrawn.
- » An Alternative Measures Program (AMP), where the accused might perform community service or make restitution, after which the charges are withdrawn.
- » An absolute or conditional discharge, which requires a guilty plea but ultimately results in no criminal record.

Running the scenario

1. The Judge starts in the courtroom. Crown Counsel and Duty Counsel sit outside the courtroom in their “offices”. The Accused is standing at the front of the room.
2. Read the “Background” section aloud to the class. Tell the Accused that they’ve arrived outside the courtroom. They aren’t allowed in the courtroom yet, but they see an office next door marked “Duty Counsel”, and invite them to go in.
3. The Accused and Duty Counsel should confer. Duty Counsel should ask questions about what happened, give the Accused legal advice, and find out how the Accused wants to proceed.
4. Duty Counsel and Crown Counsel can (and probably should) confer outside the courtroom, either in person or “by phone”. They have the option to negotiate a resolution. Duty Counsel is trying to avoid jail time, per the Accused’s objectives and a criminal record if possible. Crown Counsel has some leeway and can decide what a fair agreement would be for the petty theft of a wallet.
5. All the characters meet in front of the Judge. The Judge has guidelines on how to proceed depending on whether a deal was reached.
6. The scenario ends once the Judge has either imposed a sentence, set a trial date, or stayed/withdrawn the charge.

Discussion questions

- » What does the presumption of innocence mean? Why is it important? How does it play out in the process for the different characters?
- » How do the circumstances of the Accused impact what's fair for this case? Here, the Accused had no criminal record, was young, and was charged with a minor offence. Would a fair outcome look different if the Accused has a previous record for theft, for example?
- » Do you agree with the decisions that the Accused made at the courthouse? Is there anything they could have done differently?
- » Did the Crown Counsel and Judge make fair decisions?
- » Was the result of the hearing fair? If there was a punishment, did its severity match the seriousness of the offence?
- » What are some obstacles people can face in navigating the justice system? How might the circumstances of the Accused impact the case?
 - » What considerations are appropriate if the Accused identified as Indigenous, Black, or racialized? What if they didn't speak English or French well, or had a mental or physical disability?
 - » How might a person's experience differ if they already had a lawyer, or if they couldn't afford legal advice?