

A Mock Trial:

“You can’t say that! It’s cyber libel!”

Understanding libel and how it can occur in social media such
as Snapchat©, TikTok©, Instagram©

Teacher Introduction

This mock trial is a practical lesson for intermediate/ middle school level students on how the law is relevant to them on a daily basis and how their behaviour is affected or governed by laws such as those regarding libel. Electronic media open many possibilities for the violation of libel laws. In fact it is now exceptionally easy for a young person to commit what would be considered libel in law through a social networking medium such as Instagram. The important difference between young people living in a world of electronic communication and those growing up in earlier times is that so much of what they now communicate is through a “fixed medium”, that is, a permanent written form that can be widely distributed and hence potentially libelous. Less than a generation ago such communications were impossible and the uttering of defamatory statements was generally much less harmful and libel therefore more “difficult” to commit.

While youth of this age (under age 19) are unlikely to be sued for libel even if they did commit it, they should nevertheless be fully aware of what constitutes libel and engage in electronic communications accordingly.

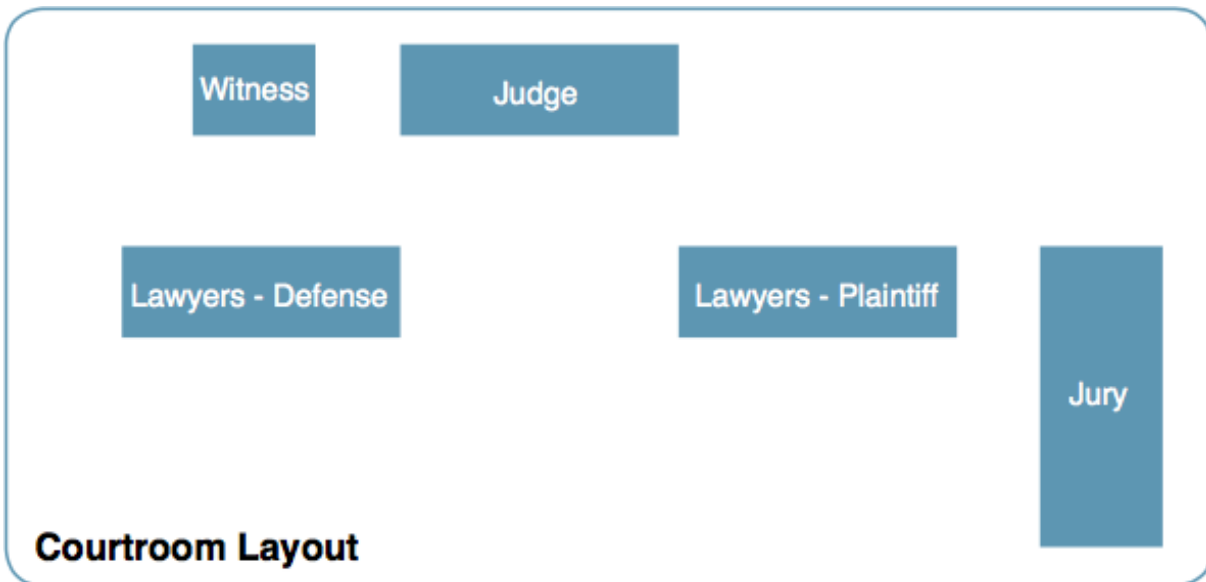
Format

The mock trial is presented as a modified form of a civil trial. Civil trials do not usually have a jury but since this is a classroom exercise a jury will be involved as a way to allow all students to participate. If there is a jury in a real civil trial it has eight members. Civil trial juries do not need to reach a unanimous decision. As long as a decision is reached within a specified period of time the judge accepts the decision. (In a real civil trial 6 of 8 jurors must agree and they have three hours to decide.) For the purposes of this mock trial, the jury may be larger so as to accommodate more students and the decision can be a simple majority. The amount of time can be determined by the teacher. In addition to the jury other roles are:

- The plaintiff (the person who believes they have been “harmed” and is making the complaint)
- The defendant (the person who is being sued for having done the “harm,” referred to as the “accused” in a criminal trial)
- The lawyers (each side can have up to three lawyers who will present their case)
- The judge (it is advisable for a teacher or other adult to perform this role)
- Witnesses (each side will call up to three witnesses – these are students who should not have any other roles)

Preparing for the Mock Trial

The classroom should be arranged like a courtroom with the judge behind a desk at the front. The lawyers are at two tables with their clients (the plaintiff and the defendant) facing the judge. The jury is assembled together and seated to the left of the judge. Witnesses are not to be present until they are called. (In a real court the witnesses would be called by a court clerk. In this mock trial, the witnesses can be seated outside the classroom/ courtroom and called in by the lawyers as they are required.) Once the witnesses have given their evidence, they can stay in the room.



Ideally two consecutive hours should be planned. If two class periods are required the second period could be used for the jury to give their verdict, the judge to determine the award if necessary and the debriefing to take place.

In a real court the jury would deliberate in a separate jury room but for the purposes of this mock trial and the learning objective, the jury can deliberate in the classroom and the lawyers, witnesses, plaintiff and defendants can observe. They should be instructed, however, not to attempt to participate. If the jury is unable to reach a decision, the judge can declare a “hung jury” (unable to reach a decision). In a real court this would require a new trial with another jury, but in the case of this mock trial, the judge can give the verdict if the jury is unable to. If the verdict is in favour of the plaintiff, the judge will also award damages. *(Note: The judge may want to “chair” the jury deliberation. This would not happen in a real trial and students should be told this, but in the interests of time constraints and classroom management this may be advisable.)*

The lawyers should be students who are able to work independently and are comfortable with higher level learning challenges. They will need extra time to prepare so they should be given their roles in advance and it is advisable that the teacher spend some time with them (perhaps outside of class time) to ensure they are going to be well prepared and their questions of the witnesses well worded. The lawyers are provided the witnesses' role cards to help them prepare their questions for the witnesses.

The witnesses, plaintiff, and defendants should also be given their roles in advance and be given some opportunity to rehearse them with either the plaintiff's or defendant's lawyers. It is important that the witnesses, the plaintiff, and the defendants are instructed not to talk to one another before or during the trial about what they are going to say.

All students should be given the handouts:

- #1, *"The Story: Did the Finsta account go too far?"*
- #2, *"What is Libel?"*

The lawyers and jury members should be given their "information" handouts before the trial begins.

Trial Procedure

The classroom should be arranged as described in the background/preparation material for teachers.

1. The judge should take her/his place at the front and declare the court in session and introduce himself/herself as “Judge (full name) presiding” (normally this would be done by a court clerk).
2. The plaintiff’s lawyers and the defendants’ lawyers stand and introduce themselves to the judge giving their full names.
3. The plaintiff’s lawyer(s) begin with an opening statement describing the complaint and injuries suffered by the plaintiff (Ms. Cullen) and briefly mention the evidence they have to support the plaintiff’s claim.
4. The plaintiff’s lawyer(s) call their witnesses, one at a time, and question them about what they know about the complaint.
5. The defendants’ lawyer(s) may, after each of the plaintiff’s witnesses has been questioned by the plaintiff’s lawyer, cross-examine that witness trying to cast doubt or discredit the witness and his/her account.
6. After each of the plaintiff’s witnesses have been questioned and cross-examined the defense lawyers make an opening statement. In this statement, they lay out the case for the defense describing how the witnesses for the defense will prove that there has been no libel committed and that the claim is exaggerated.
7. As with the lawyers for the plaintiff, the witnesses for the defendants are called, questioned and if the plaintiff’s lawyers wish, cross-examined.
8. Then the plaintiff’s lawyer(s) summarize their case for the jury.
9. Then the defendant’s lawyer(s) summarize their case for the jury.
10. The judge instructs the jury about their task, explaining “libel” and “damages”.
11. The judge should give the jury a specific amount of time to reach a decision. They should be told that, if they cannot reach a decision in that time, the judge will then make the decision.
12. The jury deliberates and when they have reached a majority agreement (juries in civil trials do not need to be unanimous), they inform the judge of their decision and, if relevant, the damages they have awarded. The judge tells the plaintiff and defendants the jury’s decision. The judge may assign other damages.
13. The court is dismissed.

Student Handout 1 – The Story



Note: The following is based on an actual incident, but has been adapted to make the events suitable for a civil court trial.

Did the Finsta account Go Too Far?



Leah and her friend Jared are students at a middle school. They have been going to the school for two years and have come to know most of the teachers and the school's administrators quite well. At the beginning of their second year at the school they set up a Finsta instagram account for students who had stories to tell about their experiences with the teachers and administrators at the school. Students could request the password to post on their own. They called the account @shameateacher. At first, most of the stories were from students who had complaints about teachers who they thought had treated them unfairly and had the usual concerns about too much homework and class work that was too difficult.

At some point students started posting photos of teachers in embarrassing or awkward positions and this gave Leah and Jared an idea they thought was very funny. They had a long-standing dislike of the school's Vice-Principal Ms. Cullen. They thought she was too strict, mean, and generally weird. Jared was good at using Photoshop so they decided to Photoshop a photo of Ms. Cullen coming out of the boys' washroom and post it on the Finsta account.

Below the post, Leah wrote a story in which she said that she had seen Ms. Cullen frequently coming out of the boys' washroom and that she went in there to hide in a cubicle and spy on the boys. Leah said this was proof that Ms. Cullen had some kind of a problem and was a sexual predator.



It was not long until the photo of Ms. Cullen coming out of the boys' washroom along with Leah's claim that she was a sexual predator was all over the school and had in fact spread to other schools in the district as more and more students followed the Finsta account Leah and Jared had created. They thought it was the funniest thing they had ever done and couldn't get over how hilarious they both were.

The fun ended a few days later when they were called to the principal's office and asked to explain the Instagram trick they had played on Ms.Cullen. They denied involvement, pointing out to the principal that their names were nowhere on the posting and they didn't know who was responsible. When creating the account, Jared and Leah made sure to remain anonymous by making the login information under a pseudonym, in order to avoid having their names show up. In other words, the principal had no proof.

The principal replied that there was proof since several students had confirmed to her that Leah and Jared were responsible for starting the account. Leah and Jared claimed they were being set up by school mates who had a grudge against them.

The principal then said that the fact that they had set up the Instagram account made them partly responsible for what appeared on the account's feed whether or not they actually posted the material.

The Story

They disagreed saying there was no way they could control all the postings to the feed. Anyway, they claimed, whatever went on the Finsta account wall was only done as a joke between friends on Instagram. They are not trying to spread rumours or ruin a person's reputation or anything like that.

What they were doing was really just free speech and they are only having a bit of fun. The principal claimed however that Instagram is more than a group of friends "just talking" as it is widely available and many people can see what is on Finsta account pages. Their account on Instagram had become a form of bullying and harassment.

Finally, the principal said that she trusted the word of the witnesses who claimed Leah and Jared were responsible and as a result she was suspending them from school indefinitely and they would have to go before the school board to be re-admitted to this or any other school in the district. She went on to explain that if they were a few years older and were considered in law as adults, Ms. Cullen could take them to court and sue them for libel.

So, what if Ms. Cullen did take Leah and Jared to court and sue them for libel? Would they be liable or would all of this just be considered a harmless joke? What would Ms. Cullen and her lawyers have to do to be successful? How can Leah and Jared defend themselves? If they are found liable, what could happen to them?



Student Handout 2 – What is Libel?

What is Libel?

This definition of libel is over 150 years old and is still considered the “classic” definition.

“A publication, without justification, which is calculated to injure the reputation of another person by exposing them to hatred, contempt or ridicule.” (*Parke, B. in Parmiter v. Coupland (1840) GM&W 105 at 108*)

Explanation:

In this definition, “publication” means the printing and distribution of an untrue statement. Libel has always involved some sort of permanent or lasting record that can be seen by many people. It is different from, and more serious than, slander which is usually only a spoken statement and therefore not as “permanent.” Statements made on the internet (e.g. Instagram) are considered “permanent” or a “publication.”

Libel is saying something in a print (or online) form that the person making the statement knows is not true and is a statement that could cause the victim (in this case Ms. Cullen) real harm.

If a person is found liable of libel, what can happen to them?

In Canada, people who are found liable of libel are ordered by the court to pay “damages” to the person they libeled. “Damages” are a specific amount of money decided by the judge. In a case such as this one, an amount of \$40,000 would not be unusual. This means Leah and Jared, if the jury finds them liable, would have to pay Ms. Cullen that amount immediately.

Courts in Canada are taking cyber libel very seriously mainly because of the possibility of so many people seeing untrue (libelous) statements on the internet.

In addition, a court can order other punishment such as prohibiting Leah and Jared from using Instagram or other similar social media.

Role Card – The Plaintiff: Ms. Cullen

As Ms. Cullen you are claiming that your reputation as an educator (as a vice-principal Ms. Cullen is a licensed teacher) has been damaged by the actions of Leah and Jared. This is a serious matter because as a vice principal you are hoping to eventually become promoted to school principal.

Your complaint alleges that what Leah and Jared did in posting the photo of you and claiming you were a sexual predator was libel because for a person working as an administrator in a school, any suggestion of sexual misconduct is very damaging. You believe that unlike most other professions or occupations teachers, principals and vice-principals are very seriously affected by any suggestion of sexual misconduct.

You will also argue that Leah and Jared have ridiculed you and caused you significant embarrassment. As a vice-principal, this is serious and has actually harmed you because it has made it more difficult for you to do your job. It is vital that you have the respect of students in the school and the actions of Leah and Jared have damaged that respect. You believe you are entitled to some damages as a result of this embarrassment.

To prepare for the trial, you should:

1. Be able to describe what your job as a vice-principal involves. You will want to make the point that you are responsible for student discipline and this can affect how some students feel about you.
2. Explain why you feel your reputation has been damaged by the posting of the picture on Instagram and the claim you are a sexual predator. (In other words why, from your point of view, this is not simply a “joke.”)
3. Explain how your ability to do your job has been affected by the actions of Leah and Jared.

Role Card – Lawyers for Ms. Cullen

You are trying to show the court that Ms. Cullen has been libeled by the actions of Leah and Jared in their Instagram posting. To do this you must convince the jury that Ms. Cullen has been harmed by them. This means showing that her reputation has been damaged and that her goal of becoming a school principal could have been affected in a negative way. Remember you have to show more than that her feelings have been hurt. Also, you have to show that as a subject of ridicule Ms. Cullen's ability to do her job has been negatively affected.

To prepare for the trial, you should:

1. Make sure you understand what is considered libel in Canada.
2. Prepare a brief (one page) written opening statement in which you explain to the judge and jury what Ms. Cullen is alleging (libel) and why. This means you have to briefly explain the law against libel and how Leah and Jared have broken it.
3. Review the role cards for the witnesses and prepare a few questions for each of the witnesses, both those for Ms. Cullen (Scratchy Cummings, Mona Insta, and Ms. Cullen herself) and those for the defense, Leah and Jared. When you are preparing your questions remember to stay focused on your objective of showing that Mrs. Cullen has been libeled. Also, you should read over the role cards for each of the witnesses. The information on the role cards will help you make up questions (See information sheet for lawyers on suggestions for witness questions.)
4. At the end of the trial you will have to give a brief summary statement to the jury that reviews the case you have made and restates why Ms. Cullen has been libeled.

Role Card – Witness for Ms. Cullen: Ms. Volturi (Principal of the school)

As a witness, you will be sworn in by the judge and told that you must tell the truth. This is serious because, if you lie to the court, you can be charged with perjury (lying in court) and can be fined or even sent to jail. If you don't know an answer you should say you don't know. Don't make up answers. If you do know the answer you must say it. It would be perjury to say you don't know when you in fact do.

In your role as Ms. Volturi, the school principal, this is what you know:

1. Ms. Cullen has worked at the school for 5 years and has never had any problems and certainly nothing has happened that even hints she is a sexual predator.
2. There has never been a report of her going into a boy's washroom.
3. As school vice-principal, she spends a lot of time in the hallways and may enter the girls' washroom, but if she had some reason to see what was going on in a boys' washroom she would get a male staff member and has in fact done this on occasion.
4. She has told you she would like to be a school principal in the near future. You believe it is possible, because she is in a position of responsibility with youth, the rumours caused by the Instagram posting could harm her reputation.
5. You know that teachers being falsely accused of sexual misbehaviour can be very serious. You worked in another school district where a falsely accused teacher resigned from his position even though he was not guilty. The embarrassment and whispering was more than he could handle.

Role Card – Witness for Ms. Cullen: Scratchy Cummings (Grade 8 student)

As a witness, you will be sworn in by the judge and told that you must tell the truth. This is serious because, if you lie to the court, you can be charged with perjury (lying in court) and can be fined or even sent to jail. If you don't know an answer you should say you don't know. Don't make up answers. If you do know the answer you must say it. It would be perjury to say you don't know when you in fact do.

In your role as Scratchy Cummings, this is what you know:

1. You frequently use the washroom Ms. Cullen is pictured exiting.
2. Even though you are frequently in the washroom you have never seen Ms. Cullen in there, although you have often seen her near it.
3. You have never heard of the @shameateacher Insta account.
4. If you saw the Instagram post of Ms. Cullen, you would think it was a joke.
5. You know students are now making fun of Ms. Cullen because of the photo.

Role Card – Witness for Ms. Cullen: Mona Insta (Grade 7 student)

As a witness, you will be sworn in by the judge and told that you must tell the truth. This is serious because, if you lie to the court, you can be charged with perjury (lying in court) and can be fined or even sent to jail. If you don't know an answer you should say you don't know. Don't make up answers. If you do know the answer you must say it. It would be perjury to say you don't know when you in fact do.

In your role as Mona Insta, this is what you know:

1. You were one of the first students to join the @shameateacher Finsta account.
2. You have posted embarrassing pictures of teachers on the feed. You took these pictures with your cell phone.
3. You don't know who posted the picture of Ms. Cullen. All you know is it wasn't you.
4. Other students have told you it was Leah and Jared that did the posting, but you don't know for sure.
5. You thought the Finsta account was not "private" because new people were on it all the time. You knew Leah and Jared thought it was "private" because they kept saying that, but they obviously didn't know what a real "private" Finsta account was.
6. When you saw the posting you thought it was going too far and didn't find it very funny. You knew it could cause Ms. Cullen serious problems.
7. You know students are now making fun of Ms. Cullen because of this incident.

Role Card – Ms. Cullen (Witness in her own claim)

As a witness, you will be sworn in by the judge and told that you must tell the truth. This is serious because, if you lie to the court, you can be charged with perjury (lying in court) and can be fined or even sent to jail. If you don't know an answer you should say you don't know. Don't make up answers. If you do know the answer you must say it. It would be perjury to say you don't know when you in fact do.

In your role as Ms. Cullen, this is what you know:

1. As vice-principal, it is one of your jobs to maintain student discipline. This means you are usually in the hallways during breaks and class changes. The washrooms are always a potential trouble spot and you do keep an eye on them. You will enter the girls' washroom but have never gone into a boys' washroom. If need be, you get a male staff member to do that.
2. You have never been accused of anything improper, let alone the claim you are a sexual predator. Leah's story about you hiding in washroom cubicles is completely untrue.
3. As far as you are concerned this is not a joke. Your reputation has been harmed and your future possibilities for promotion may have been affected in a bad way.
4. Since the incident you have seen students laughing at you and you have heard them call you "pervert" and "weirdo" behind your back.

Role Card – Lawyers for Leah and Jared

As lawyers for Leah and Jared your main objective is to show that Ms. Cullen’s claim against them is exaggerated or unreasonable and that she has not experienced serious harm as a result. Also, you have to make sure Leah and Jared tell the truth. This means once they are under oath they cannot say, as they did to the Principal, that they had nothing to do with the Instagram posting. You have to instruct them to admit they did it, but ask them questions that will show the jury that they did not intend to cause Ms. Cullen serious harm.

To prepare for the trial, you should:

1. Make sure you understand what is considered libel in Canada.
2. Prepare an opening statement in which you tell the jury what you plan to do in the case. That is, you are going to show that Leah and Jared have not committed libel and that Ms. Cullen’s claim that they have is not reasonable and is based on exaggerations.
3. Prepare questions for the witnesses, both those for Ms. Cullen (Scratchy Cummings, Ms. Volturi, and Mona Insta) and for Leah and Jared (Jock Barbell, Nosy Parker, and Amy Friendless). Also, you should carefully read over the role cards for each witness. The information on the role cards will help you make up questions. See the information sheet for lawyers on suggestions for questions of witnesses.
4. At the end of the trial you will have to give a summary statement to the jury reviewing your case and showing that Ms. Cullen’s claim is not reasonable and she has not therefore been libeled.

Role Card – Witness for Leah and Jared: Jock Barbell (Teacher on the school staff)

As a witness, you will be sworn in by the judge and told that you must tell the truth. This is serious because, if you lie to the court, you can be charged with perjury (lying in court) and can be fined or even sent to jail. If you don’t know an answer you should say you don’t know. Don’t make up answers. If you do know the answer you must say it. It would be perjury to say you don’t know when you in fact do.

In your role as Jock Barbell, this is what you know:

1. You have been a teacher in the school for 25 years. You have known Ms. Cullen for five years.
2. You think she is a good vice-principal and that she would be a good school principal.
3. You were not aware of the Instagram page even though there are several embarrassing pictures of you on it. You only became aware of the Finsta account after the incident with Ms. Cullen.
4. You don’t like the photos of you, but are not that upset. This is just typical middle school student behaviour.
5. The Instagram incident with Ms.Cullen has not affected your opinion of her. You know it is not true and is just student foolishness.
6. You think Ms. Cullen is taking it all too seriously and she should chill out.

Role Card – Witness for Leah and Jared: Nosy Parker (Grade 7 student)

As a witness, you will be sworn in by the judge and told that you must tell the truth. This is serious because, if you lie to the court, you can be charged with perjury (lying in court) and can be fined or even sent to jail. If you don't know an answer you should say you don't know. Don't make up answers. If you do know the answer you must say it. It would be perjury to say you don't know when you in fact do.

In your role as Nosy Parker, this is what you know:

1. You joined the @shameateacher Finsta account when it started.
2. You didn't think very many students were involved, but don't know how many exactly. When you saw the photo of Ms. Cullen you were pretty sure (but not positive) that it was a fake.
3. The photo of her leaving the boys' washroom and the story that she was a sexual predator did not affect your opinion of her. You didn't like her before and you still don't. Even if she didn't go into the washroom she's still weird.
4. You don't know how the photo has affected how students feel about Ms. Cullen. She wasn't popular before and now students who don't like her have another reason to laugh at her, but they would have done that without the photo.

Role Card – Witness for Leah and Jared: Amy Friendless (Grade 9 student)

As a witness, you will be sworn in by the judge and told that you must tell the truth. This is serious because, if you lie to the court, you can be charged with perjury (lying in court) and can be fined or even sent to jail. If you don't know an answer you should say you don't know. Don't make up answers. If you do know the answer you must say it. It would be perjury to say you don't know when you in fact do.

In your role as Amy Friendless, this is what you know:

1. You joined the @shameateacher Finsta account when it started.
2. You have never posted anything on its feed, but you look at it regularly.
3. When you saw the photo and read the story about Ms. Cullen being a sexual predator, you knew right away that it was a joke even though the photo looked real to you.
4. Your opinion of Ms. Cullen has not changed, but you do laugh when you see her now in the hallways especially if she is near the boys' washroom.
5. In your opinion, no one takes Instagram postings seriously, except stressed out adults who have no clue what kids are really thinking.
6. You don't know what other students are thinking about Ms. Cullen. You don't really talk to anyone.

Role Card – Leah and Jared (Witnesses in her own defense)

Note: Leah and Jared should have different roles. Leah can make the case that they were really just exercising free speech and were unaware of the privacy issue or that their site was not private. Jared can present their position that it was intended as a joke and they were not trying to do serious harm to Ms. Cullen or jeopardize her future.

As Leah and Jared, it is important to know that now that you are before a court, you are obliged to tell the truth. This means you can no longer stick to the story you told the Principal when you denied having anything to do with the photo and story about Ms. Cullen. You have now admitted you did it and your lawyers are only trying to show that it was not libel because Ms. Cullen was not seriously harmed. As witnesses in your own defense, you have to be careful to accept responsibility but also present yourselves in a way that shows the jury you did not actually intend to harm Ms. Cullen.

As witnesses in your defense, this is what you know:

5. The Finsta account was quite popular with around 800 students involved.
6. You don't like Ms. Cullen but you would not want to "destroy her future." You were only trying to embarrass her a little in front of her friends.
7. You thought the Finsta account was "private," but now you realize you didn't know what that meant. You now know many people may have seen the posting, but since you didn't know at the time that it was not private you believe it was not your fault.
8. When asked about why you created the @shameateacher Finsta account, you answer that you thought it was important for students to be able to express their opinions about school and teachers. If it got out of control it wasn't really your fault. You were just giving people freedom of speech.
9. You didn't shut down the space when people started posting embarrassing pictures of teachers and comments about them because you thought it was just a joke and everyone knew it was a joke. It was supposed to be funny.

Information for Ms. Cullen's lawyers

Ms. Cullen could claim:

- Even if it is a joke, the description of her as a sexual predator could affect her reputation enough that her future job prospects could be affected. As a person working in schools, she is especially affected by a claim that she preys on children in a sexual manner.
- The posting ridicules Ms. Cullen and could make it more difficult for her to work as a vice-principal. (This is what is meant by “real harm.” Libel is more than having feelings hurt. It has to do harm to a person’s reputation.)

Questioning the witnesses:

You will be questioning two sets of witnesses, those you call who are witnesses for Ms. Cullen and those the other side’s lawyers call for Leah and Jared. It is important to stay focused on your main concern, you are trying to show that Ms. Cullen has been libeled because real harm has been done to her reputation and as a result may suffer real damages such as a loss of income because she cannot get promoted to Principal.

In doing this, your questions should focus on the following:

- You must first establish that the story about Ms. Cullen being a sexual predator is not true. This will not be difficult because Leah and Jared are going to admit they made it up.
- Your questions of your witnesses (Ms. Volturi, Scratchy Cummings and Mona Insta) should try to get the witnesses to say that Ms. Cullen is now being ridiculed as a result of the posting and that her future job prospects have been harmed. (Ms. Volturi is your best witness on her job prospects.)
- Your cross-examination of the witnesses for Leah and Jared (Jock Barbell, Nosy Parker and Amy Friendless) should also try to get them to admit to the possibility that Ms. Cullen’s reputation has been harmed. None of these witnesses say their view of her has changed, but you want them to say it is possible her reputation has been harmed in the eyes of others.
- Your questions for Ms. Cullen should be about her plan to be a principal, what has happened to her since the posting, such as being openly ridiculed by students.
- You could ask Ms. Volturi to describe her experience in another school district with a falsely accused teacher.
- Do not give the impression this is only about her feelings being hurt. (Hurt feelings are not libel.)
- Your questions for Leah and Jared are mainly trying to show that many people could have seen the posting. The Finsta account was not “private.” It is important to show that Ms. Cullen has been harmed and therefore libeled, because the story about her being a sexual predator could have been seen by a significant number of people.

Your summation for the jury:

At the end of the trial, after all the witnesses have been questioned you must summarize your case for the jury. In your summary, you should pay attention to the following points:

- The story about Ms. Cullen being a sexual predator was not true and Leah and Jared knew it was not true.
- Emphasize that, because Ms. Cullen works in a school with young people, the suggestion she is a sexual predator is very serious, much more serious than if she were working in other jobs.
- There is evidence (such as from students ridiculing her) that her reputation has been harmed.
- Leah and Jared have no way of knowing for certain how many people saw the posting. This is one reason why what they did is libel, many people including senior school district staff who are in a position to promote or demote Ms. Cullen could have seen this story because it was on the internet.
- She has been harmed because her goal to become a school principal could easily have been negatively affected as it has been for other teachers who have had false charges made against them.
- Telling false stories about people on the internet is not a joke. It is libel. Freedom of speech does not mean you can say whatever you want, especially if it involves libeling someone by spreading false stories about them through the internet.

Information for the lawyers for Leah and Jared

As the lawyers for Leah and Jared you must show the jury that Ms. Cullen's claim of being harmed by the Instagram posting is exaggerated, because no reasonable person would believe she is a sexual predator. Your questions to the witnesses should focus on these points:

- "Jokes" such as the one they have pulled on Ms. Cullen are so common on the internet that no "reasonable" person would actually believe she hides in the boys' washroom spying and is a sexual predator.
- Even though Leah and Jared did not know what "private" meant, it is highly unlikely very many people saw the posting and therefore it was not libel.
- Freedom of speech is important. Leah and Jared thought they were carrying on free speech. People should not be punished (charged with libel) when they are really only trying to promote free speech.

Questioning the witnesses:

You will be questioning two sets of witnesses, those you call for Leah and Jared and the witnesses the other side call for Ms. Cullen. It is important to stay focused on your main concern which is to show that libel has not been committed because Ms. Cullen has not been seriously harmed. Her claim is exaggerated. No one could reasonably believe she is a sexual predator.

In doing this, your questions should focus on the following:

Your questions of your witnesses (Jock Barbell, Nosy Parker and Amy Friendless) should focus on the fact that not one of them believed the Instagram story about Ms. Cullen being a sexual predator and that they didn't believe anyone really did. It was well known that this was a joke.

- You should also ask questions that show opinions of Ms. Cullen have not changed as a result of the incident.
- You should ask Leah and Jared questions that will give them a chance to explain how they felt that the Finsta account was really about freedom of speech and the right to an opinion.
- Jock Barbell should be asked if he thinks Ms. Cullen's chances of being a principal have been harmed. (Since he is your witness, he would be expected to say "no".)
- When you are questioning witnesses for the other side, especially Ms. Cullen and Ms. Volturi, you should focus on how certain they can be that Ms. Cullen's reputation has been harmed and her work has been made more difficult. Emphasize that it seems well known the whole thing was a joke. Also ask them about "student behaviour" and if they agree that such a Instagram posting by students is not unusual and students know they are just jokes.

Your summation for the jury:

At the end of the trial, after all the witnesses have been questioned you must summarize your case for the jury. In your summary, you should pay attention to the following points:

- A key point is that Leah and Jared said they were not trying to ruin Ms. Cullen's reputation. They believed it was a joke only a few people would see.
- Ms. Cullen had a good reputation as a vice-principal. It is obvious to any reasonable person that the Instagram posting was not true and was intended to be a joke.
- It is important to uphold freedom of speech. Even if this was a cruel joke, it was only a joke and it should not be a reason to limit what people can say.
- It is clear (from your witnesses) that not that many people would have seen the posting therefore not that much harm could have been done to Ms. Cullen's reputation.
- The account was for students not adults and students have a different idea as to what is appropriate on- line behaviour.

Information for the jury

You must decide, on the basis of what you hear in the trial, if Ms. Cullen has been libeled. That is, has her reputation been harmed (or “injured” as in the definition) because the action of Leah and Jared has made her the subject of ridicule?

In reaching a decision (i.e., your “deliberation”) you will have to consider:

- The “reasonableness” of Ms. Cullen’s claim that her reputation has been harmed and her work has become more difficult due to the actions of Leah and Jared.
- Whether or not you believe Leah and Jared when they say they did not intend to harm Ms. Cullen.
- The likelihood that Ms. Cullen’s prospects for the future, such as becoming a school principal, have been harmed.
- Whether or not putting the story on Instagram is “free speech.”

You cannot make your decision until you have heard all of the witnesses and the judge has given you “instructions.” When the trial is over and the judge has spoken you will meet as a jury to make a decision. If you decide,

- . a) Ms. Cullen’s claim is reasonable and there has been real harm to her reputation;
- . b) Leah and Jared did intend to harm her;
- . c) Ms. Cullen’s hopes of being a principal could be harmed; and
- . d) Using the internet to spread a false story is not “free speech,”

then Leah and Jared are liable for libeling Ms. Cullen and as a jury you will award “damages” to Ms. Cullen. The judge will instruct you on what these damages can be.

If you find that some of the considerations are true but not others, you can still find them liable, but the damages would probably be less.

If you decide her claim is not reasonable, Leah and Jared did not intend to harm her and there is no real harm to Ms. Cullen’s reputation, then Leah and Jared are not liable and Ms. Cullen’s complaint of libel is dismissed.

Information for the judge

As suggested in the introduction it is advisable that the teacher or some other adult serve as the judge. The judge's role does involve duties that will determine how effective the learning experience will be. These duties are:

- Maintaining order in the court. This includes insuring the lawyers' questions are appropriate and ruling them out of order if they are not.
- Instructing the witnesses (swearing them in) on the importance of telling the truth.
- Instructing the jury at the end of the lawyers' statements on what they must do to reach a decision and making sure they understand the law regarding libel as explained in the student handout.
- The jury should also be advised on awarding damages. In Canada damages in civil trials are based on similar cases held in the past (precedents). Typically, in a case such as this one, if there is a finding of liability, the punishment could be damages of around \$40,000. In this case, another or additional punishment could be a court order to prohibit the guilty party from using social media on the internet for a certain period of time.
- Since this is a mock trial with a desired learning outcome of having students understand libel, the consequences of committing libel and the dangers of using electronic media to spread untruths about a person, the judge (teacher) should at the end of the exercise emphasize those points regardless of the jury's decision.
- It is important that there be a debriefing session after the mock trial, to further address the issues that surfaced, such as what persuaded the jury to make the decision that they did, what other evidence might have been helpful to know when making the decision, what questions this case raises around the issues of on-line social networking, cyber-bullying, etc., what the students learned from this activity, what questions they would like to pursue further, etc.
- Discuss what students learned by participating in the learning strategy of a mock trial; that is, was it helpful to examine different perspectives on the issue, did students gain empathy for the different players involved in the case, how did they feel playing the role they did, is there something they would have done differently to strengthen their case, etc.

Suggestions for Debriefing the Mock Trial

- 1) Students write a brief description in their own words of what they understand libel to be.
- 2) Students make up a story or scenario which would demonstrate libel.
- 3) Students write a brief explanation of how libel can be so easily committed on social media sites and other forms of electronic messaging.
- 4) Students write a commentary on the trial answering the questions:
 - a. Was the verdict the right one? How so?
 - b. Was the trial fair to Leah and Jared? Why or why not?
 - c. Was the trial fair to Ms. Cullen? Why or why not?
 - d. How has the mock trial affected you? What was the main lesson you have learned from it?