PRELIMINARY, MID-TRIAL AND FINAL INSTRUCTIONS

I - PRELIMINARY INSTRUCTIONS.

9. General Principles

9.1 Presumption of Innocence

(Last revised February 2004)

[1] Every person charged with an offence (or, *NOA*) is presumed to be innocent, unless and until the Crown has proved his/her guilt beyond a reasonable doubt.

[2] The indictment tells you and *NOA* what offence the Crown alleges against *NOA*. The charge is not evidence. It is not proof of guilt.

[3] The presumption of innocence lasts throughout the trial. This presumption only ceases to apply if, at the end of the case and on the whole of the evidence, the Crown has proved beyond a reasonable doubt that *NOA* is guilty of the crime charged.

9.2 Burden of Proof[1]

(Last revised February 2004)

[1] The person charged (or, *NOA*) does not have to present evidence or prove anything in this case, in particular, that s/he is innocent of the offence charged.

[2] From start to finish, it is the Crown who must prove the guilt of *NOA* beyond a reasonable doubt. You must find *NOA* not guilty of the (an)[2] offence unless the Crown proves beyond a reasonable doubt that he/she is guilty of it.

9.3 Reasonable Doubt[3]
(R. v. Lifchus)

(Last revised February 2004)

[1] The principle of "proof beyond a reasonable doubt" is an essential part of the presumption of innocence.

[2] A reasonable doubt is not a far-fetched or frivolous doubt. It is not a doubt based on sympathy or prejudice. It is a doubt based on reason and common sense. It is a doubt that arises at the end of the case based not only on what the evidence tells you but also on what that evidence does not tell you.

[3] It is not enough for you to believe that *NOA* is probably or likely guilty. In those circumstances, you must find him/her not guilty, because the Crown would have failed to prove his/her guilt beyond a reasonable doubt. Proof of probable or likely guilt is not proof of guilt beyond a reasonable doubt.

[4] You should also remember, however, that it is nearly impossible to prove anything with absolute certainty. The Crown is not required to do so. Absolute certainty is a standard of proof that does not exist in law.

[5] If, at the end of the case, and after an assessment of all of the evidence, you are not sure that *NOA* committed the (an) offence, you must find him/her not guilty.

[6] If, at the end of the case, based on all of the evidence, you are sure that *NOA* committed the (an)[4] offence, you should find *NOA* guilty.

9.4 Assessment of Evidence

(Last revised February 2004)

[1] To make your decision, you should consider carefully, and with an open mind, all the evidence presented during the trial. It will be up to you to decide how much or little of the testimony of any witness you will believe or rely on. You may believe some, none or all of the evidence given by a witness.

[2] When you go to the jury room to consider the case, use your collective common sense to decide whether the witnesses know what they are talking about and whether they are telling the truth. There is no magic formula for deciding how much or how little to believe of a witness's testimony or how much to rely on it in deciding this case. But here are a few questions you might keep in mind during your discussions.

[3] Did the witness seem honest? Is there any reason why the witness would not be telling the truth?

[4] Did the witness have an interest in the outcome of the case, or any reason to give evidence that is more favourable to one side than to the other?

[5] Was the witness in a position to make accurate and complete observations about the event? Did s/he have a good opportunity to do so? What were the circumstances in which the observation was made? What was the condition of the witness? Was the event itself unusual or routine?

[6] Did the witness seem to have a good memory? Does the witness have any reason to remember the things about which s/he testified? Did any inability or difficulty that the witness had in remembering events seem genuine, or did it seem made up as an excuse to avoid answering questions?

[7][5] Did the witness seem to be reporting to you what he or she saw or heard, or simply putting together an account based on information obtained from other sources, rather than personal observation?

[8] Did the witness's testimony seem reasonable and consistent? Is it similar to or different from what other witnesses said about the same events? Did the witness say or do something different on an earlier occasion?

[9] Do any inconsistencies in the witness's evidence make the main points of the testimony more or less believable and reliable? Is the inconsistency about something important, or a minor detail? Does it seem like an honest mistake? Is it a deliberate lie? Is the inconsistency because the witness said something different, or because s/he failed to mention something? Is there any explanation for it? Does the explanation make sense?

[10] What was the witness's manner when he or she testified? Do not jump to conclusions, however, based entirely on how a witness has testified. Looks can be deceiving. Giving evidence in a trial is not a common experience for many witnesses. People react and appear differently. Witnesses come from different backgrounds. They have different abilities, values and life experiences. There are simply too many variables to make the manner in which a witness testifies the only or most important factor in your decision.[6]

[11] These are only some of the factors that you might keep in mind when you go to your jury room to make your decision. These factors might help you decide how much or little of a witness's evidence you will believe or rely on. You may consider other factors as well.

[12] In making your decision, do not consider only the testimony of the witnesses. Take into account, as well, any exhibits that have been filed and decide how much or little you will rely on them to help you decide this case. I will be telling (or, have already told) you about how you use admissions in making your decision.

9.5 Numbers of Witnesses

(Last revised February 2004)

[1] How much or little of the evidence of the witnesses you will believe or rely on does not depend on the number of witnesses who testify for one side or the other.

[2] Your duty is to consider all of the evidence. You may decide that the testimony of fewer witnesses is more reliable than the evidence of a larger number. It is up to you to decide.

[3] Your task is to consider carefully the testimony of each witness. Decide how much or little you believe of what each witness has said. Do not decide the case simply by counting witnesses.

9.6 Testimony of Person Charged (The W. (D.) Instruction)[7]

(Last revised March 2007)

[1] If you believe the testimony of *NOA* that s/he did not commit the offence charged, you must find him/her not guilty.

[2] Even if you do not believe the testimony of *NOA*, if it leaves you with a reasonable doubt about his/her guilt (or, about an essential element of the offence charged (or, an

offence)), you must find him/her not guilty (of that offence).

[3] If you don't know whom to believe, it means you have a reasonable doubt and you must find *NOA* not guilty.[8]

[4] Even if the testimony of *NOA* does not raise a reasonable doubt about his/her guilt, (or, about an essential element of the offence charged (or, an offence)), if after considering all the evidence you are not satisfied beyond a reasonable doubt of his guilt, you must acquit.

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[1] This instruction will require modification where the burden of proof is reversed, as for example, where the accused denies criminal responsibility on account of mental disorder.

[2] The word "an" should be used in paragraph [2] where included offences will be left to the jury.

[3] This instruction will require modification where the burden of proof is reversed as, for example, where the accused denies criminal responsibility on account of mental disorder. The substantive offence instructions make it clear that proof beyond a reasonable doubt relates only to the essential elements of the crime charged or being considered. Some judges may wish to emphasize this in the instructions about reasonable doubt. The following may be added, for example, in [2]:

"It is a doubt about an essential element of the (an) offence (charged)."

or, in [4]:

"What the Crown must prove beyond a reasonable doubt are the essential elements of the (an) offence, as I shall define them for you."

[4] The word "an" should be used in paragraph [6] where included offences will be left to the jury.

[5] Paragraph [7] is directed at witnesses who may have put their testimony together, or embellished their account from outside sources, such as media accounts or other sources. It may require modification where the source is records whose accuracy, and the propriety of consulting them, is not in issue.

[6] Where a witness is testifying through an interpreter, this instruction may be expanded to point out the particular difficulties in assessing such a witness's testimony.

[7] *R. v. W. (D)*, [1991] 1 S.C.R. 742. This instruction is appropriate where the evidence of the accused, or a statement introduced by Crown counsel, constitutes a complete defence to the offence charged.

[8] This instruction is appropriate in "he said/she said" cases.