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2021 Asia Access to Justice Week CLE Mock Pre-Trial Hearing Event **Packet-Revised**

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Introduction to the BABSEACLE Annual Asia Regional CLE Pre-Trial Hearing Event Packet

The following 2021 CLE Mock Pre-Trial Hearing Event Packet is to be used in preparation for, and to participate in, the Annual Asia Regional CLE Mock Trial Event which will be held virtually during 27-28 November and 4 December. This event is a part of the BABSEACLE Annual Access to Justice Week.

The Annual Asia Regional CLE Mock Pre-Trial Hearing is a practical learning experience in which students simulate the practices occurring in a court in a hypothetical jurisdiction. As such, the structure used for the Asia Regional CLE Mock Trial Event will not strictly adhere to a specific country's local procedure, but rather a set of regional and global combined procedures which demonstrate strong Rule of Law, Fair Trial, Access to Justice and Legal Ethic practices.

The annual event involves a mix of Bachelor of Law students who participate from throughout the Asia region, all gathering, learning and working together. Many others also participate, including various members from the Justice Sector.

This case packet will be the same case that is used for the 2021 Asia Regional CLE Mock Trial and therefore should be used by students to prepare and train, so they can more effectively participate in this annual event.

Even if a person is not planning to attend the Regional CLE Mock Trial Event, the Asia Regional CLE Mock Pre-Trial Hearing Packet is also a very useful training resource. We therefore encourage persons to review this packet and use it in ways that will help them become stronger, legal and access to justice advocates.

What is a Pre-Trial Motion and a Pre-Trial Hearing?

Pre-Trial Motions

In the justice system, a case is often decided before the actual trial. A pre-trial motion is simply an application to the Court to hear an argument about an issue before the hearing itself commences. Specifically, advocates can file pre-trial motions in order to exclude evidence from being used during the trial. In criminal trials, pre-trial motions can be filed by prosecutors and/or defence advocates; in civil trials, these motions can be filed by plaintiff advocates and/or defence advocates. There can be many legal reasons why some type of evidence should not be allowed to be used during a trial. The ability to file a pre-trial motion, and have a Court

decide before the actual trial whether some evidence can be used at trial, is a core part of ensuring a fair trial.

Pre-Trial Hearing and Motions to Exclude Evidence

A Pre-Trial Hearing is not the trial itself. It is a hearing where a Court is asked to make a decision on some legal or factual issue before a case goes to trial. Many times at a Pre-Trial Hearing, a Court will hear arguments from prosecutors and defence advocates as to why evidence should, or should not, be allowed to be used at trial. Often during a Pre-Trial Hearing, advocates and prosecutors call witnesses and provide the Court with other type of evidence in order to try to convince the Court that certain evidence should, or should not, be allowed to be used at trial. Prior to a Pre-Trial Hearing being held, advocates and prosecutors file a pre-trial motion asking the Court to either allow or exclude certain type of evidence. If a advocate or prosecutor wants the Court to exclude certain types of evidence, they usually file what is called a Motion to Exclude Evidence.

This case packet contains a Motion to Exclude Evidence that was filed by the Defence advocate in the case of *Zaltanu Public Prosecutions v Eltra Parker*. The motion was filed by the Defence advocate requesting the Court to exclude certain types of evidence from being introduced during the actual trial. Because the Defence filed a Motion to Exclude Evidence, it is now necessary for the Court to have a Pre-Trial Hearing to make a ruling on the motion. This Pre-Trial Hearing takes place before the trial. However, the purpose of the Pre-Trial Hearing is not to decide if the accused in this case, Eltra Parker, is guilty or not guilty of the criminal charges. The only purpose of the Pre-Trial Hearing is to decide whether the evidence that is the subject of the motion can be introduced, or should be excluded, from trial.

During the Pre-Trial Hearing, both the Prosecution and the Defence advocates will try to convince the Court, through both witnesses and documents, that evidence should, or should not, be excluded during the trial. The Prosecution will try to convince the Court that the evidence should be allowed to be used at trial, and the Defence advocates will try to convince the Court the evidence should not be allowed to be used.

Motions to Exclude and Burden of Proof

Even though the Defence Advocate files a Motion to Exclude the burden is on the Prosecution to prove that evidence it wants to admit during the trial was collected in a legal and proper manner. Unlike a criminal trial, where the burden is on the Prosecution to prove an accused is guilty beyond a reasonable doubt, in a Pre-Trial hearing on a Motion to Exclude evidence, the Prosecution's burden of proof to prove the evidence was obtained legally and properly is by a preponderance of evidence, or also known as a balance of probabilities. Under the **preponderance** or **balance of probabilities** standard, the burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true. This standard of proof requires proof beyond a reasonable degree of probability. This proof would allow the Court to say it thinks that some is "more probable than not".

This standard is much lower than what is required to prove a person guilty at trial, which is proof beyond a reasonable doubt.

Zaltanu Public Prosecutions

v

Eltra Parker

1.0 Scenario

1.1 Statement of Facts

1. Eltra Parker is a 28-year-old transgendered person, who was born in the State of Zaltanu. For the past year, Eltra has been working part-time as a delivery driver for PDP, a courier company, whilst studying Chemical Engineering full-time. Eltra comes from a rich background and is very private about his/her sexuality, even to the point of keeping it a secret from his/her family.
2. Eltra has been in a relationship with Daine Carriér for the past two years. Daine is 24 years old, unemployed and loves to party. Daine has one prior conviction for possession of a dangerous drug.
3. As a delivery driver, Eltra is responsible for collecting and delivering various packages. For some deliveries, payment is required upon delivery. Eltra uses his/her own car for the deliveries, but he/she is required to wear a company uniform with PDP's logo.
4. PDP has been under police watch because the police department were suspicious that there were connections to the drug trade in Zaltanu.
5. On March 1, 2021, Eltra was on a delivery run. Eltra had plans to go to a party after work with Daine, and as such was eager to complete his/her deliveries as promptly as possible. In order to save time, Daine was helping with the deliveries. On his/her way to his/her third delivery of the day, Eltra was directed by Senior Officer Strait to stop at a police checkpoint on Pacific Avenue at the crossroad of Aster Road.
6. Upon approaching the car, Senior Officer Strait noticed that Eltra appeared to be very nervous and he/she was restlessly playing with his/her pockets. Senior Officer Strait ordered Eltra and Daine to raise their hands and step out of the car. Eltra and Daine then stepped out of the car and stood on the sidewalk. Senior Officer Strait questioned Eltra about the nature of the packages that he/she was transporting, and if he/she was hiding anything. Eltra denied any knowledge of the contents of the car and complained to Senior Officer Strait that he/she was in a rush and the officer was wasting his/her time, stating that someone else at the company loaded them this morning.
7. Senior Officer Strait asked Eltra if he/she could perform a frisk search on him/her. Eltra refused and became aggressive by flailing his/her arms, yelling at the officers that he/she felt uncomfortable. Senior Officer Strait insisted that Eltra and Daine would be released immediately if they did not have anything to hide. Senior Officer Strait then noticed that Eltra was reaching for an object that he could partially see, but was unsure whether it was a stress ball or if it could be a weapon. As a cautionary public safety measure, Senior Officer Strait conducted a frisk pat-down search of both Eltra and Daine against the

car. Whilst the search of Daine found nothing of interest, Senior Officer Strait found a small electronic scale in the inside front pocket of Eltra's jacket. As Eltra was a chemical engineering student, he/she often carried a scale for measurement as he/she normally had lab classes before work.

8. Senior Officer Strait questioned Eltra about where they were going. Senior Officer Strait asked if Eltra had anything illegal in the car. Senior Officer Strait also asked about Eltra's relationship with Daine and how they knew each other and whether Eltra knew Daine had been previously found guilty of dealing drugs. As a result of the search, Officer Strait found various packages held in a crate marked clearly with PDP's branding in the trunk of the car. One of the packages contained an address, but no name. Upon opening the package, the officers found a large baggie containing white powder. This was later confirmed in a laboratory report to be 750g of pure cocaine. The officers also found a black bag with a large amount of money placed next to the crate in the trunk.
9. Officer Strait placed the small electronic scale and package containing the alleged cocaine into a duffel bag which was in the trunk of the police car.
10. Senior Officer Strait then placed Eltra under arrest for drug possession, handcuffed him/her, and directed him/her to a police car. All the while, Eltra was saying: "What are you talking about? I don't do drugs anymore. I don't know what's in those packages. I didn't load the car!"
11. Eltra was later charged with possession of a dangerous drug with intent to sell.
12. After arriving back at the police station, Senior Officer Strait received a phone call from an elderly resident, Bertie Walsh, who said that he/she wished to report suspicious activity in his/her neighborhood. Walsh described his/her earlier sighting of an individual in a PDP uniform carrying suspicious parcels from a residential home and loading them into the trunk of her car. As Eltra denied loading the packages into his/her car, Senior Officer Strait asked Walsh if he/she could come to the police station to confirm the identity of the suspect by way of photo line-up. When Walsh arrived, Senior Officer Strait directed him/her to the police station counter and showed him/her a photo board containing 12 photos of people, only two of whom had blonde hair. One of them was Eltra Parker. Walsh hesitated and appeared doubtful of his/her recollection, but ultimately identified Eltra Parker as the person he/she witnessed loading the parcels into the car as he/she had blonde hair similar to what Walsh recalled from that morning.
13. Following this "photo-lineup" identification, Senior Officer Strait and Officer Momo led Eltra to an interview room, where they questioned him/her about PDP and whether he/she knew of its links to the drug trade. After Eltra didn't answer their questions, Senior Officer Strait decided to question Eltra alone. Senior Officer Strait told him/her that the police were more interested in PDP, and suggested that if he/she knew anything, he/she should cooperate with the police and would then be treated more leniently. Eltra continued to insist he/she knew nothing. He/she insisted that he/she is only responsible for driving the car and delivering the packages, and that he/she has nothing to do

with loading the car or knowing the contents of the packages, as this is organised by other staff of PDP.

14. Officer Strait soon gave up and decided to ask Officer Momo to talk to Eltra alone. Officer Momo took a more aggressive approach, telling Eltra that the police officers believed they had enough evidence to convict and this was his/her last chance to get on their good side by cooperating. Eltra continued to maintain that he/she had done nothing wrong and that he/she did not have knowledge of the contents of the package in his/ her car.
15. Following this questioning, Eltra was returned to a holding cell, began to cry, and said, "What am I going to do? I need to get out of here." He/she kept crying and began pulling at the zipper of his/her jacket. After seeing this take place from the desk in the guard room, Officer Momo was concerned that Eltra may be trying to make a sharp edge by breaking the zipper. He/she was concerned that this may be used to harm his/herself or another person in the holding cell. Accordingly, Officer Momo decided to immediately conduct an unclothed search of Eltra's person.
16. Officer Momo did not inform Eltra of why or how the search was to be conducted. Officer Momo, who was not of the same gender as Eltra, proceeded with the search and instructed Eltra to remove his/her clothing. Eltra requested for someone experienced with transgender persons to conduct the search, but Officer Momo ignored him/her.
17. Lenny Bloom, who is the police station's experienced LGBTI+ Liaison Officer, was on duty at the time of Eltra's search and would have been available to conduct and/or supervise the search had Officer Momo requested it.
18. Whilst no items that could harm anyone were found on Eltra's person as a result of this search, a folded-up note was found in Eltra's waistband that read "Meet me on the rooftop of the party at 7pm" and was signed "Alex Smith". Alex Smith is well known to the Zaltanu Police for dealing drugs in the area.
19. After the unclothed search, Senior Officer Strait and Officer Momo decided to question Eltra again because of the note found on his/her person. By this time, Eltra was tired and very upset about the manner in which he/she was searched. Eventually, when asked questions repeatedly and aggressively, Eltra answered "yes" when asked if he/she knew about the existence of the white powder. Eltra immediately took back this answer, which he/she has since said was given because he/she was tired and scared. However, because Senior Officer Strait and Officer Momo have said that Eltra's answer is a clear admission, the Prosecution intends to admit this statement into evidence during the trial.
20. The Defence Advocate filed a Motion to Exclude Evidence arguing: (1) that Senior Officer Strait did not possess the required "reasonable suspicion" that Eltra was armed and dangerous to conduct a pre-arrest frisk search; (2) that the identification of Eltra as a result of the photo board "line-up" should be excluded on the basis that Senior Officer Strait suggestively influenced the witness's identification; (3) that the evidence found as a result of the unclothed search should be excluded as Officer Momo conducted the search

in an improper manner; and (4) that Eltra's admission to Senior Officer Strait and Officer Momo was obtained by unlawful detainment and interrogation and should thus be excluded.

2.0 Witness Statements/Documents

2.1 Prosecution Witness Statement: Officer Momo

1. My name is Officer Momo. I am 50 years old. I graduated from the Zaltanu Police Academy 29 years ago and as I am approaching retirement. For most of my career, I was assigned to the police station jail.
2. On March 1, 2021, I was on duty at the police station jail. Senior Officer Strait and I brought in two individuals. One was Eltra Parker who was booked into the jail and placed in an interrogation room. The other individual, Daine Carriér, was let go.
3. Senior Officer Strait and I decided to question Parker about the items found in his/her car, the scales found on his/her person and his/her suspected involvement in PDP's connection to the drug trade.
4. Senior Officer Strait and I questioned Parker in the interview room. Parker was hesitant to answer our questions. After some time without any success, we both exited the room. Senior Officer Strait suggested that I allow him/her to question Parker alone as he/she was more experienced in questioning and had the means to have better interaction with him/her and to enable better communication with him/her.
5. Senior Officer Strait later approached me and told me he/she was having no luck with Parker. Senior Officer Strait suggested that I question him/her alone. Senior Officer Strait said his/her attempt at building a rapport was failing, and that I should try a more aggressive approach.
6. I entered the interview room to interview Parker. He/she didn't look particularly stressed or tired at this stage. I asked him/her why he/she wasn't cooperating with Senior Officer Strait and warned him/her that his/her time was running out to cooperate. I told him/her that the amount of cocaine he/she had been found with was enough that we could prosecute him/her for possession with intent to deal, which was going to carry a much heavier sentence, and this was his/her last chance to earn our good graces.
7. Parker responded by denying that he/she knew anything about the white powder and how it got there. I found him/her to be rude and disrespectful. He/she said "I just deliver the parcels that I'm given. I'm just trying to do my job. Would you prefer that I looked through everyone's packages?" I decided to take him/her back to a holding cell and talk to Senior Officer Strait.
8. About 10 minutes after Parker was returned to the holding cell, I was at the guard room desk and heard shouting so I walked over to the holding cells. I saw Parker rocking back and forth whilst talking to him/herself. Parker was also quickly pulling at the zipper of his/her jacket and it looked to me like he/she was attempting to break off the zipper and make a weapon out of it. After witnessing this, I had concerns for Parker's safety and that of the other people being held in the cell so I decided to enter the cell and conduct an unclothed search of Parker's person to ensure that he/she was not attempting

to make a weapon that could be used to harm him/herself or another person in the holding cell.

9. Given Parker's strange behaviour, I immediately entered the cell and instructed Parker to remove his/her articles of clothing. I believed that there was not enough time to instruct Lenny Bloom to undertake the search as I was concerned for the safety of Parker and the other detainees. Upon removing his/her pants, I noticed a small piece of paper sticking out of his/her underwear waistband. I removed the paper and found a folded-up note which said "Meet me on the rooftop of the party at 7pm" and was signed "Alex Smith". Alex Smith is well known by all the police at the station for dealing drugs in the area.
10. After this unclothed search, Senior Officer Strait and I decided that we needed to question Parker about the note found on his/her person. We decided to wait a few hours after the search so he/she could calm down. In this time, we also received the lab results confirming that the powder was cocaine.
11. Strait and I returned to the interview room with Parker. We told him/her that we knew that the powder was cocaine and had found the note which indicated that he/she was intending to meet up with a known drug dealer at the party that night. We warned him/her that we clearly had enough evidence to prosecute him/her and it was his/her last chance to get on our side. He/she became more aggressive and upset in response to our questions. We repeatedly asked his/her whether she knew the cocaine was in the car. After several times asking, he/she eventually admitted that he/she did.
12. Overall, Parker was kept in police custody just under 8 hours. I did not keep a detailed record of how long we questioned him/her for, but I do not believe it was more than half of the time he/she spent detained. I believe it was necessary for us to question Parker as we did as it helped us draw out his/her confession that will assist us in investigating a major drug operation.

2.2 Prosecution Witness Statement: Senior Officer Strait

1. My name is Senior Officer Strait. I am 49 years old and I have been a member of the Zaltanu Police Force for the past 16 years. I have worked as part of the Traffic Control Unit for the past 9 years and I have conducted numerous traffic checkpoints as part of my job responsibilities. I am honoured to be a part of this Traffic Control Unit because I consider drugs to be very bad for our society and I feel that the checkpoints are a great way to help stop the trafficking of drugs.
2. On the 1st of March 2021, I was in charge of operating a traffic checkpoint on the corner of Pacific Avenue and Aster Road. I set up the checkpoint at 10:00 am. I set this up because we had received reports of drugs being moved along Pacific Avenue. At the checkpoint was myself and Officer Fife.
3. Pacific Avenue is about 8 kilometers long. At 11:00 am, I directed an older model black BMW into the checkpoint. I approached the car and saw two people in the front seats of the car. As I approached the car, I immediately recognised the passenger as Daine Carriér from a previous arrest. I introduced myself to the driver and then said: "This is a routine police checkpoint stop. Where are you two heading today?" The driver, who introduced himself/herself as Eltra Parker, responded by saying that he/she was out on a delivery run. He/she said he/she worked for a company called PDP.
4. I then asked for his/her name and identification. The driver appeared nervous. His/her eyes were bloodshot, and he/she was constantly moving her/his hands and looking at his/her watch. He/she avoided direct eye contact with me. I informed the driver that I would need to conduct a further investigation of the car and ordered both Parker and Carriér to step out of the car with their hands visible.
5. After both individuals exited the car, I started questioning the driver on the contents of the packages. Parker refused to disclose the nature of the packages and responded in an aggressive tone: "I'm only a delivery driver and I don't know what's in the packages. Someone else at the company loaded them this morning."
6. I informed both individuals that I would need to conduct a frisk search. Once again, Parker responded in an aggressive tone: "You shouldn't have the right to do this." I told Parker that I wanted to conduct the investigation as efficiently as possible, and that both Parker and Carriér could continue forward with their business if they were not hiding any dangerous weapons. However, after I made this statement, Parker became more upset and aggressive.
7. He/she reached into his/her pocket and began to take something out of it. He/she told me that it was a stress ball, but I was not completely sure that it was not a weapon. I then forcibly took hold of Parker and Carriér as a public safety measure to prevent any potential harm that could be caused by a dangerous weapon. Due to Parker's suspicious and aggressive behaviour I had to immediately conduct a frisk search him/her to confirm there was no dangerous weapon that would threaten public safety.

8. I proceeded to conduct a frisk search: first on Parker, then on Carriér. I found a small electronic scale in the inside front pocket of Parker's jacket. From my experience, such scales are commonly used by drug dealers when portioning out small quantities of drugs for individual sale. I informed Parker that I would have to confiscate the electronic scale for further investigation.
9. Officer Fife and I then conducted a search of the car. In the trunk, we observed a crate labelled with PDP's branding, holding various baggies. PDP is the delivery company that Parker works for. I observed one package that appeared different to all the other packages, as it was marked with an address but no name. I decided to open the package and found a large self-seal baggie containing white powder. From my past experience, this is the type and size of a baggie drug dealers use to transport one kilogram of cocaine. We also found a black bag containing large amounts of cash in the trunk.
10. I asked Parker if the car belonged to him/her. He/she stated: "Yes." I then advised Parker that he/she was under arrest for possession of a dangerous drug with intent to sell. I also detained Carriér. At that time, I told the both of them that they had the right not to say anything to us and had the right to have an advocate. After I gave them this warning, I asked why Parker was selling drugs and why he/she was with Carriér, who is a convicted drug dealer. Parker resisted and defended himself/herself, exclaiming: "What are you talking about? I don't do drugs anymore!" After placing Parker and Carriér in the back of the police car, I proceeded to take both individuals to the police station.
11. When we arrived at the station, I received a phone call from a community member named Bertie Walsh seeking to report the suspicious activity of a blonde PDP employee. Earlier that morning, Walsh saw the employee loading suspicious packages from a residential boarding house into their car. During the extended periods between questioning, I arranged for Walsh to visit the police station jail to confirm the suspect's identity. I prepared a photo board of 12 people, 1 of which was Eltra Parker. I ensured that the 11 innocent fillers were of similar appearance. Walsh seemed to recognise the image of Eltra Parker, and later confirmed this by clearly stating the photograph number. He/she expressed high confidence in his/her final identification of Eltra Parker and proceeded to sign and date the back of the selected photograph.
12. Following this potential identification, Officer Momo and I then decided to question Parker about the cocaine found in his/her car. We also suspected he/she was involved in PDP's connections to the drug trade and wanted to ask him/her about this.
13. Officer Momo and I questioned Parker in the interview room. Parker was hesitant to answer our questions. After some time without any success, we both exited the room. I decided that it would be better for me to interrogate Parker alone. I believed that Officer Momo tended to be too aggressive, and I thought it was more important that Eltra cooperate with us so we could investigate PDP's connections to the drug trade.

14. When I was with Parker alone, I told him/her that we were far more interested in PDP than him/her, and if he/she could help us with that investigation we could "figure something out". He/she was not open to this and continued to deny knowing anything about the powder or PDP. He/she said repeatedly "Who the hell do you think I am? I'm just a driver, I just deliver the parcels they give me to where I'm told. You've got the wrong idea!"
15. I was surprised that Parker was so argumentative in response to my attempts to reach an agreement. I decided that Officer Momo's more forceful questioning style may be suited to this situation. I believed Momo would be better able to make Parker understand what was at stake and why it was in his/her interest to cooperate as soon as possible. I approached Momo and informed him/her of this, and he/she proceeded to question Parker alone.
16. Officer Momo later informed me that an incriminating note had been found on Parker's person. We agreed that, in light of this, we should question him/her further. We also received the lab results confirming that the white powder was cocaine.
17. Officer Momo and I returned to the interview room with Parker. We told him/her that we knew that the powder was cocaine and had found the note which indicated he/she was intending to meet up with a known drug dealer later that day. We warned him/her that we clearly had enough evidence to prosecute him/her and it was his/her last chance to get on our side. He/she became more aggressive and upset in response to our questions. We repeatedly asked him/her whether he/she knew the cocaine was in the car. After several times asking, he/she eventually admitted that he/she did.
18. While Parker was detained for nearly 8 hours, for most of this time he/she was not being actively questioned. There were extended periods between questioning where he/she was given the opportunity to rest. In any case, detaining and questioning him/her was, as it turns out, necessary for us to confirm his/her involvement in the drug trade.

2.3 Prosecution Witness Statement: Bertie Walsh

1. My name is Bertie Walsh. I am a 71 year old retiree. I became a volunteer for Zaltanu Community Crime Watch about 2 years ago, after hearing about increased drug-related activity in my neighbourhood.
2. On the 1st of March 2021, I was reading the paper on my front porch. Early that morning, a flashy black BMW pulled up and parked in front of a boarding house on my street. The blonde driver entered the boarding house empty-handed, but soon returned to the car carrying parcels. The individual placed the parcels into the trunk of the car.
3. I recognised that the driver's uniform had a PDP Courier logo. I thought it was strange that a delivery company would arrange for personal collections from residential properties. Later that afternoon, I called the police station to report the unusual activity and provided a brief description of what I remembered seeing, especially the person's hair colour. My call was transferred to Senior Officer Strait who requested that I visit the police station to provide a more accurate identification of the individual.
4. At the station, Senior Officer Strait showed me a photo board of 12 individuals. Only two of the suspects had blonde hair. I felt a bit stressed, given that I had been more focused on the PDP uniform than personal characteristics, but Officer Strait reassured me I was under no obligation to make a positive identification. He then asked: "I noticed that you stopped on photo number 3, does that mean anything to you?"
5. The individual in photo number 3 had the same blonde hairstyle as the person I saw loading packages into the trunk of their car. I felt confident that the image looked like the driver I had seen that same morning, so I confirmed to Senior Officer Strait that photo number 3 was correct. Senior Officer Strait smiled, nodded, and said: "That's what I thought". He/she did not say this until after I positively made the identification. I felt even more assured after Senior Officer Strait confirmed he/she had the same thoughts as me. Senior Officer Strait then thanked me for my co-operation. I signed and dated the back of the photograph.

2.4 Defence Witness Statement: Eltra Parker

1. My name is Eltra Parker and I am 29 years old. I have lived in the State of Zaltanu since birth. I am not married, but I live with my partner Daine Carriér. I work part-time as a delivery driver for PDP (a package delivery service). I also am studying Chemical Engineering. I sometimes go to classes before or after my shifts with PDP. I have worked at PDP for two years. As a delivery driver, I collect and deliver various packages. I also collect payments for the deliveries. I am required to wear a uniform when working and I use my own car to make deliveries.
2. On the 1st of March 2021, I drove my black BMW to work with Daine. We arrived at PDP's warehouse and Daine remained in the car. As usual, I entered my morning meeting with my boss to learn about the locations of my deliveries of that day. I was also handed my daily list of deliveries, containing only the serial number of each package and the corresponding address. On that day, we also spoke about the business generally and how we wanted to grow as a company. It is standard that while I am in the meeting, another employee loads the crate of packages into the car. Once I finished my meeting, I then started making the deliveries as per our normal schedule. I did not inspect the contents of the crate as that is not my usual role. I trust the people I work with and simply make the deliveries per the list and the instructions.
3. I was on the third delivery run driving along Pacific Avenue when I was directed by a police officer to pull over at a traffic checkpoint. Senior Officer Strait who made me stop said: "This is a routine police checkpoint stop. Where are you two heading today?" I then responded: "I am on a delivery run.". Meanwhile, Senior Officer Strait was crouching up and down to look throughout the car. This made me nervous so I started to fiddle with my watch and pocket where I keep my stress ball. Senior Officer Strait then asked for my identification and I handed over my driver's licence.
4. As Senior Officer Strait inspected my licence, I asked: "Officer, is everything okay?" Senior Officer Strait then stepped back and, in a serious tone, asked Daine and me to step out of the car slowly and keep our hands visible.
5. Daine and I both exited the car. As Daine and I stood waiting on the sidewalk, Senior Officer Strait questioned me aggressively. He/she asked me "What are you hiding in the packages in the car? What are you hiding on your person?" I replied and told him/her: "I'm only a delivery driver and I don't know what's in the packages." I then reminded him/her that "I am in a rush and you are wasting my time."
6. Senior Officer Strait then asked if he/she could perform a pat-down frisk search of both Daine and me. Feeling uncomfortable, I refused, telling him/her that "you shouldn't have the right to do this". I became more nervous due to Senior Officer Strait's aggressive attitude. To calm myself down I reached for my stress ball, but stopped when Senior Officer Strait instructed me to. I told him/her it was a stress ball and it was visible to him/her, but he/she continued to grab me and accused me of concealing a weapon.

7. Senior Officer Strait then said that I would be released immediately if I didn't have anything to hide. Still uncomfortable, I kept silent. Senior Officer Strait began conducting the search. Senior Officer Strait pushed me against my car and then conducted a pat down search from my shoulders to the bottom of my legs. While conducting the search, he/she felt something in the front right pocket of my jacket. He/she immediately reached in and pulled out a small electronic scale. Senior Officer Strait told me that the scale would need to be confiscated and ordered us to wait as they continued their investigation. However, these scales are necessary for my Chemical Engineering Degree. We often do lab work and require precision measurements of different chemicals.
8. Senior Officer Strait then searched my car. After looking through the car, he/she opened the trunk and searched it. I could not see exactly what he/she was doing as Daine and I were standing near the front of the car. However, he/she seemed to take particular interest in what was found. I saw Senior Officer Strait hand one of the baggies, as well as my black bag, to Officer Fife. I then saw Senior Officer Strait walk to the trunk of the police car with the package, but I did not see what he/she was doing.
9. Senior Officer Strait then told me I was under arrest for drug possession with intent to sell. Senior Officer Strait said: "I don't know why you people are doing drugs." I yelled: "I don't do drugs anymore." Daine was also detained. We were both put in the police car and taken to the police station.
10. At the police station, Senior Officer Strait led me from the holding cell to an interview room. Officer Momo was also in the interview room. In this room, they said they believed I was involved in dealing and smuggling drugs and demanded I cooperated with an investigation they were running. I was confused by this line of questioning as I had no idea about any investigation. They refused to accept this explanation and continued to question me in the same way.
11. Eventually, they left the room together. Shortly thereafter, Senior Officer Strait returned to the interview room alone. He/she explained that the police were investigating PDP and that they wanted me to help. I was confused why they were asking me this and I told Senior Officer Strait that I was only a driver and didn't know anything about what he was asking about.
12. I could tell that Senior Officer Strait was getting frustrated and he/she eventually left. Shortly afterwards, Officer Momo returned to the interview room and he/she looked angry.
13. Officer Momo was more aggressive than Senior Officer Strait. He/she accused me of dealing drugs and threatened that they would prosecute me and "send [me] away for a long time". I told him/her the same thing that I told Senior Officer Strait: that I was just a driver and couldn't monitor the contents of every package I delivered. I was frustrated that I was being asked the same questions repeatedly despite having answered them already. After a while questioning me, Officer Momo got frustrated and I was returned to the holding cell. When walking me back to the holding cell, he/she said to me "We'll get it out of you eventually, don't you worry!"

14. After these interrogations by Senior Officer Strait and Officer Momo, I started feeling really distressed and began crying. The situation was just so scary. I couldn't believe what was happening. I have a habit of fiddling with my clothes when I get nervous and I remember playing with the zipper on my jacket while I was in the cell.
15. The next thing I knew Officer Momo was in the cell with me and started telling me to remove my clothes. Officer Momo didn't say why he/she was instructing me to do this and when I asked if someone else who was experienced with transgender persons could do it instead, he/she just ignored me and kept telling me to remove my clothes.
16. After being subject to this unclothed search, I was very embarrassed and upset. I wanted to get out of the station as soon as possible. Eventually, Senior Officer Strait and Officer Momo returned and said I was being taken to the interview room again for questioning. I found this very distressing given Officer Momo had invaded my privacy and I had already told them that I knew nothing.
17. In this final questioning, Senior Officer Strait and Officer Momo both kept asking me the same questions aggressively and repeatedly. I was confused and exhausted after hours of questioning and didn't fully understand what they were saying. Eventually, I lost track of their line of questioning and incorrectly answered 'Yes' when they asked if I knew about the powder they had found. I immediately took back this statement, but the police officers said that they had "finally got me".
18. I was detained for nearly 8 hours. While I didn't have any way of telling the time while I was detained, I believe I was being questioned for at least half of the time that I was kept at the station. I was asked the same questions aggressively and repeatedly, with very limited opportunities for a break, other than when I was strip searched in the holding cell.

2.5 Defence Witness Statement: Lenny Bloom

1. My name is Lenny Bloom. I am 35 years old and currently work as a police officer at the Zaltanu Central Police Station.
2. One of my roles is that I am the designated LGBTI+ Liaison Officer at the Zaltanu Central Police Station. That role requires me to support detainees and police officers who are part of the LGBTI+ community. This is an important role as members of the LGBTI+ community sometimes have specific needs during police procedures. For example, detained members of the LGBTI+ community, such as gender diverse or transgender persons, often request a police officer with my expertise to perform certain police procedures as they feel more comfortable with that. This mainly involves body searches that require a detainee to remove their clothing.
3. On the day that Eltra Parker came to the station, I was filing court documents at the police station counter near the holding cells. From the counter, I was able to overhear Senior Officer Strait conducting a photo board identification to an elderly member of the community. The elderly eyewitness seemed hesitant to make a positive identification at first pass, until I heard Senior Officer Strait ask him/her: "I noticed that you stopped on photo number 3, does that mean anything?" The witness scanned the images again and seemingly expressed confidence in his/her identification. Senior Officer Strait smiled and nodded.
4. I did not leave the station at any time when Eltra Parker was detained and was available to conduct the search of Eltra Parker if Officer Momo had requested it. Everyone at the station knows about my role as the LGBTI+ Liaison Officer so I was surprised to learn about Officer Momo's search of Eltra Parker.

2.6 Defence Witness Statement: Daine Carriér

1. My name is Daine Carriér. I am 23 years old. I am currently unemployed, although I am trying to seek employment. I like to go to parties and sometimes help Eltra Parker with his/her deliveries. I have been in a relationship with Eltra for the past 4 years. On the 1st of March 2021, I was with Eltra giving him/her a hand with deliveries. Once completed, we had plans to go to a party. On the way to the third delivery, a police officer directed us into a checkpoint. We were both a bit nervous as neither of us get stopped by police often. I soon recognised the officer to be Senior Officer Strait who arrested me once before. It was during this incident where I remember Senior Officer Strait being somewhat discriminatory because of my relationship with another person of my same gender.
2. Coming back to the day of the 1st March 2021, once the car was stationary, the officer who stopped us introduced him/herself as Senior Officer Strait. He/she proceeded to say: "This is a routine police checkpoint stop. Where are you two heading today?" I recall Eltra responding: "I am on a delivery run." Eltra then asked: "Officer, is everything okay?"
3. Senior Officer Strait ignored Eltra's question and asked us to step out of the car. Senior Officer Strait advised both Eltra and me that he/she would be conducting a frisk search of each of us. Eltra refused, saying that he/she felt uncomfortable and demanded to know whether the police had the right to conduct a frisk search. Senior Officer Strait insisted, suggesting that Eltra and I would be released immediately if we had nothing to hide. I could tell that Eltra was still uncomfortable about this. As a result, Eltra reached for his/her stress ball in her jacket and the police felt this was suspicious. So, Senior Officer Strait took the opportunity to grab Eltra and violently pushed him/her against our car. Senior Officer Strait then conducted the frisk search. After the frisk search, Senior Officer Strait advised us that he/she would need to confiscate an electronic scale he/she had found in Eltra's pocket and that we would have to wait longer as he/she continued his/her search of the car. Otherwise, the frisk search revealed nothing else of interest.
4. Eltra and I were directed to stand on the sidewalk whilst Senior Officer Strait undertook the search. I recall Senior Officer Strait began the search in the back seat of the car and then moved to the trunk of the car. Both officers seemed to spend quite a lot of time searching the trunk of Eltra's car. From where Eltra and I were standing, it was difficult to see exactly what Senior Officer Strait was doing.
5. After the car search, Senior Officer Strait advised Eltra that he/she was under arrest and proceeded to place handcuffs on him/her. He/she then escorted Eltra to his/her police car. All the meanwhile, Eltra was yelling out: "What are you talking about? I don't do drugs anymore and I don't even put the packages in the car!"

2.7 MOTION TO EXCLUDE

COUNTRY OF ZALTANU

IN THE PROVINCIAL COURT

PUBLIC PROSECUTIONS

CAUSE NO. 2021-23667

vs.

ELTRA PARKER

Defendant.

MOTION TO EXCLUDE EVIDENCE

The Defendant requests the Court to exclude all property seized by the arresting officers, all observations made by the arresting officers, and all statements made by the Defendant, and in support thereof says:

1. That the Defendant is charged with Possession of cocaine with Intent to Sell or Distribute.
2. That on March 1, 2021, police officers, and Senior Officer Strait in particular, performed a pre-arrest frisk search on the Defendant without the required “reasonable suspicion” that the Defendant was armed and dangerous.
3. That on March 1, 2021, at the police station, Senior Officer Strait unduly suggested and influenced the identification of the Defendant during a photo board.
4. That Officer Momo improperly conducted an unclothed search of the Defendant.
5. That the Defendant’s admission is illegally obtained because:
 - a. The Defendant was unlawfully detained and interrogated based on an unjustified pre-arrest frisk search.
 - b. The Defendant was subjected to bias and prejudice by Senior Officer Strait during the photo board identification.
 - c. The police failed to follow correct procedures to conduct a lawful unclothed search on the Defendant.
 - d. The Zaltanu laws and regulations relied upon in this motion are:
 - i. Sections 881.23, 590AA – *Zaltanu Criminal Code* ;
 - ii. Article IV – *Zaltanu Constitution* ;

- iii. *Schedule 6 – Zaltanu Police Powers and Responsibilities Act*
- iv. *Sections 58, 29, 30, 203, 204, 617, 624 – Zaltanu Police Powers and Responsibilities Act*
- v. *Sections 43 – Zaltanu Police Powers and Responsibilities Regulation*
- vi. *Rules 15.10, 15.20, 15.30, 15.40, 16.10, 16.20 – Zaltanu Police Operational Procedures Manual*

The Defendant requests the Court to make the following orders:

- (a) Exclude from use in the trial of this cause the evidence found as a result of the pre-arrest frisk search of Eltra Parker, as Officer Strait did not possess the required “reasonable suspicion” that Eltra Parker was armed and dangerous.
- (b) Exclude from use in the trial of this cause the identification of Eltra Parker as a result of the photo board, as Officer Strait suggestively influenced the witness.
- (c) Exclude from use in the trial of this cause all evidence found as a result of the unclothed search of Eltra Parker, which was conducted in an improper manner.
- (d) Exclude from use in the trial of this cause Eltra Parker’s admission to Officer Strait and Officer Momo as it was obtained by unlawful detention and interrogation.

Respectfully submitted,
Liberty for All



Advocate
Zaltanu Bar Number-908933434
Submitted: July 1st, 2020

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has been provided to all parties herein by first class mail, postage prepaid on July 1st, 2020

Liberty for All

A handwritten signature in black ink, appearing to be 'NSK', written over a horizontal line.

3.0 Applicable Law

3.1 Charge Against Eltra Parker

“Eltra Parker is charged with possession of a controlled substance with the intent to sell, in that on 1 March 2021, Parker was in possession of pure cocaine in an amount of one (1) kilogram in violation of Section 881.12 of the Zaltanu Criminal Code.”

3.1.1 State of Zaltanu Legal Provisions

Zaltanu Criminal Code

Section 881.12:

Except as authorized by law, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance.

Section 590AA:

At any time before trial, the court may hear and decide any issue with respect to the trial that the court considers appropriate, including—

- (1) an issue of law or procedure that arises or is anticipated to arise in the trial, including an issue as to admissibility of evidence;
- (2) an issue of fact, or mixed law and fact, that may be determined lawfully by a judge alone without a jury, including an issue as to admissibility of evidence;”

Zaltanu Constitution

Article IV:

All persons in Zaltanu have a right to be secure against unreasonable or unlawful searches and seizures. Evidence seized as a result of an unreasonable or unlawful search shall be subject to exclusion.

Zaltanu Police Powers and Responsibilities Act

Schedule 6 - **Definitions:**

Consent means free agreement. Consent does not include silence, submission or compliance.

Example of consent not freely and voluntarily given:

OFFICER: Do you mind if I enter your home?

OCCUPANT: Actually, I do mind.

OFFICER: May I remind you of the penalties associated with obstructing police.

OCCUPANT: Fine, you can come in.

Compliance means acting in a way that follows a command, rule or official instruction.

Commission of an Offence means committed, or being likely to have committed, or of committing or being likely to be committing, an offence.

Reasonable belief means a belief that is arrived at through a process of logic or of rational thought. It also includes reasonable belief in the existence of facts which are sufficient to induce that state of mind in a person. A belief that is capricious, or held as a result of suspicion or prejudice, is not a reasonable belief.

This can occur when a suspect is acting against police orders or in a way which creates the actual and real belief of immediate danger or harm, possibly a threat to themselves or to public safety. It cannot be an unfounded and baseless accusation, there must be reasonable suspicion induced by an action or observation of possibly trying to cause harm to one self or others.

Suspect means a person reasonably suspected of having committed, or being likely to have committed, or of committing or being likely to be committing, an offence.

Suspicion means a thought, feeling or belief is likely to be true. It is also a cautious or distrustful of someone as a result of someone else's actions.

PART I - POLICE POWERS RELATING TO ROADSIDE CHECKPOINTS

Section 58 :

- (1) Where a roadside check has been created, a police officer may:
 - (a) Require the driver and/or occupants to provide their name, address and registration details;
 - (b) Search the vehicle in accordance with a search warrant;
- (2) If it is not reasonably practicable to obtain a search warrant beforehand, a police officer may conduct a search without a warrant if the officer has a reasonable belief that an offence has been committed, or is likely to be committed.

Section 29 :

- (1) A police officer who reasonably believes in the commission of an offence may, without a warrant, stop and detain a suspected person.
- (2) For the avoidance of doubt, a police officer can search a person and anything in the person's possession with:
 - (a) consent given by the suspect; or
 - (b) a search warrant obtained.

Section 30 :

- (1) Prior to arrest, a police officer may search the person and anything in the person's possession for anything relevant if they have a reasonable belief that the person is unlawfully carrying:
 - (i) a weapon, knife or explosive the person may not lawfully possess, and
 - (ii) the person poses a threat to public and/or police safety.

Part IV - DETAINMENT PROCEDURAL RULES

Section 203:

- (1) A police officer may detain a person for a reasonable time to investigate, or question the person about -
 - (a) If the person is in custody following an arrest — the offence for which the person was arrested; or
 - (b) in any case—any offence the person is suspected of having committed, whether or not the offence for which the person is in custody.
- (2) However, the person must not be detained under this section for more than 8 hours.
- (3) Within these 8 hours, the person may only be questioned for a maximum of 4 hours.

Section 204:

- (1) The following must be taken into consideration when deciding what is a reasonable time to detain a person under *section 203* —
 - (a) whether the person's detention is necessary for the investigation of an offence;
 - (b) the number of offences under investigation;
 - (c) the seriousness or complicated nature of an offence under investigation;
 - (e) the person's age, physical capacity and condition, and mental capacity and condition;
 - (f) any time spent questioning the person before the arrest;
 - (g) the need to delay or suspend questioning of the person for time out purposes (e.g. sleep, meeting with defence counsel).

PART IX - PROCEDURES FOR EVIDENCE COLLECTION

Section 617:

- (1) It is lawful for a police officer to use 1 or more of the following procedures to obtain evidence of the identity of a person suspected of having committed an offence –
 - (a) an identification parade;

- (b) a photo board containing at least 12 photos of people of similar appearance, 1 of whom is the person suspected of having committed the offence;
 - (c) videotape;
 - (d) computer generated images.
- (2) The police officer must comply with the procedures in the responsibilities code for identification procedures.
 - (3) This section does not limit the procedures a police officer may use to help gather evidence of the identity of a person suspected of having committed an offence.
 - (4) Failure to comply with the above sections may be grounds for exclusion of evidence.

Section 624:

- (1) The court may refuse to admit evidence if its probative value is substantially outweighed by the danger that the evidence might:
 - (a) be unfairly prejudicial to a party; or
 - (b) be misleading or confusing; or
 - (c) cause or result in undue waste of time.
- (2) In a criminal proceeding, The Court may refuse to admit evidence adduced by the prosecutor if its probative value is outweighed by the danger of unfair prejudice to the accused.
- (3) Evidence that was obtained –
 - (a) improperly or in contravention of a law of Zaltanu; or
 - (b) in consequence of an impropriety or of a contravention of a Law of Zaltanu

Is not to be admitted unless the desirability of admitting the evidence outweighs the undesirability of admitting evidence that has been obtained in the way in which the evidence was obtained.

Zaltanu Police Powers and Responsibilities Regulation

Section 43 - Photo Board Regulations:

- (1) A police officer showing witnesses a photo board must show the photo board to each witness separately.
- (2) Also, the police officer must ask each witness to carefully view the photo board and state whether the witness recognises anyone whose photo is on the photo board.
- (3) The police officer must ask the question in a way that does not suggest the identity of a person whose photograph is on the photo board.
 - (a) Suggesting the identity includes-
 - (i) directing the witness's attention to a particular image; and/or

- (ii) asking leading questions; and/or
 - (iii) pointing out a particular image.
- (4) If a witness indicates that he/she identifies a person in a photo on the photo board, the police officer must ask the witness to—
- (a) Clearly state the number of the photograph the witness has identified as being that of the person accused to be responsible for committing the relevant offence; and
 - (b) write the photograph number and the date the photo board was shown to the witness—
 - i.) on the front of an unmarked photocopy of the photo board; or
 - ii.) on the back of the photo board or the selected photograph; and
 - (c) sign the photo board, photocopy or photograph where the person has written on it.

Zaltanu Police Operational Procedures Manual

PART I - UNCLOTHED SEARCH PROCEDURE

Rule 15.10:

A police officer who conducts a search of a person in police custody may require the person to remove all or any item of clothing on their body.

Rule 15.20

A police officer who conducts a search under Rule 15.10 must reasonably suspect that the searched person poses a risk and the search is necessary to remove that risk.

Rule 15.30

When a police officer is deciding whether or not to exercise their discretion under Rule 15.10, the following factors must be considered –

- (i) the risk that the searched person possesses an item in their clothing or on their body that:
 - (a) may be used to harm themselves or another person;
 - (b) may be used to escape from custody;
 - (c) is evidence of the commission of an offence; or
 - (d) may be used to damage property; and
- (ii) the known relevant history of the person, including:
 - (a) previous or present threat of suicide or self-harm;
 - (b) previous violence;
 - (c) previous instances/attempts of keeping hidden or disguising contraband while in custody; and
 - (d) previous escapes or attempts or threats of escape

Rule 15.40:

- (1) If reasonably practicable, a police officer must, before conducting a search of a person –
 - (a) tell the person that he or she will be required to remove their clothing;
 - (b) tell the person why the person is required to remove their clothing; and
 - (c) ask the person for their cooperation.

PART V - PERSON TO CONDUCT UNCLOTHED SEARCH

Rule 16.10:

Unless an immediate search of a person is necessary, a police officer who conducts the search of the person must be a police officer of the same sex as the person searched.

Rule 16.20

Unless an immediate search is necessary, a police officer who intends to search a transgender person must consider any reasonable concerns or objections of the transgender person.

Example: if a transgender person requests to be searched by a particular person and an appropriate person is available to conduct the search, the search must be conducted by the appropriate person.

3.2 Zaltanu Pre-Trial Hearing Procedure & Rules of Evidences

3.2.1 Steps and Time in the Pre-Trial Hearing

The **pre-trial hearing** is an application brought by the Defence for the purposes of having evidence of the prosecution **excluded from trial**.

Note the roles of the counsel for the prosecution and Defence must be equally divided. That is, time must be evenly distributed between examination-in-chief and cross-examination.

Process:

The following are an outline of the steps in the CLE Mock Pre-Trial Hearing.

1. Several Judges will preside over the proceedings. However, one Judge will be selected as the Presiding Judge to control the proceedings.
2. JUDGE'S CLERK: "Everybody stand-up."
3. JUDGES: Judges enter the courtroom.
4. PRESIDING JUDGE: Asks both sides "are you ready?"
5. CLERK: Calls the case number.
6. DEFENCE ADVOCATE: Reads a brief summary of the Motion to Exclude.
7. JUDGE: Asks if the prosecution is ready to proceed with the hearing to establish its burden that the evidence obtained during the roadside checkpoint was lawfully obtained.
8. PROSECUTOR: Answers "We are ready to proceed, your honor".
9. PROSECUTOR: Gives opening statement. **(no more than 5 minutes)**
10. DEFENCE ADVOCATE: Gives opening statement. **(no more than 5 minutes)**
11. PROSECUTOR: Calls first witness (Officer Momo).
12. JUDGE: Administers oath.
13. PROSECUTOR: Examination-in-chief of Officer Momo. **(no more than 7 minutes)**
14. DEFENCE ADVOCATE: Cross-examination of Officer Momo. **(no more than 7 minutes)**
15. PROSECUTOR: Opportunity for re-examination. **(no more than 3 minutes)**
16. PROSECUTOR: Calls second witness (Senior Officer Strait).
17. JUDGE: Administers oath.
18. PROSECUTOR: Examination-in-chief of Senior Officer Strait. **(no more than 7 minutes)**

19. DEFENCE ADVOCATE: Cross-examination of Senior Officer Strait. **(no more than 7 minutes)**
20. PROSECUTOR: Opportunity for re-examination. **(no more than 3 minutes)**
21. PROSECUTOR: Calls third witness (Bertie Walsh).
22. JUDGE: Administers oath.
23. PROSECUTOR: Examination-in-chief of Bertie Walsh. **(no more than 7 minutes)**
24. DEFENCE ADVOCATE: Cross-examination of Bertie Walsh. **(no more than 7 minutes)**
25. PROSECUTOR: Opportunity for re-examination. **(no more than 3 minutes)**
26. DEFENCE ADVOCATE: Calls first witness (Defendant - Eltra Parker).
27. JUDGE: Administers oath.
28. DEFENCE ADVOCATE: Examination-in-chief of Eltra Parker. **(no more than 7 minutes)**
29. PROSECUTION: Cross-examination of Eltra Parker. **(no more than 7 minutes)**
30. DEFENCE ADVOCATE: Opportunity for re-examination. **(no more than 3 minutes)**
31. DEFENCE ADVOCATE: Calls second witness (Lenny Bloom).
32. JUDGE: Administers oath.
33. DEFENCE ADVOCATE: Examination-in-chief of Lenny Bloom. **(no more than 7 minutes)**
34. PROSECUTION: Cross-examination of Lenny Bloom. **(no more than 7 minutes)**
35. DEFENCE ADVOCATE: Opportunity for re-examination. **(no more than 3 minutes)**
36. DEFENCE ADVOCATE: Calls third witness (Dianne Carriér).
37. JUDGE: Administers oath.
38. DEFENCE ADVOCATE: Examination-in-chief of Dianne Carriér. **(no more than 7 minutes)**
39. PROSECUTION: Cross-examination of Dianne Carriér. **(no more than 7 minutes)**
40. DEFENCE ADVOCATE: Opportunity for re-examination. **(no more than 3 minutes)**
41. PROSECUTION: Closing argument. **(no more than 15 minutes)**
42. DEFENCE: Closing argument. **(no more than 15 minutes)**
43. JUDGE'S CLERK: "Everybody stand-up."
44. JUDGES: Judges leave the room to make a decision on which team was the strongest according to the points evaluation.

45. JUDGE'S CLERK: "Everybody stand-up."

46. JUDGES: Judges return to the room and give their decisions on which team was the strongest according to the points evaluation. Judges provide constructive feedback to each participant.

The team with the most judges voting for it advances to the next round CLE Mock Pre-Trial Hearing team participants.

The Prosecution/Plaintiff team shall consist of:

- 1st Prosecutor
- 2nd Prosecutor witnesses

The Defence team shall consist of:

- 1st Advocate
- 2nd Advocate

3 witnesses CLE Mock Pre-Trial Hearing team roles

3.2.2 Burdens and Standards of Proof

The trial judge determines the admissibility of any evidence according to the rules of evidence. In determining whether evidence will be excluded at a subsequent trial, the prosecution must prove its case on the balance of probabilities.

3.2.3 Relevance of Evidence

Before a party can introduce an item of evidence at trial, it must be relevant. Where the relevance of evidence is not obvious, a party introducing it must explain how it is relevant. Irrelevant evidence is inadmissible.

Evidence can be directly relevant, or indirectly relevant:

- **Directly Relevant:** if it makes a fact of the case MORE or LESS likely.
- **Indirectly Relevant:** if it affects the probative value of the *direct evidence* and thus the accuracy of the other facts/evidence.

Test: Does the evidence carry you forward in proving or disproving the occasion in issue? Where the effect of the evidence is so ambiguous that it could not rationally affect the judging of the fact in issue, the evidence is irrelevant.

In order to be relevant, evidence must:

1. Directly or indirectly relate to the existence or non-existence of a fact in issue in the trial; or
2. Be relevant to a party's disposition in the alleged crime.

Note: evidence may become more or less relevant depending on circumstances and surrounding information.

Example:

QUESTION: What had you consumed on the day of making the deliveries?

OBJECTION: I object, your honor. What the witness ate is not relevant to circumstances surrounding the material day.

POSSIBLE RESPONSE: Your honor, there is evidence that the witness was in possession of, or may have consumed, drugs. This evidence goes to the probability of that.

3.2.4 Probative Value of Evidence

The Court may refuse to admit evidence if its probative value is substantially outweighed by the risk that the evidence might:

1. Be unfairly prejudicial to the accused;
2. Be misleading or confusing; or
3. Result in an undue waste of time.

Probative value refers to the weight that should be placed on the particular piece of evidence.

Where there are **inconsistencies in evidence**, the fact finder must compare and weight up the probative value of each piece of evidence and decide which set of facts are more likely to be accurate.

3.2.5 Right to Silence

The accused has a right to silence. This right exists before and during the trial. The right of the accused to raise this Defence exists regardless of whether he/she chooses to remain silent upon arrest.

No adverse inferences can be drawn from the accused's choice to exercise their right to silence.

Where the accused was not cautioned as to their right to silence and was subsequently manipulated, coerced or elicited into making an admission to their

detriment, The Court may determine the admissibility of the evidence in accordance with the illegality provisions in 2.2.6.

3.2.6 Illegally Obtained Evidence

The Court may, on application from the defendant, exclude evidence where it has been illegally or improperly obtained. Once the defendant has raised an assertion of illegality, the prosecution must establish that the evidence was legally obtained and is admissible on the balance of probabilities. In determining whether the evidence has been illegally or improperly obtained, The Court may weigh the competing public interests in convicting those who commit criminal offences and in protecting the individual from unlawful and unfair treatment. The Court may consider:

1. Whether there was a deliberate or reckless disregard for the law;
2. Whether the illegality was a result of a mistake;
3. Whether the illegality impacts the reliability and probative value of the evidence;
4. How easy it would have been to comply with the law; and
5. The nature of the offence.

The abovementioned indicia should not be considered in isolation. For example, the fact that the charged offence is serious will not automatically result in the admissibility of illegally obtained evidence. All indicia must be considered to assist the Court in determining whether the aid of an unlawful or improper act to obtain the evidence was at too high of a price.

3.2.7 Hearsay Evidence

Hearsay is defined as an out-of-court statement, made in court, to prove the truth of the matter asserted. The out-of-court statement may be spoken, written, or made through other forms of communication (e.g., hand gestures).

The **rationale** for finding hearsay inadmissible is because:

- it is unreliable;
- it is not made under oath;
- it does not involve reporting a direct observation;
- it cannot be cross-examined;

- it is impossible to determine the statement maker's demeanour and body language;
- it is impossible for the factfinder to determine whether the evidence is believable.

However, there are many **exceptions** to the hearsay rule. If an exception is established, the out-of-court statement is admissible.

Exceptions to hearsay include:

- Where the out-of-court statement does not go towards proving the truth of the matter asserted, rather it **proves some other fact**.
- Where the out-of-court statement was made by a person who had **personal knowledge** of the asserted fact and it is the best evidence available (first-hand hearsay).
- Where the out-of-court statement is used as **original evidence** to prove the person's **state of mind, intention, motive or plans**.

For example, an out-of-court statement saying 'I want ice-cream' is acceptable as evidence of the intention to go buy ice-cream. It is not, however, used as evidence to prove that the person was at the ice-cream shop.

- Where the out-of-court statement was an **admission** (something that can be used to incriminate the defendant) or a **confession** (admitting to having committed the crime). The rationale behind this exception is that a reasonable person would not admit to a fact hurting his or her interest unless it were true. Note, however, that an out-of-court admission:

- Must be free and voluntary. Here The Court may consider whether the defendant's will was overborne by external pressure. For example:
 - Any inducements, threats, trickery, violence; or oppressive, inhuman or degrading conduct;
 - Persistent questioning;

- The defendant's capacity to resist improper pressure; and
- The defendant's age, intelligence, maturity, self-sufficiency, mental or psychological health, and physical health.
- Must not be unfair on the defendant (e.g., he/she were cautioned and understood his/her right to silence prior to making the admission); and
- Must not be illegally obtained (see the above indicia in 2.2.6).

3.2.8 Character Evidence

Generally, evidence of the defendant's character cannot be brought out in trial, unless the defendant first raises evidence of their good character.

Example:

DEFENDANT: "I am not the sort of person who uses drugs"

As the defendant has raised his/her good character, the Prosecution may cross-examine the defendant on his/her bad character.

PROSECUTOR: "You gave evidence that you were not the sort of person who uses drugs, but it's true that you have previous convictions for drug possession, isn't it?"

If the defendant had not previously raised his/her good character, the Defence could object to this question on the basis of improper character evidence. However, since the Defence raised good character as an issue, the Prosecutor's question is proper and should be allowed.

3.2.9 Prior Inconsistent Statements

An advocate in cross-examination may test the reliability of a witness's evidence by highlighting contradictions with a prior inconsistent statement. Note: in some circumstances, a witness may be honest but mistaken.

3.2.10 Tendency Evidence & Previous Convictions

Generally, evidence must not be led to prove that a person has a tendency to act in a particular way or has a particular state of mind. The rationale behind the tendency rule is that The Court may consider evidence in relation to the case before it.

Tendency evidence is highly prejudicial to the defendant and may result, for example in him/her being punished again for prior convictions.

The Court nonetheless may allow the tendency evidence if the probative value of the evidence outweighs the risk of the evidence being “highly prejudicial.”

3.2.11 Opinion Evidence

A witness is not usually allowed to give their opinion in evidence. An opinion is a conclusion or view formed by a witness based on something that he/she have observed or experienced. It is not for the witness, but rather the fact finder, to form these conclusions. The rule against opinion evidence assists the Court to objectively assess all of the facts and draw its own objective conclusions. If a witness testifies about their opinion, it may confuse or mislead the Court.

Example:

A witness cannot give evidence that the defendant was anxious. Rather, the witness must describe what he/she saw (e.g., the defendant was shaking, fidgeting with his/her clothes, was pale in the face.)

Exceptions:

Opinion evidence may nonetheless be led if:

- The topic is something that ordinary people are knowledgeable about (e.g., the age someone appears to be);
- The opinion of a witness is relevant to a fact in issue (e.g., self-Defence); or
- The opinion of a qualified expert with training, study or experience in the area is required to explain and give meaning to the evidence.

3.2.12 Contested Evidence must be Put to the Witness

An advocate must cross-examine a witness on all aspects of the witness’s evidence that the advocate disputes.

In particular, the advocate must ask the witness to comment on the alternative version of events that the advocate’s case relies on.

3.2.13 Questions in Examination-in-Chief v. Cross-Examination:

At trial, both the prosecution and Defence counsel have an opportunity to call witnesses. The advocate calling a witness must only ask open-ended questions which require the witness to explain in their own words what happened. This process is called “examination-in-chief.” During the examination-in-chief, the advocate may ask closed or leading questions for preliminary matters only. If the matter is not preliminary and the advocate calling the witness asks leading questions, the other advocate should object. The purpose of this rule is to ensure that the witness gives an accurate account of events and is not misled by leading questions.

After the advocate concludes the examination-in-chief, the other party’s advocate will have the opportunity to cross-examine the witness. During cross-examination, the advocate should only ask leading or closed questions that can generally be answered with yes, no or I don’t know. If the advocate asks open-ended questions, then he/she gives the witness an opportunity to say too much.

Examples:

OPEN-ENDED QUESTIONS (used in Examination-in-Chief): “What did you do on the 1st of March 2021?” This question is open-ended because it invites the witness to explain in his/her own words what he/she did on the 1st of March.

LEADING QUESTIONS (used in Cross Examination): “Is it true that you were on a delivery run on the 1st of March 2021?” This question is leading because it generally forces the witness to answer yes or no.

3.2.14 Direct speech

Conversation must be recited as it occurred in direct speech and not summarized by the witness.

Where an objection is based on indirect speech, the witness must convert the evidence to direct speech.

Example:

CORRECT: Officer Strait said to me: “Can I please see your driver’s license?”

INCORRECT: Officer Strait asked me for my identification.

3.2.15 Double Questions/Compound Questions

A double (or compound question) is one in which two questions are contained in one question. Advocates should object to double questions being asked of the witness. This is to ensure clarity as to which question the witness is answering.

Example:

DOUBLE QUESTION: Is it true that Eltra Parker is studying full-time and working part-time at night?

This is considered a double question because the advocate is really asking two questions – “Does Eltra Parker study full-time?” and “Does Eltra Parker working part-time?” The witness may not be able to answer this question with a simple “yes” or “no.” For example, if Eltra was working part-time and studying full-time, the answer to the first part of the question would be “no”, while the answer to the second part of the question would be “yes.”

3.2.16 Harassment of the Witness

While advocates in cross-examination are permitted to ask questions to test the witness’s credibility, The Court may forbid any question which appears intended to insult, offend or annoy a witness. Indecent and scandalous questions are also forbidden. Where an advocate appears to harass a witness, the other advocate should object.

3.2.17 Admission of Exhibits into Evidence

During the trial the advocates may want to admit certain types of evidence, such as documents, police reports, photographs, and other things for the court to review. Doing this requires a step-by-step procedure which includes the following:

1. Pre-mark the exhibit;
2. Show it to opposing counsel;
3. Show it to the witness;
4. Ask the right foundational questions (see below the foundational questions);
5. Ask the court to admit the exhibit (see below for magic terminology);
6. Let the clerk mark the exhibit into evidence.

Foundational Questions:

Business Record Documents:

You should ask the following questions in order to establish the foundation for business record documents to be admitted into evidence:

- I am showing you what has been marked as Exhibit “A” for identification. Do you recognize this document? (The witness will reply “yes.”)
- What is this document? (The witness will reply: “It is a business record relating to [topic]”)
- Was this business record kept in the normal course of business?
- Was the business record made at or near the time of the event it records?
- Was the business record made by, or from information given by, a person with knowledge acting in the regular course of business?

Move the business record into evidence.

Photographs:

You should ask the following questions in order to establish the foundation for photographs to be admitted into evidence:

- I am showing you what has been marked as Exhibit “B” for identification. Do you recognize what is shown in this photograph?
- Are you familiar with the scene (person, product, etc.) portrayed in this photograph?
- How are you familiar with the scene portrayed in the photograph?
- Does the scene portrayed in the photograph fairly and accurately represent the scene as you remember it on 1st of March 2020?

Move the photograph into evidence.

Diagrams:

You should ask the following questions in order to establish the foundation for diagrams to be admitted into evidence:

- I am showing you what has been marked as Exhibit “C” for identification. Are you familiar with the area located Pacific Avenue at the crossroad of Aster Road?
- How are you familiar with this area?
- Based on your familiarity with the area, can you tell us whether the scene depicted in this diagram fairly and accurately represents the area as you recall it on the date in question?

Move the diagram into evidence.

Tangible Objects:

You should ask the following questions in order to establish the foundation for tangible objects to be admitted into evidence:

- I am showing you what has been marked as Exhibit “D” for identification. Do you recognize what I am showing you?
- Do you know what this object looked like on the 1st of March 2020?
- Does this object appear in the same or substantially same condition as when you saw it on the relevant date?

Move the tangible object into evidence.