

MOCK BAIL HEARING

R v SOUZA



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For this OJEN mock bail hearing, there are THREE packages:

- » **OJEN Mock Bail Hearing Scenario**
- » **OJEN Mock Bail Hearing Role Preparation Package**
- » **OJEN Mock Bail Hearing Justice Sector Volunteer Package**

Youth need the **Scenario** and **Role Preparation** packages.

Justice sector volunteers/teachers/organizers need all three packages.

MOCK BAIL HEARING

SCENARIO: R v SOUZA



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IN THE MATTER OF: *R v SOUZA*

- » Theft under \$5000
- » Failure to comply with a probation order
- » Failure to comply with curfew
- » Possession of stolen goods over \$5000

For this OJEN mock bail hearing, there are THREE packages:

- » **OJEN Mock Bail Hearing Scenario**
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Youth need the **Scenario** and **Role Preparation** packages.

Justice sector volunteers/ teachers/organizers need all three packages.

PARTICIPANTS

LIST OF PARTICIPANTS

Role	Participant Name
1. Marco Souza (accused)	
2. Isabela Souza (proposed surety #1 – Marco’s mother)	
3. Adriano Gouveia (proposed surety #2 – Marco’s uncle; Isabela’s brother)	
4. Yusuf Osman (proposed surety #3 – Marco’s neighbour and family friend)	
5. Constable Tenzin Sonam (arresting officer)	
6. Lawyer(s) for the Crown	
7. Lawyer(s) for the defence	
8. Justice of the Peace or Judge ¹ (can be played by a student, a teacher or a justice sector professional)	
9. Court Clerk (assists the justice of the peace -- optional)	
10. The Press (report on the hearing – optional)	
11. Court Artist(s) (sketch what happens at the hearing -- optional)	

¹In Canada, bail hearings may be presided over by either a judge or a justice of the peace. References to the “justice of the peace” in this package imply either title.

WHAT HAPPENED?

Marco Souza is an 18 year old high school student. His father died two years ago and he has been having a hard time dealing with this. While he used to do well at school his grades have been falling. A couple of months after his father died, Marco began hanging out with a new group of friends, some of whom have a history of problems with the law. They have been a negative influence on Marco, and now he has a criminal record for dangerous driving because he and one of his new friends, Jason, took Jason's aunt's car on a joyride one night. Marco was not taken into custody for this offence and he did not have a bail hearing. At trial, he was found guilty, ordered to pay a fine and placed on probation for 12 months.

Eight months later, Marco, Jason, and two other young men were allegedly caught breaking into a neighbour's house late at night. Marco was charged with:

- Break and enter;
- Assault;
- Failure to comply with his probation order from the first conviction (keeping the peace/good behaviour).

Marco was taken into custody by the police. At his bail hearing, the justice of the peace released him on a \$500 surety (which his mother supplied) and gave him a 9:00 p.m. curfew.

Marco is once again appearing before a justice of the peace at a bail hearing. Although he has not yet gone to trial for the break and enter incident, he was picked up by the police again because he and Jason allegedly stole a sign from inside a bar at 1:00 a.m. on a Saturday night. They were also allegedly in possession of a stolen vehicle that was parked outside the bar. The new charges Marco is facing are:

- Theft under \$5000;
- Failure to comply with his probation order (keeping the peace / good behaviour);
- Failure to comply with his curfew;
- Possession of stolen goods over \$5000.



The Crown is seeking a detention order. This means that Marco would be denied bail and would remain in jail until his trial. Generally, the Crown has the obligation of showing why the accused should not be released. However, in some cases (those involving more serious offences, or ones where the accused has previous charges, or previously failed to appear in court) the responsibility – or “onus” – is switched and the defence must explain why the accused should be released; this is called a “reverse onus”. Since Marco has outstanding charges, it will be up to him to convince the justice of the peace that he does not pose a threat to society and that he will show up to court when ordered.

FACT
SCENARIO

Marco’s mom is willing to act as his surety again, but is unable to come up with another \$500 because she quit her job when Marco was charged with the most recent set of offences. Her brother (Marco’s uncle) has recently moved into the home and plans to help support the family while Marco’s mom remains at home and searches for part-time employment.



SYNOPSIS OF CHARGES

Name of Defendant	Original Arrest Date	Date of this Report		Time
SOUZA, Marco	20XX/09/24	20XX/09/25		08:00
Charge	This Report Prepared by	Rank	Badge No	Unit
Possession Property obtained by crime (over) C.C. 354(1)	VLAD SOBOTKA	PLI	0000	00

SYNOPSIS FOR A GUILTY PLEA

CHARGE #1: Theft (under) C.C. 334

CHARGE #2: Failure to comply with probation C.C. 733.1

CHARGE #3: Failure to comply with recognizance C.C. 145(3)

CHARGE #4: Possession of property obtained by crime (over) C.C. 354(1)

DATE AND TIME: Saturday, September 24, 20XX, at approximately 1:00 AM

LOCATION: 123 Fake Street, Brampton, ON

VICTIM: DELLACOSTA, Aldo

On Saturday, September 24, 20XX at approximately 12:30 a.m., PC SONAM was assigned to investigate a stolen property complaint at Nipsy McThirsty's Pub. PC SONAM received information that a pair of youths stole an electronic beer sign from the establishment. The witness, DELLACOSTA, indicated that he noticed the sign was gone after they left, at which point he saw them pulling away from the parking lot in a white panel van with a broken driver's side window.

PC SONAM then patrolled the area and observed a white van, Ontario licence plate AAAA 000, proceeding southbound on Christie St., then followed it and observed that the driver's side window was broken.

At approximately 1:00 a.m., PC SONAM stopped the van and observed a sign matching the description given by the bar owner in plain view in the rear of the van.

Further investigation on the two male occupants of the vehicle established that the accused SOUZA was in violation of the terms of his release on outstanding charges of Assault x 1, Breaking and Entering x 1, and fail to comply with probation x1.

SYNOPSIS OF CHARGES



SYNOPSIS
OF CHARGES

The driver, Jason KING, was unable to produce vehicle registration documents. Upon checking the license plates, PC SONAM discovered that the van had been reported stolen

Both males were then arrested and advised of their rights to counsel. After an investigation at the scene and due to the accused SOUZA's outstanding charges, the officer was not satisfied that the accused would attend court if released on an appearance notice.

The accused were transported to xx Division and held for a show cause hearing.

	<hr/> Signature of Officer in Charge of Station	Badge No 0000
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RELEVANT LAW

JUDICIAL INTERIM RELEASE

Justification for detention in custody

515. (10) For the purposes of this section, the detention of an accused in custody is justified only on one or more of the following grounds:

- (a) where the detention is necessary to ensure his or her attendance in court in order to be dealt with according to law;
- (b) where the detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, or any person under the age of 18 years, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice; and
- (c) if the detention is necessary to maintain confidence in the administration of justice, having regard to all the circumstances, including
 - (i) the apparent strength of the prosecution's case,
 - (ii) the gravity of the offence,
 - (iii) the circumstances surrounding the commission of the offence, including whether a firearm was used, and
 - (iv) the fact that the accused is liable, on conviction, for a potentially lengthy term of imprisonment or, in the case of an offence that involves, or whose subject-matter is, a firearm, a minimum punishment of imprisonment for a term of three years or more.

FAILURE TO COMPLY WITH CONDITION OF UNDERTAKING OR RECOGNIZANCE

145. (3) Every person who is at large on an undertaking or recognizance given to or entered into before a justice or judge and is bound to comply with a condition of that undertaking or recognizance, and every person who is bound to comply with a direction under subsection 515. (12) or 522. (2.1) or an order under subsection 516. (2), and who fails, without lawful excuse, the proof of which lies on them, to comply with the condition, direction or order is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
- (b) an offence punishable on summary conviction.

THEFT***Theft***

322. (1) Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent

(a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it;

Motor vehicle theft

333.1 (1) Everyone who commits theft is, if the property stolen is a motor vehicle, guilty of an offence and liable

(a) on proceedings by way of indictment, to imprisonment for a term of not more than 10 years, and to a minimum punishment of imprisonment for a term of six months in the case of a third or subsequent offence under this subsection; or

(b) on summary conviction, to imprisonment for a term of not more than 18 months.

335. (1) Subject to subsection (1.1), every one who, without the consent of the owner, takes a motor vehicle or vessel with intent to drive, use, navigate or operate it or cause it to be driven, used, navigated or operated, or is an occupant of a motor vehicle or vessel knowing that it was taken without the consent of the owner, is guilty of an offence punishable on summary conviction.

Punishment for theft

334. Except where otherwise provided by law, every one who commits theft

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, where the property stolen is a testamentary instrument or the value of what is stolen exceeds five thousand dollars; or

(b) is guilty

(i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or

(ii) of an offence punishable on summary conviction,

where the value of what is stolen does not exceed five thousand dollars.



POSSESSION AND TRAFFICKING

354. (1) Every one commits an offence who has in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from

- (a) the commission in Canada of an offence punishable by indictment; or
- (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.

Punishment

355. Every one who commits an offence under section 354

- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars; or
- (b) is guilty
 - (i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or
 - (ii) of an offence punishable on summary conviction,
 where the value of the subject-matter of the offence does not exceed five thousand dollars.

RELEVANT
LAW

PROBATION

Failure to comply with probation order

733.1 (1) An offender who is bound by a probation order and who, without reasonable excuse, fails or refuses to comply with that order is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
- (b) an offence punishable on summary conviction and is liable to imprisonment for a term not exceeding eighteen months, or to a fine not exceeding two thousand dollars, or both.

MOCK BAIL HEARING SCHEDULE

ORDER	ACTION	TIME LIMIT
1	Crown and defence lawyers robe and take their seats in the courtroom	1 min
2	Justice of the peace is escorted into the courtroom	1 min
3	Clerk opens court	2 mins
4	Crown and defence counsel stand and introduce themselves	1 min
5	Crown lawyer reads in allegations	3 mins
INTERVIEWING WITNESSES & PROPOSED SURETIES		
6	Crown Witness #1 – Tenzin Sonam	4 mins
7	Defence cross examination of Officer Sonam	2 mins
8	Defence Witness #1 – Isabela Souza	4 mins
9	Crown cross examination of Ms. Souza	2 mins
10	Defence Witness #2 – Adriano Gouveia	4 mins
11	Crown cross examination of Mr. Gouveia	2 mins
12	Defence Witness #3 – Yusuf Osman	4 mins
13	Crown cross examination of Mr. Osman	2 mins
14	Defence examination of Marco Souza	4 mins
15	Crown cross examination of Mr. Souza	2 mins
CLOSING ARGUMENTS		
16	Defence lawyer gives closing arguments	3 mins
17	Crown lawyer gives closing arguments	3 mins
THE DECISION		
18	Justice of the peace leaves. Court is adjourned (by clerk) until he or she returns	5 mins
19	Justice of the peace returns; clerk calls court back to order. Justice of the peace explains the bail decision and discusses surety provisions if applicable	10 mins
TOTAL		59 mins

MOCK BAIL HEARING SCHED.

CONSTABLE TENZIN SONAM, ARRESTING OFFICER

Your background:

- Your name is Tenzin Sonam.
- You are 37 years old.
- You have been working for the Brampton Police Department (Peel Regional Police Services) for 12 years.
- You come from and reside in the community in which you work.

Other information for your role:

- At approximately 12:30 a.m. on September 24 of this year, you were assigned to investigate a complaint by a bar owner who alleged a pair of youths stole a beer sign from his establishment after he refused to serve them alcohol when they were unable to produce proof of age. He did not directly see them steal the sign, but noticed it was gone after they left, at which point he saw them pulling away from the parking lot in a vehicle.
- The bar owner gave a description of the youths' vehicle – a white panel van with a broken driver's side window.
- You patrolled in her car until you saw a white van, then followed it until you could see that it did, in fact, have a broken driver's side window.
- At approximately 1:00 a.m., you stopped the car and were able to see a sign matching the description given by the bar owner in the rear of the van.
- A background check on the two occupants of the vehicle established that Mr. Souza was in violation of the terms of his release.

HOW CAN I PREPARE TO BE A GOOD WITNESS DURING THE HEARING?

- » Learn your facts by heart.
- » You will be sworn in during the hearing and will need to spell your character's full name.
- » Stick to the script. Don't make up facts because this is unfair to the other students.
- » Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- » If you are asked a question about something that isn't in your package you can say you don't know the answer.
- » Speak with the paralegals/agents/representatives for your side ahead of time, and get into character when you take the stand.

CONSTABLE TENZINSONAM, ARRESTING OFFICER

- The driver, Jason King, was unable to produce vehicle registration documents. Upon checking the license plates, you discovered that the van had been reported stolen earlier that evening.
- You arrested the youths for the charges described above and held them in custody awaiting this bail hearing. While in custody, you found Mr. Souza's behaviour cooperative with police, but hostile towards Mr. King.

QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:

What is your professional background? How much experience do you have as a police investigator?

How did you come to be at the scene of the alleged crime? What did you observe at that time? How did you proceed from there?

How was the accused identified?

Is the accused known to you? How so?

What steps were taken in the course of your investigation?

Are you certain you arrested the right individual? Why?

What measures were taken to protect the rights of the accused or other relevant persons?

How has the accused behaved since being taken into police custody?

Are incidents such as the one outlined in the scenario common in the community? How do you feel about this?

MARCO SOUZA, THE ACCUSED

Your background:

- Your name is Marco Souza.
- You are 18 and attend high school.
- You have two younger brothers and live with them and your mother.
- You have no income.

Other information for your role:

- You concede that you were in the bar on the night in question and you recognize that this is a violation of your existing bail agreement. However, you maintain that you had no knowledge that the vehicle was allegedly stolen or that there was a sign from the bar in the rear of the van.
- When Jason picked you up to go out that night, you did ask him where he got the van. He told you he borrowed it from a girl he knows from his job. When you asked about the window he said he didn't know how it had been broken, and that that was the condition in which he had borrowed it.
- After being refused alcohol service by the bar owner, Jason became angry. You both wanted to find another bar. You used the washroom before leaving, and when you walked out of the establishment Jason was already in the van. You had no reason to look in the back as you entered, and so did not see the sign.
- Since your father died, you have found it difficult to be at home and have been spending more time with friends, especially Jason. You like spending time with them, but realize that every time you have had trouble with the law, it has been while with Jason.

HOW CAN I PREPARE TO BE A GOOD WITNESS DURING THE HEARING?

- » Learn your facts by heart.
- » You will be sworn in during the hearing and will need to spell your character's full name.
- » Stick to the script. Don't make up facts because this is unfair to the other students.
- » Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- » If you are asked a question about something that isn't in your package you can say you don't know the answer.
- » Speak with the paralegals/agents/representatives for your side ahead of time, and get into character when you take the stand.



MARCO SOUZA, THE ACCUSED

- You attend school regularly, but your grades are suffering. You are worried that if you miss a lot of school, you may not graduate this year. This will threaten your plans to attend community college, where you are looking forward to studying graphic design.
- You are deeply concerned about being detained because you know that several youths with whom you have had altercations in the past are currently in the same centre.
- You are glad your mother is at home more, but have a deep sense of guilt over the difficulty your behaviour has caused her.

QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:

What is your version of the events leading up to the hearing? Is the evidence and testimony the Crown is presenting accurate?

Do you have a history of obeying court orders?

What facts in your scenario can be used to convince the justice of the peace that you are a stable community member?

Have you been treated fairly during the police investigation? Have you cooperated with police?

Do you understand the bail process?

Do you have adequate financial resources to guarantee your appearance at trial?

How do you feel about what is happening to you?

What might happen to you if you are held in a detention centre before your trial?

ISABELA SOUZA, PROPOSED SURETY #1 – MARCO'S MOTHER

Your background:

- Your name is Isabela Souza.
- You are 40 years old.
- You have three sons, including Marco.
- Your husband died two years ago, leaving you the sole income earner for the family.

Other information for your role:

- You are very concerned about the changes in Marco's behaviour since his father died.
- You used to work full-time as a paralegal at a law firm, however you recently quit this job following Marco's second arrest.
- You quit your job because you feel that you need to be at home more in order to look after Marco and his brothers. You hope to find part-time employment instead of continuing with full-time work.
- You acted as Marco's surety when he was charged for the break and enter and posted \$500.
- You do not own, but rent the apartment in which you live with your three sons and most recently, your older brother, Adriano.
- You own a 2003 Chevy Blazer, but have no savings or investments.
- You do not have a criminal record or any outstanding criminal matters.

HOW CAN I PREPARE TO BE A GOOD WITNESS DURING THE HEARING?

- » Learn your facts by heart.
- » You will be sworn in during the hearing and will need to spell your character's full name.
- » Stick to the script. Don't make up facts because this is unfair to the other students.
- » Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- » If you are asked a question about something that isn't in your package you can say you don't know the answer.
- » Speak with the paralegals/agents/representatives for your side ahead of time, and get into character when you take the stand.

ISABELA SOUZA, PROPOSED SURETY #1 – MARCO'S MOTHER

QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:

Do you know what it means to be a surety? Can you explain what your responsibilities will be?

Are you a stable member of the community in which the accused will reside upon release?

What kind of relationship do you have with the accused? Are they likely to want to preserve this relationship?

What do you think about the accused's recent behaviour? Do you think that the problems are permanent or do you see them improving? How could this change occur?

What happened to allow the accused to breach their previous bail conditions? How would your involvement this time around make sure that they comply with the new conditions?

What kinds of plans can you make in order to make sure that the accused does not breach any more conditions and shows up for trial? Who will help you?

Can you provide any money for bail? How much? What financial resources do you have?

Is there anything else that you think the court should know about the accused?

ADRIANO GOUVEIA, PROPOSED SURETY #2 – MARCO’S UNCLE

Your background:

- You are Marco’s uncle and Isabela’s brother.
- You are 45 years old, unmarried, and have no children.
- You are very close to your sister Isabela and offered to move into her house to help support her and her family following Marco’s second arrest.

Other information for your role:

- You have a good relationship with Isabela’s two younger sons. You used to be close with Marco too, but feel that Marco has shut you out since his father died.
- You do not like Marco’s new friends and believe that Marco has been negatively influenced by them. You do not think that Marco would have engaged in criminal activity if he hadn’t been hanging out with them.
- You have worked as a research technician for the federal government for the past 15 years and currently make \$65,000 per year.
- You do not own a house, and have given up the lease on your apartment in order to move in with Isabela and her family. You are currently paying the rent on her apartment.
- You own a 2007 Toyota Camry, and have savings in the amount of \$40,000.
- You do not have a criminal record or any outstanding criminal matters.

HOW CAN I PREPARE TO BE A GOOD WITNESS DURING THE HEARING?

- » Learn your facts by heart.
- » You will be sworn in during the hearing and will need to spell your character’s full name.
- » Stick to the script. Don’t make up facts because this is unfair to the other students.
- » Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- » If you are asked a question about something that isn’t in your package you can say you don’t know the answer.
- » Speak with the paralegals/agents/representatives for your side ahead of time, and get into character when you take the stand.

ADRIANO GOUVEIA, PROPOSED SURETY #2 – MARCO'S UNCLE

QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:

Do you know what it means to be a surety? Can you explain what your responsibilities will be?

Are you a stable member of the community in which the accused will reside upon release?

What kind of relationship do you have with the accused? Are they likely to want to preserve this relationship?

What do you think about the accused's recent behaviour? Do you think that the problems are permanent or do you see them improving? How could this change occur?

What happened to allow the accused to breach their previous bail conditions? How would your involvement this time around make sure that they comply with the new conditions?

What kinds of plans can you make in order to make sure that the accused does not breach any more conditions and shows up for trial? Who will help you?

Can you provide any money for bail? How much? What financial resources do you have?

Is there anything else that you think the court should know about the accused?

YUSUF OSMAN, PROPOSED SURETY #3 – MARCO'S NEIGHBOUR

Your background:

- You are Isabela and Marco's neighbour. You live in the apartment down the hall from the family.
- You are 30 years old and married, with two small children of your own.
- You have been a family friend for the past 5 years. You believe that they are a very strong and caring family but that they need the support of others since the death of Isabela's husband/ Marco's father.

Other information for your role:

- You used to teach Marco when he was in middle school and remember him as a bright student who did very well in his classes.
- You also used to coach Marco in basketball. You believe that Marco is a talented athlete and were disappointed when he quit the team shortly after his father died.
- You have tried to convince Marco to rejoin that team, and have sought his help with coaching a junior team which also practices at the local community centre, but Marco has not expressed any interest in doing this.
- You are a full-time teacher at the local middle school and make \$55,000 a year. Your wife does not work right now because she is at home caring for your two young children.
- You lease a car, do not own any property, and have savings in the amount of \$10,000.
- You do not have a criminal record or any outstanding criminal matters.

HOW CAN I PREPARE TO BE A GOOD WITNESS DURING THE HEARING?

- » Learn your facts by heart.
- » You will be sworn in during the hearing and will need to spell your character's full name.
- » Stick to the script. Don't make up facts because this is unfair to the other students.
- » Listen to the questions carefully. If you do not understand the question, then ask to have it repeated.
- » If you are asked a question about something that isn't in your package you can say you don't know the answer.
- » Speak with the paralegals/ agents/representatives for your side ahead of time, and get into character when you take the stand.

YUSUF OSMAN, PROPOSED SURETY #3 – MARCO'S NEIGHBOUR

QUESTIONS YOU SHOULD THINK ABOUT WHEN PREPARING:

Do you know what it means to be a surety? Can you explain what your responsibilities will be?

Are you a stable member of the community in which the accused will reside upon release?

What kind of relationship do you have with the accused? Are they likely to want to preserve this relationship?

What do you think about the accused's recent behaviour? Do you think that the problems are permanent or do you see them improving? How could this change occur?

What happened to allow the accused to breach their previous bail conditions? How would your involvement this time around make sure that they comply with the new conditions?

What kinds of plans can you make in order to make sure that the accused does not breach any more conditions and shows up for trial? Who will help you?

Can you provide any money for bail? How much? What financial resources do you have?

Is there anything else that you think the court should know about the accused?