

CLINICAL COURSE IN CRIMINAL LAW

COURSE OUTLINE

SPRING - 2019

A. Introduction

This nine-credit course offers to students an opportunity to combine practical experience with academic study. Its intent is to motivate students by putting them in field placements in the criminal justice system and to give them the opportunity in the classroom to reflect on that experience. The objectives of the course are:

- (i) to enhance the development by each student of the skills most commonly used by practicing lawyers, and
- (ii) to develop the students scholarly understanding of the legal system in general and of the criminal justice system in particular.

With the time allocated in a nine-credit course, there is an opportunity to bring together disparate aspects of the learning process for prospective lawyers; skills training, acquisition of information and knowledge concerning areas of substantive criminal law and procedure, increased ethical awareness, interdisciplinary perspectives and a focus on legal process issues. However, the pressures and time commitments created by other scholastic endeavours (valued at between four and six hours) necessitates that selective emphasis will have to be taken with respect to the many different opportunities created within the clinical setting. The nature of these choices will be evident from the seminar schedule which is attached to this outline; suffice to say that a major emphasis will be placed on skills training (especially interviewing and advocacy skills), that only a few areas of criminal law and procedure will be examined (from an enormous range of possible options), and that interdisciplinary work in the criminal field will only be illustrated by example. It is intended that professional responsibility issues will receive attention throughout the course.

The following sections of this outline give an indication of expectations from each segment of the course and of student responsibilities.

B. The Field Placement

Students will be placed with selected personnel working the criminal justice system. Students will be placed with Crown attorneys or with members of the defence bar or possibly with judges at different levels of the Nova Scotia court system. Student placements will be determined after an interview between each student and the course instructors. An effort will be made to give students an experience which is likely to enhance their career plans or aspirations. Often this will involve exposing the student to a different perspective from that which the student has gained in the past or has planned for the future.

The division between placements with the bench and the two sides of the criminal bar is also designed to give the group, when it meets in a classroom setting, an opportunity to get input and insight from different perspectives within the system. This is something which is often very difficult to achieve from full-time actors in the criminal justice system. The academic sponsorship of this program, the different

backgrounds of the three instructors and the weekly classroom sessions create an excellent opportunity for sharing and comparing perspectives.

Apart from this exposure to the law in action through work with judges and lawyers, students will also be formally exposed to some related aspects of the system, largely through organized tours. Likely these tours will include a visit to a federal penitentiary (eg. Springhill).

Students working under supervision in a clinical law program, by virtue of Section 16(2)(d) of the Legal Profession Act S.N.S. 2004, c.28 (appended hereto), are permitted to practice law. The relevant Section of the Act should be read carefully and kept at hand when a student is appearing in court.

In some instances, as for example in a judicial placement, the opportunity for first-hand experience as counsel will not arise. Moreover, in every instance the primary question is not - What am I legally entitled to do? - but rather - What degree of responsibility can I expect to have placed upon me by virtue of the relationship established with my principal and the opportunities available? Student initiative and ability will be key determinants of this.

The instructors of the course ask every principal (judge or lawyer) to seek to develop an effective and informal working relationship with the student. This usually entails exposure to and involvement in the full range of work undertaken by the principal. (Fact gathering, client and witness interviewing, planning trial tactics and strategy, negotiating, legal research, pre-trial conferences, trial work, etc.). Though in most instances the student will not have direct responsibility (for conducting an examination, arguing a motion, rendering a ruling) the principals are always encouraged to seek out the student's input and to force the student to work through problems themselves. This is just as important as obtaining the benefit of the principal's knowledge and experience. Informal discussion between principal and student will also often include discussion of broader issues - of professional responsibility - of the efficacy of the (criminal) justice system - of tactics and strategy - of the gap between theory and practice. At the beginning of the term a checklist will be provided to students as a guide to areas they should try to participate in.

As indicated in the introductory Section, students in the Criminal Clinic do have other academic responsibilities in other courses. These they should discuss with their principal. As a general guideline, students are expected to spend approximately twenty (20) hours each week in work associated with the placement. Students, with the concurrence of their principal, may opt to be relieved of their obligations to their principals during study week (February 19 to 23) or to take a different week off from the placement position, instead of this week.

The student's status with his or her principal also carries with it concomitant professional obligations summarized in the Nova Scotia Barristers' Society Code of Professional Conduct. Students will receive initial instruction with respect to the provisions dealing with confidentiality and they can also expect that their principals will discuss any particular responsibilities which pertain to any special obligations arising out of the particular situation, for example with the federal Crown or with a judge. These and other professional responsibility concerns - from the conventional duties of the lawyer as advocate to more subtle issues of conflicting responsibilities involved in the lawyer's role - will receive continued attention throughout the term.

C. Written Assignments

Students are responsible for keeping a daily log or diary and for producing two memoranda.

(i) The Daily Log:

Each student must keep a daily log of his or her activities. This log should be a record of:

- (a) instructions received from your principal;
- (b) activities undertaken or observed by the student;
- (c) interesting issues of law, fact or professional responsibility encountered; and
- (d) time spent.

The log should go beyond the mere recording of information with respect to the student's work. Your first-hand experience with the legal system is to be treated as a rare opportunity to explore the implications for the system, for the actors in the system and for yourself of what you see, do and feel on a daily basis - that is, you are to explore in your log both the emotive and the analytic side of your exposure to "the law". The log is designed as an instrument to force each student to be reflective about your experience - and to be able to identify and evaluate both positive and negative aspects of your experience. The log also allows the instructor reviewing them to draw upon your experience either for individual or group discussion.

The logs (or copies thereof) are to be handed in weekly (normally at the Monday night seminars). Your principals are aware that this is a requirement of the course and that some of the information contained in the logs will obviously need to be treated in confidence. Indeed the nature of some of your work will be such that no details ought to be disclosed by the student even in the logs. Where appropriate, class discussions will also be conducted so as to depersonalize or generalize the event or incident under discussion.

Experience with this aspect of the course over a number of years has led to a general practice **not** to give copies of this written reflective diary to your principal. However, each student should discuss this question with their principal, as well as with a faculty member in order to judge what is considered appropriate for your particular placement.

(ii) Memoranda:

The expectation is that, in each placement position, students will be pressed into research on legal issues on a constant basis. Sometimes this research may be directed to an evidentiary or procedural point, sometimes to a matter of substantive criminal law, sometimes a Charter issue may be involved. There will be times when the research work will be done quickly and on the spur of the moment, perhaps at a lunch recess; however, sometimes the research will be anticipated well in advance of trial or it will be central to an appeal. Whatever the context, whatever the point, students are being encouraged to use their legal knowledge and their research skills to facilitate or improve the quality of work and the quality of the product in the adversarial system in action. (Indeed, it is even expected that principals who have a good idea of the possible answers to various legal points may nevertheless still force the students to work through to their own solutions. This may particularly be so of the judicial placements).

A central skill to a lawyer is to be able to concisely argue points of law and fact **in written form** as well as in the oral tradition. The requirement for this course is that the student hand in, as part of the formal course requirements, **two written memoranda**. Normally, these memoranda will address issues of law and fact and most often they will be produced first for direct use by your principal.

As a rough guideline, each memorandum should be between five and fifteen pages long. They may be handwritten but typed papers are preferred. Students who have a special project in mind, or who find difficulty in discovering an appropriate topic for their written endeavour, ought to consult with Professors Beach, Sarson or Driscoll. Any proposed deviation from the written requirements of this course must be discussed with and approved by these three instructors early in the term.

D. The Seminars

Generally speaking, there will be two two-hour seminars per week throughout the course. The seminars (unless otherwise indicated on the schedule or advised) will be held as follows:

Mondays - 7:00-9:00 p.m.

Fridays - 1:30-3:30 p.m.

As indicated in the introduction, time limitations dictate that choices be made between different but related ways of approaching the subject of the criminal justice system and the students personal involvement with that system - through substantive and adjectival law, through an interdisciplinary focus, and through concern for issues of professional responsibility and legal process. The attached schedule of seminars reflects the tentative choices which have been made. Alternative suggestions from participants are welcome. Some examples of possible alternatives have been listed at the bottom of the schedule.

PLEASE NOTE: Class participation is an important component of this course. This is a nine credit clinical course; Attendance is Mandatory.

E. Class Material

Students are asked to acquire the most recent edition of:

Martin's Criminal Code or Tremear's Criminal Code

Students will be required to use reference texts throughout the term dealing with evidence law, criminal law, trial techniques and advocacy.

F. Evaluation

The course is graded on an honours/pass/fail basis. Faculty regulations require that a numerical grade be given to any person who fails for purposes of computation in an individual's overall average. Otherwise, the grade is not computed in the student's average. The final grade will be determined after consultation

with the principal to whom each student was assigned and with others who may have assisted in conducting the course.

Ideally, evaluation is intended to constructively advise the student of his or her strengths or weaknesses with the aim of positively encouraging improvement and the continuing development of the knowledge or skills which are sought to be learned. During the term, students will be evaluated on the spot as they conduct various simulations. Each principal will also be encouraged to speak to the student about things that are being done well and about things that are being done poorly and about why this is perceived to be so. The required written work will also be examined in this way.

At the end of the term, each student will attend a final evaluation session with the instructors and will receive feedback with respect to their participation in each aspect of the course. Students may also receive a written evaluation, and if they request it, one will be provided.

G. Instructors

The Honourable Judge Barbara J. Beach

Barbara is a Judge of the Provincial Court sitting in Halifax. She is a former senior staff lawyer at Nova Scotia Legal Aid specializing in criminal law and was in charge of the Halifax Nova Scotia Legal Aid Office. She was called to the Nova Scotia Bar in 1978 and had worked at Nova Scotia Legal Aid to the time of her appointment to the Bench. She has participated in the Clinical Course in Criminal Law as a principal since 1982. Barbara has also acted as a guest lecturer at the law school and in various continuing legal education programs. She has been a co-instructor in this course since 1987. Barbara is extensively involved in judicial education in Nova Scotia and throughout Canada.

Christine Driscoll

Christine is a senior prosecutor with the Nova Scotia Public Prosecution Service. She was called to the Bar in 1996. She spent two years in private practice and then joined the Nova Scotia Public Prosecution Service in 1998 as a Senior Crown Attorney. In that role she prosecuted many complex and high profile cases in Provincial Court and Supreme Court. She was promoted to the position of Senior Crown Counsel in 2015 and became a member of the Senior Litigation Team in Halifax in 2016. She has taught the Criminal Trial Practice Course since 2013 and was a mentor in this course from 2001 to 2012.

Brad G. Sarson

Brad is a senior defence lawyer in Nova Scotia. He was called to the Bar in 1997 and joined the Truro Office of Nova Scotia Legal Aid in October of that year. He practiced in the area of family law in the Dartmouth office of NSLA from 1998 until July of 1999, at which time he began practicing exclusively in the area of criminal law with the Halifax South office of NSLA. Brad has represented clients at all levels of court in Nova Scotia. In March of 2013, Brad was appointed the managing lawyer of the Halifax South office from 2000-2015.