

Sopinka McKelvey Cup

LAWS 2171.02

Course Outline

A list of suggested readings and an explanation of the course format is attached. An example of particular topics covered in the course is identified under the suggested readings.

Evaluation

The purpose of the Sopinka Cup is to teach trial advocacy skills by instruction, practice and constructive criticism (trial and error). Students will read texts on direct examination, have a lecture on direct examination, and then perform a direct examination. The same process will be followed for other trial skills.

At the conclusion of the fall course, each student will take part in a full trial based on the current year's Sopinka Cup problem. Four students will be chosen in that process to go on to the McKelvey Cup in Moncton in February, and, one of those teams will go on to a second trial in Ottawa in national competition. The trials last up to 3 ½ hours. The actual conduct of the trials is subject to the Rules of the Sopinka Cup.

Students will be evaluated based on their performance in their final trial, including oral argument (opening or closing), a direct examination and a cross examination. They will also be judged on objections, motions and general trial procedure. There is no written work required in the course, and the course does not count as a Major paper. Students who wish to do so may submit written versions of their

questions or submissions for criticism.

The student's performance in the final trial is assessed out of 100 and that mark becomes the student's numeric grade, although the performance in class will form 25% of the final mark in the event that benefits the student. (Students selected to attend the regional trial or the Sopinka Cup will be assessed based on their performance at that event, with the early class work to form 25% of the mark if that benefits the student). The numeric grade is converted to a letter grade by the law school.

Classes are Tuesday and Thursday evening, beginning at 4.30pm. Attendance at any particular session is not mandatory, but students will be expected to attend regularly (as other students cannot practice without their regular participation).

The first portion of the course ends in the fall and receives two credits; students selected to go on in regional competition receive 3 credits. For those students preparation sessions will be scheduled at mutually convenient times through until the McKelvey or Sopinka Cup.

Typically, we meet twice a week for about 90 minutes.

The course requires substantial preparation for each class (chiefly preparing and refining an examination or oral argument), but occasionally also research on particular issues of substantive, evidential or procedural law.

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Format

The objective of the course is to teach you trial advocacy skills. That's done by reading, lecture and practice.

There is no casebook for the course. There are five excellent texts in the area. Look at all five of them, decide which one you like, and refer to it regularly. The bibliography, which appears at the end of these materials, also refers you to other reading which may be useful for a particular topic.

Geoffrey D.E. **Adair**, *On Trial* (Butterworths, 2004)
Earl **Levy**, *Examination of Witnesses in Criminal Cases*
Thomas **Mauet**, *Fundamentals of Trial Techniques*
Modern Trial Advocacy (2d Cdn Edition) (NITA)
Lee **Steusser**, *An Advocacy Primer*

While one class a week will feature a lecture on the different skills, the lecture is more valuable if you have done some reading. One of the great values of the texts is that they offer sample direct and cross examinations to illustrate the point they make.

The other class each week is directed toward practise and criticism. You will take turns doing an examination in chief on each other, and then we'll assess how you have done.

Part way through the course, after we have briefly examined the basics of trial advocacy, we begin to look in detail at the particular problem you will use in your final trial. Thereafter, our classes will include less instruction, and more practice and criticism.

The rules of the competition prohibit me from simply writing a script for you to follow—and that wouldn't be very useful as a teaching technique anyway. So it's up to each of you to decide on what issues you wish to examine each witness, what you wish to address in your opening or closing arguments. My job is to criticize your technique.

My own observation (and one of my great disappointments in life) is that advocates are made, not born. Doing well is largely a matter of hard work. (I had always entertained the hope that simply being brilliant, witty and comfortable speaking in public would count for something. Alas not. I hope you handle this disappointment better than I did.)

Steps

In my view, most of your success at the Sopinka Cup depends on technique: how you ask questions or make an opening or closing argument. Rather less depends on what you choose for your questions or argument. And a good bit depends on luck—how well the particular line of questions works with your particular witness.

We can't make you luckier, so instead we have to focus on technique and substance. When we begin

to focus on the Sopinka Cup problem, you should spend some time on the substance, and then we will focus as a group on technique. Learning technique requires lots of practice! What that means is letting you practise on each other and on volunteer witnesses until you develop a passable technique.

Bibliography

I have provided you with a short precis of the key points on 8 topics. This is just until you get your feet wet, on the assumption you need to know some basics before you can learn something. Most of what you need to know you must research for yourself.

You will need to learn the law on a number of issues, some of which will only become apparent depending on the lines of questioning you wish to use. The law library has 17 shelves of textbooks on advocacy, some of which are more useful than others (!).

All 5 of the books I have identified as general texts are on reserve. You might also look at Keith Evans, *Golden Rules of Advocacy* (Blackstone) on basic issues that are not canvassed in many other works.

You have three different kinds of research to prepare for the Sopinka Cup: learning the relevant substantive law to support the particular charge, learning the rules relating to the admission of particular evidence, and learning effective technique. The last two are most important. One kind of text teaches us how to use character evidence effectively; the other teaches us the circumstances in which character evidence is admissible.

There are particular issues which can arise in any trial, most of which are listed below. I have tried to identify particular references for you when dealing with those issues. However, if you wish simply to stick with the texts already referred to (or some personal favourite of your own)—that's fine.

However, if you are searching for direction on the specific issues which are listed, I hope the sources will prove helpful. You may wish to choose one source which states the rules on when character evidence is admissible, and one which deals with how to introduce it effectively (to prolong the earlier illustration).

General Works on Advocacy

The following deal with a number of advocacy issues and are recommended. They are cited below by author unless otherwise indicated.

Geoffrey D.E. **Adair**, *On Trial* (Butterworths, 2004)
F. Lee **Bailey**, *Cross Examination in Criminal Trials*
CBA, *Advocacy*, 1982 (DeBoo)
Dialogue with the Bench: Sharpening your advocacy Skills (CBAO)
Keith **Evans**, *Golden Rules of Advocacy* (Blackstone)
Federation of Law Societies *National Criminal Law*

Program

Earl **Levy**, Examination of Witnesses in Criminal Cases

Thomas **Mauet**, Fundamentals of Trial Techniques

Alan W. **Mewett**, Witnesses (Carswell)

Frank **Moskoff**, Advocacy in Court (Canada Law Book)

Modern Trial Advocacy (2d Cdn Edition) (NITA)

John **Olah**, The Art and Science of Advocacy

Julian **Porter**, Cross Examination: Techniques that Work

Roger **Salhany**, Cross Examination: The Art of the Advocate

Lee **Stuesser**, An Advocacy Primer

Robert B. **White**, The Art of Trial (Canada Law Book)

Works on Evidence

The following deal with evidential issues, although of course there are many textbooks which also address the law of evidence.

Christopher **Granger**, The Criminal Jury Trial in Canada

Sopinka, Lederman & Bryant, Evidence

Watt's Manual of Criminal Evidence

You will be expected during the Sopinka Cup to know how to handle the following issues. It is also possible that you will be required to argue a specific legal issue relating to the admissibility of evidence on an issue not identified here. We will attempt to identify any evidential issues as part of our preparations.

As one of these issues arises in our practices, I'll identify it and try to explain the limits on (for example) referring to prior consistent statements. However, I encourage you to do further research as the issue arises; you may have to argue the point in the competition, and you'll need more than "Brian Casey said so." In no particular order, expect to know about the following issues:

Basic Rules—Evans, pp. 5-30; Levy, Ch. 21; Stuesser, pp. 49-51

Trial Brief—Advocacy - p. 35; Stuesser, pp. 43-48

Opening Argument—Moskoff, p. 53, Advocacy, 109; Advocacy, 129, Advocacy, 269, 496; Granger, ch. 7; Olah, s. 8.1, 8.3; Modern, 335-384; Mauet
Stuesser, pp. 73-80

Preparing Witnesses—Olah, s. 7.3; Finlay & Cromwell, Witness Preparation Manual; Stuesser, pp. 81-85; 30-33; Adair, pp. 97-110

Direct Examination—White, p., 97 - 104, Watt, s. 19; Olah, s. 9; Modern, p. 43-78; Levy, 33-90; Mauet; Evans, p. 73-94; Stuesser, pp 81-114; Adair, pp. 111-124

Prior Consistent Statement—

Use of out of court statements: Advocacy, 213, Mewett, 11.2; Olah, s. 10.3

Exhibits—Olah, s. 7.4; 10-6; Modern, 271-334; Levy, 50-52; Mauet; Stuesser, pp. 98-103; Adair, pp. 13-34

Voir Dire—How to enter a voir dire and the procedure on a voir dire Olah, s. 10.1

Objections—Advocacy, p. 49; Levy, Ch. 24; Dialogue, Pt II, pp. 12-13; Modern, p. 235-270; Mauet; Stuesser, Ch. 10; Adair, pp. 451-456

Prior Inconsistent Statements—How to prove and cross on a prior inconsistent statement Advocacy, 213, Mewett, 11.3, 14.3; 1998 Fed 12.1 - 12.2; Stuesser, pp. 152-166; Modern 139-188; Adair, pp. 257-266

Impeaching a witness—Advocacy, 229, Mewett, 11.3; Modern, p. 139-188; Stuesser, Ch. 9

Character Evidence—Watt, s. 31-33; Olah, s. 10.9; 1998 Fed 12.5; Sopinka; "Evidence of the accused's character: A Roadmap for young counsel" 43 Crim LQ 489.

Demonstrative Evidence—Olah, c. 11

Similar Act evidence—Watt, s. 34-36; Sopinka

Use of notes—Mewett, 13; 98 Fed 12.4

Hearsay—Rules relating to the admission of hearsay and exceptions: Sopinka, Levy Ch. 31

Experts—How to qualify an expert - Advocacy, p. 207; Modern 195-234; Adair, pp. 347-442

Browne & Dunn—Mewett, 2.4; Evans; Adair, pp. 173-183

Cross Examination—Levy, Ch. 4-17; Modern, p. 79-138; Evans, p. 95-112; Mauet; Moskoff, p. 25 -53; White, pp.105-211; Advocacy, p.247, Watt, s. 20; Olah, ch. 12-16; 2002 Fed, Tab 7 & 8; Stuesser, pp. 115-143; Adair, pp. 165-346, 411-442

Re-examination—Watt, s. 21; Modern, p. 189-194; Evans, p. 113-118; Levy, 393-395; Stuesser, pp. 104-105; Adair pp. 443-450

Closing Address—Modern, p. 385-434; Mauet; Moskoff, p. 65; White, p.213-220; Advocacy, 508; Olah, c. 17-18; 1998 Fed 15.7, 15.8; Stuesser, Ch. 11; Adair, pp. 481-510

1. Student Requests for Accommodation

Requests for special accommodation for reasons such as illness, injury or family emergency will require an application to the Law School Studies Committee. Such requests (for example, for assignment extensions) must be made to Associate Dean Michael Deturbide or the Director of Student Services as soon as possible, before a scheduled exam or a deadline for an assignment, and will generally require medical documentation. Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests.

Students may request accommodation for either classroom participation or the writing of tests and exams due to barriers related to disability, religious obligation, or any characteristic under the Nova Scotia Human Rights Act. Students who require such accommodation must make their request to the Advising and Access Services Center (AASC) at the outset of the regular academic year. Please visit www.dal.ca/access for more information and to obtain the Request for Accommodation – Form A. Students may also contact the Advising and Access Services Centre directly at 494-2836.

2. Submission of Major Papers and Assignments

Major papers and assignments must be submitted in hard copy. Students should hand papers in to the place stipulated by the instructor and ensure they are date and time stamped. Please read the law school policy on late penalties: <https://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>

Please note students may also be required to provide an identical electronic copy of their paper to the instructor by the due date. Papers may be submitted by the instructor to a text-matching software service to check for originality. Students wishing to choose an alternative method of checking the authenticity of their work must indicate to the instructor, by no later than the add/drop date of the course, which one of the following alternative methods they choose:

- a) submit copies of multiple drafts demonstrating development of their work
- b) submit copies of sources
- c) submit an annotated bibliography

3. Plagiarism

All students must read the University policies on plagiarism and academic honesty <http://academicintegrity.dal.ca/> and the Law School policy on plagiarism <http://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>. Any paper or assignment submitted by a student at the Schulich School of Law may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above and should consult with the instructor if they have any questions. Ignorance of the policies on plagiarism will not excuse any violation of those policies.

Required links:

* General Academic Support – Advising Halifax: https://www.dal.ca/campus_life/academic-support/advising.html

* Fair Dealing Guidelines <https://libraries.dal.ca/services/copyright-office/guidelines/fair-dealing-guidelines.html>

Class Schedule

Draft Class Schedule

This is the schedule I would propose to follow for the fall portion of the course. Towards the end of October, we will schedule the four trials which are to take place-- typically for a time in the middle of November.

Subject	Lecture	Practise	Exercise
Introduction to course	6 Sept	11 Sept	Direct & Cross
Direct Examinations & Exhibits	13 Sept	18 Sept	Direct & Cross
Cross Examinations	20 Sept	25 Sept	Direct & Cross
Notes & PI Statements	27 Sept	2 Oct	Impeachment
Opening & Closings	4 Oct	9 Oct	Opening or Closing
Appearances & Motions	11 Oct	16 Oct	Appearances and Motions
Walk through Crown	18 Oct	23 Oct	Walk through Defence
Make Up Class, Questions	25 Oct	30 Oct	Practice whatever you wish

Exercise Schedule

Room 304		
September 11		
Direct	Witness	Cross
Hilary Angrove	Chris Chapin	Michael Curry
Nicholas Foran	Chris Chapin	Rebecca Hovi
Andrew Jamieson	Hilary Angrove	Desmond Jung
Chris Chapin	Hilary Angrove	Ted Lewis

Room 305		
September 11		
Direct	Witness	Cross
Jack MacDonald	Matt MacLellan	Sean Ponnambalam
Hussein Rehmanji	Matt MacLellan	Daniel Roth
Fabian Suarez-Amaya	Jack MacDonald	Tamara Watson
Matt MacLellan	Jack MacDonald	Alicia Yowart

September 18		
Tamara Watson	Sean Ponnambalam	Fabian Suarez-Amaya
Alicia Yowart	Sean Ponnambalam	Matt MacLellan
Sean Ponnambalam	Alicia Yowart	Jack MacDonald
Daniel Roth	Alicia Yowart	Hussein Rehmanji

September 18		
Desmond Jung	Michael Curry	Andrew Jamieson
Ted Lewis	Michael Curry	Chris Chapin
Michael Curry	Ted Lewis	Hilary Angrove
Rebecca Hovi	Ted Lewis	Nicholas Foran

September 25		
Andrew Jamieson	Nicholas Foran	Desmond Jung
Chris Chapin	Nicholas Foran	Ted Lewis
Hilary Angrove	Andrew Jamieson	Michael Curry
Nicholas Foran	Andrew Jamieson	Rebecca Hovi

September 25		
Tamara Watson	Hussein Rehmanji	Fabian Suarez-Amaya
Alicia Yowart	Hussein Rehmanji	Matt MacLellan
Sean Ponnambalam	Fabian Suarez-Amaya	Jack MacDonald
Daniel Roth	Fabian Suarez-Amaya	Hussein Rehmanji

October 2		
Sean Ponnambalam	Tamara Watson	Jack MacDonald
Daniel Roth	Tamara Watson	Hussein Rehmanji
Tamara Watson	Daniel Roth	Fabian Suarez-Amaya
Alicia Yowart	Daniel Roth	Matt MacLellan

October 2		
Michael Curry	Desmond Jung	Hilary Angrove
Rebecca Hovi	Desmond Jung	Nicholas Foran
Desmond Jung	Rebecca Hovi	Andrew Jamieson
Ted Lewis	Rebecca Hovi	Chris Chapin

Room 304	
October 9	
4 Crown openings	
4 Crown closings	

Room 305	
October 9	
4 Defence openings	
4 Defence closings	

October 16	
Appearances	Motions
Sean Ponnambalam	Jack MacDonald
Daniel Roth	Hussein Rehmanji
Tamara Watson	Fabian Suarez-Amaya
Alicia Yowart	Matt MacLellan

October 16	
Appearances	Motions
Hilary Angrove	Michael Curry
Nicholas Foran	Rebecca Hovi
Andrew Jamieson	Desmond Jung
Chris Chapin	Ted Lewis

October 18
We do a walk through of each part of the Crown Case in chief.

October 23
We do a walk through of each part of the Defence case in chief

Trial "A"

Crown	Defence
Hilary Angrove & Jack MacDonald	Nicholas Foran & Hussein Rehmanji

Trial "B"

Crown	Defence
Andrew Jamieson & Fabian Suarez-Amaya	Chris Chapin & Matt MacLellan

Trial "C"

Crown	Defence
Michael Curry & Sean Ponnambalam	Rebecca Hovi & Daniel Roth

Trial "D"

Crown	Defence
Desmond Jung & Tamara Watson	Ted Lewis & Alicia Yowart