

Cross-Examination

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The Paralegal Licence

An Advocate's Licence

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Presentation Roadmap

1. Trial Advocacy
2. Fundamentals of Cross
3. Ethics
4. Advanced Cross

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1. Trial Advocacy

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The Advocacy Process

1. Gather info
2. Process info
3. Present info

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The 6 Trial Fundamentals

1. Story
2. People
3. Documents and things
4. Law of evidence
5. Trial procedure
6. Substantive law

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The 6 Trial Fundamentals

1. Story

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2. People

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3. Documents and things

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The 6 Trial Fundamentals

4. Law of evidence

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5. Trial procedure



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6. Substantive law



2. Cross-Examination Fundamentals

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A Shout Out

Larry Pozner and Roger Dodd

“Cross-Examination
Science and Techniques”

2nd Edition

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3 Rules of Cross-Examination

1. Leading questions only
2. One new fact per question
3. Work towards a goal

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3 Rules of Cross-Examination

1. Leading questions only

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3 Rules of Cross-Examination

2. One new fact per question

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3 Rules of Cross-Examination

3. Work towards a goal

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Preparing the Cross-Examination

1. Gather a pile of stuff
2. Organise info by topics
3. Draft chapters of cross-examination

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Organising the Facts

Preparation		
TOPIC		
SOURCE	FACTS	NOTES

Chapters of Cross-Examination

Cross-Examination

CHAPTER

SOURCE

LEADING QUESTIONS

TACTICS

Note-Taking during Direct Examination

Take limited notes into your chapters of cross-examination

Conducting the Cross-Examination

Use your chapters of cross-examination

Have your source material handy

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The Rule in Browne v. Dunn

If you intend to call a witness to contradict the witness being cross-examined, you must put the contradictory facts to the witness being cross-examined

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One Question Too Many

Don't ask that question!

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Break

Online trial resources for the OPA:

www.trialcounsel.ca/OPA

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3. Cross-Examination Ethics

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Paralegal Rules of Conduct

Professionalism
Integrity
Civility
Duty to the Courts

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Criminal Defence and Provincial Offences

Curiosity killed the cat.

And put your client behind bars.

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Don't become a witness

Hire a private investigator.

Hire a colleague.

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Preparing your client

It's privileged.

Keep it that way.

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Preparing a non-client witness

It ain't privileged.

Tell them to tell the truth.

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Preparing an expert witness

An expert's duty is to help the
Court

Not to advocate for your client

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Order excluding witnesses

Joe said that...

Joe's written statement suggests...

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Talking to a witness at trial

Only talk before they testify.

Don't talk while they testify.

Rule 4.03

(there are rare exceptions)

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Fair questions

Don't misstate things.

Or you lose your credibility.

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Destroy the other side's witness

It is unethical not to.

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Withdrawal

Warn your client before trial.

Withdraw if necessary.

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4. Advanced Cross-Examination

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Impeaching a Witness

1. Identify the inconsistency
2. Confirm the current version of the facts
3. Confront with the other version of the facts

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Preparing a Witness

Play devil's advocate.

Cross-examine them.

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Preparing a Witness

1. Tell the truth
2. Answer the question directly
3. Be yourself
4. Teach the Judge

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The Runaway Witness

Use the rules of cross-examination to keep them under control

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The Can't Remember / Don't Know Witness

Use selective memory to undermine credibility or to bolster your client's evidence

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Loops

Loop and re-loop great quotes

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Constructive Cross-Examination

Use their witness
to build your case

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Improving your Cross-Examination

Seek opportunities in Courts and Tribunals

Cross-examine your friends and family

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Thank you!

Online trial resources for the OPA:

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