LAW SCHOOL

The Line of Honour: a Case Brief

Proving a line: hearsay, old records, oral history and the standard of proof.

The issue

What evidence may prove a line of descent from a Loyalist Mohawk of the three villages, and to what standard; and how should gaps in the record be treated?

The instruments

Instrument	Date	What it does
Dorchester's Order, its note	9 Nov 1789	Descendants by either sex carry the mark
Simcoe's Proclamation	6 Apr 1796	Adherence ascertained on oath before the magistrates
Brant's census	1785	The families on the Grand River
Records of each generation	1785 to today	Births, baptisms, marriages, censuses

The statutes

Evidence Act, RSO 1990, c E.23, ss 35 (business records), 29–33 (public documents).
Vital Statistics Act, RSO 1990, c V.4.

The cases

F.H. v McDougall, 2008 SCC 53
In civil cases there is one standard of proof: the balance of probabilities.

R v Khelawon, 2006 SCC 57
Hearsay is admissible under the principled approach where it is necessary and reliable.

Mitchell v MNR, 2001 SCC 33
Oral history is admissible if useful and reasonably reliable.

R v Powley, 2003 SCC 43
Ancestral connection need not be by blood quantum; it may be shown by birth, adoption or other means.

The arguments

	Against the line	For the line
Old records	Incomplete and inconsistent; spellings vary	Public and church records, made at the time, carry weight
Family accounts	Hearsay	Admissible as pedigree evidence or under Khelawon where necessary and reliable
Gaps	Fatal to proof	Bridged on the balance of probabilities (McDougall), by records around the gap
The oath	No more than self-assertion	The standard the Crown set in 1796, with the record behind it

© Mohawk's Printer for Grand River, 2026, for the Mohawk Nation of Grand River · Grand River Territory, Ohsweken. Free to copy for teaching.

The Line of Honour: a Case Brief

Weak points to test

For the line: variant spellings, missing registers, and the reliability of family accounts. Against it: the single civil standard, Powley’s flexible view of ancestral connection, and the Crown’s own failure to keep the registry it ordered.

Briefing note

A justice of the peace is asked to receive the oath of a person whose line has one gap, in the 1840s, bridged by a family Bible and a census. In 150 to 200 words, advise the justice: what the oath attests, what the justice should see before receiving it, and what to record. Write it as a briefing note: purpose, background, considerations, recommendation.

Moot problem

The Nation’s registrar refused to record a line because of a gap in the 1840s. The applicant appeals to the Nation’s Bench, relying on a family Bible, a census, a baptism of the next generation, and her grandmother’s account.

For the applicant: McDougall, Khelawon, Mitchell and the records around the gap. **For the registrar:** the need for certainty in a public register and the weakness of the evidence. **For both:** what standard a register of this kind should apply.

© Mohawk’s Printer for Grand River, 2026, for the Mohawk Nation of Grand River · Grand River Territory, Ohsweken. Free to copy for teaching.

The Line of Honour: a Case Brief

A worked outline: IRAC

Step	For the applicant
Issue	Is the line proved, despite the gap, to the standard the Register should apply?
Rule	The balance of probabilities (McDougall); hearsay under Khelawon; oral history under Mitchell.
Application	The census and baptism fix the generations on each side; the Bible and account bridge the gap; nothing contradicts them.
Conclusion	The line is proved; the registrar is directed to record it.

The registrar’s outline runs the same four steps the other way. Students draft it themselves.

© Mohawk’s Printer for Grand River, 2026, for the Mohawk Nation of Grand River · Grand River Territory, Ohsweken. Free to copy for teaching.

LAW SCHOOL

The Line of Honour: a Case Brief

Written assignment: memorandum of argument

The task

Write the memorandum of argument for one side of the moot on this sheet: the applicant or the registrar, as your instructor assigns. Then argue it.

Requirements

- 2,500 words, not counting the list of authorities.
- Every authority cited in McGill Guide form, with pinpoints.
- At least six authorities, including at least two not on this sheet.
- Meet the other side’s best argument in Part III, not just your own case.
- Only facts set out in the moot problem; no new facts.

Structure

- Part I, the facts: a neutral statement, no more than two pages.
- Part II, the issues: each as a single question.
- Part III, the law and argument: issue by issue, the rule, its application, and the other side’s answer met.
- Part IV, the order sought: precisely worded.
- Part V, the list of authorities: statutes, then cases, then secondary sources.

Timeline

- Week 1: research; a one-page outline of your issues and authorities.
- Week 2: the full memorandum, exchanged with the other side.
- Week 3: oral argument.

Oral argument

Fifteen minutes a side, two minutes’ reply for the applicant. Expect questions from the bench from the first minute; the marking guide on the instructor’s page applies.

Integrity

Your memorandum must be your own. If you use an AI tool for research or drafting, verify every authority against the reports and say so in a note; an invented citation fails the assignment.

© Mohawk’s Printer for Grand River, 2026, for the Mohawk Nation of Grand River · Grand River Territory, Ohsweken. Free to copy for teaching.

LAW SCHOOL

The Line of Honour: a Case Brief

For the instructor: standards met

Universal competencies	Identify key facts and claims; Understand perspective and point of view; Analyse and evaluate evidence; Apply: what does this mean for us?. The same everywhere, whatever the curriculum.
TRC Call to Action 28	Evidence of Indigenous history (Mitchell), and the proof of identity and descent.
National Requirement	Problem-solving, legal research, and oral and written communication.
Citation	The McGill Guide; pinpoints left for students to supply.
Method	IRAC; a briefing note to a justice of the peace; a moot on an appeal from a registrar.
Balance	The arguments both ways and their weak points; the brief names its own position.
Time	One class of 90 minutes; the moot as a separate session.

Marking guide: the moot

	Outstanding	Strong	Competent	Weak
Law	Every authority on point, accurately stated and pinpointed	Main authorities correct	Some missed or loose	Wrong or absent
Analysis	Applies the law to the facts and meets the other side’s best point	Applies the law clearly	Applies it in part	States law without applying it
Structure	A clear road map, followed throughout	Clear and mostly followed	Some drift	Hard to follow
Advocacy	Answers the bench directly and returns to the theory	Answers well	Answers with difficulty	Avoids the questions

This brief sets out the Mohawk Nation of Grand River’s position beside others, for study and argument. The case summaries are for teaching: read the reports. It is not legal advice.

© Mohawk’s Printer for Grand River, 2026, for the Mohawk Nation of Grand River · Grand River Territory, Ohsweken. Free to copy for teaching.