

**MOOT COURT MANUAL**

**SCHULICH SCHOOL OF LAW**  
**DALHOUSIE UNIVERSITY**

**2011-2012**

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## **I. INTRODUCTION**

### **A. First Year Mooting**

All first year students will participate in an exercise in written and oral advocacy as part of their small group work. Students should consult the materials and guidelines handed out by their small group professor. Special workshops in mooting and advocacy will be offered to first year students. All first years are also strongly urged to attend the Smith Shield Mooting Competition taking place the evening of October 5, 2011 at 7:30 p.m. in Room 105. Each first year student will also be encouraged to attend a second year moot to watch (when oral submissions are presented in February 2012).

### **B. The Second Year Moot Program**

#### **1. General Information**

All second year students at Dalhousie Law School participate in the Compulsory Mooting Program. This participation, spread out over the fall and winter terms of second year, counts for 0.5 credits per term (1 credit total). Students will be marked on an Honours/Pass/Fail scale. They will not receive a letter grade for the course.

The marking sheets used for the factums and oral submissions can be found in the Appendices at the back of this manual;

The Compulsory Mooting Program involves:

- (i) Six lectures on advocacy skills, including persuasive legal writing, preparation of factums, proper courtroom decorum, and oral advocacy;
- (ii) Observing the Smith Shield Mooting Competition conducted by the top mooters chosen from last year's class. (This year's Smith Shield is on Wednesday, October 5, 2011 at 7:30 p.m. in Room 105);
- (iii) Mooting a hypothetical case. Second year students will be assigned their moot problem and their particular side (appellant or respondent) randomly;
- (iv) Drafting a factum. This is intended as an advocacy exercise with limits placed on the amount of research required (e.g. students may cite no more than five cases; no more than two secondary sources; and only relevant legislation);
- (v) Students will exchange factums with opposing counsel. Consistent with appellate practice, the appellants' factums are due before respondents' factums, to give respondent counsel an opportunity to respond in writing. Each side will have at least one week for

the drafting of factums. The submission and exchange of factums will occur in the fall term (see schedule below);

(vi) Presentation of oral arguments, which will take place during the winter term (see schedule below).

(vii) The bench for the oral arguments will consist of a Chief Justice (a third-year student), a faculty member, and a practitioner. Each judge will participate in questioning and engaging with students during the oral submissions;

(viii) The faculty judge will be the only individual marking the students' moots. Neither the Chief Justice nor the practitioner will mark factums or assign grades;

(ix) The third year student and practitioner will provide critique and feedback on the oral submissions immediately after the moot or later through e-mail or written assessment. Students may request a meeting with the faculty judge or practitioner for additional feedback.

## 2. Moot Schedule

<b>Date/ Location</b>	<b>Topic</b>	<b>Readings</b>
Tues. Sept. 27, 2011 12:00–1:00 p.m.  <b>Room 105</b>	<b>Introduction and Written Advocacy I</b> (Persuasive Legal Writing)  Moot Problems Distributed Professor: Cynthia Chewter	Moot Court Manual 2011-2012
Tues. October 4, 2011 12:00 – 1:00 p.m.  <b>Room 105</b>	<b>Written Advocacy II</b> (Writing a Persuasive Factum: a Lawyer's Perspective)  Professor: Cynthia Chewter	John I. Laskin, "Forget the Windup and Make the Pitch"  Marvin Catzman, The Wrong Stuff: How to Lose Appeals in the Court of Appeal"
Wed. October 5, 2011 7:30 p.m.  <b>Room 105</b>	<b>Smith Shield Moot</b>	
Tues. October 11, 2011 12:00 – 1:00 p.m.  <b>Room 105</b>	<b>Written Advocacy III</b> (Writing a Persuasive Factum: a Judge's Perspective)  Guest: Retired Justice David R. Chipman, Nova Scotia Court of Appeal	David R. Chipman, "Appeal Court Practice"
Fri. October 21, 2011 9:00 a.m.– 11:00 a.m.  <b>Room 407</b>	<b>Appellants' factums due to court and opposing counsel</b>	

Fri. October 28, 2011 9:00 a.m.–11:00 a.m.  <b>Room 407</b>	<b>Respondents' factums due to court and opposing counsel</b>	
Tues. January 10, 2012 12:00– 1:00 p.m.  <b>Room 105</b>	<b>Oral Advocacy I</b> (Crafting a Persuasive Oral Argument: a Judge's Perspective)  Guest: Retired Justice David R. Chipman, Nova Scotia Court of Appeal	Review David R. Chipman, "Appeal Court Practice" from first term
Tues. January 17, 2012 12:00 – 1:00 p.m.  <b>Room 105</b>	<b>Oral Advocacy II</b> (Crafting a Persuasive Argument: a Lawyer's Perspective)  Professor: David Blaikie	The Honourable Mr. Justice Sydney L. Robins, "Appellate Advocacy," (October 1997) 16 Advocates; Soc. J. No. 3, 11-15
Tues. January 24, 2012 12:00 – 1:00 p.m.  <b>Room 105</b>	<b>Oral Advocacy III</b> (Basics and Courtroom Decorum)  Professor: Cynthia Chewter	Justice John Sopinka, <i>The Conduct of an Appeal</i> , pp.277-291
Mon. Feb. 6 – Thurs. Feb. 9, 2012 5:00–7:00 p.m. and 7:00–9:00 p.m. <b>Rooms TBA</b>	<b>Moots</b> (each student will be assigned a two hour timeslot to argue a moot this week.)	

### C. Smith Shield Mooting Competition

Second year students who perform superbly in the compulsory moots may be asked to try out for the Smith Shield Moot for the following year. The Smith Shield Moot, first held in 1927, is very prestigious and a highlight of Dalhousie's academic year. For the past few years, the Smith Shield has been funded by the Halifax law firm of Stewart McKelvey and has had, as its judges, members of the judiciary and Nova Scotia bar.

### D. External Mooting Competitions

Second and third year students may also try out for one of the competitive mooting teams. If chosen, the student may count his or her involvement as three credit hours and satisfaction of a major paper requirement. A student may participate in only ONE competitive moot during their three years at the Law School (this includes participation in the Stewart McKelvey /Sopinka Cup Advocacy Competition). With a few exceptions, the Moot Court Committee chooses teams in the spring of each year. A notice will be posted listing the moot teams available and try out times.

## **II. THE SECOND YEAR MOOT**

### **A. Objective**

Each second year student will be assigned a case to moot. Students will also be assigned the role of either appellant or respondent. Each mooting team will be comprised of four students: two appellants and two respondents. Accordingly, students may work together to prepare their written and oral submissions.

The purpose of the second year moot program is to help students develop their advocacy skills. The program is also designed as a refresher for legal research. Out of this mechanism, all second year students will be evaluated on an Honours/Pass/Fail basis and some may be invited by the Moot Court Committee to try out for the following year's Smith Shield moot competition.

The second year moots are modeled on appellate proceedings rather than trials. With a trial, each of the parties has an opportunity to present admissible evidence, to call witnesses, to conduct direct and cross-examinations, and to present opening and closing arguments.

In an appeal court, counsel present their case by means of a written argument (contained in a factum) and later by oral argument (oral submissions made directly to the appellate bench, which is comprised of three judges).

For Dalhousie Law School's Mooting Program, the *Supreme Moot Court of Dalhousie* is the exclusive and ultimate appellate court of civil and criminal jurisdiction for all jurisdictions in Canada. As such, the *Supreme Moot Court of Dalhousie* is guided by precedent, but is not bound by *stare decisis* (of its own previous decisions or decisions of any other courts – including the Supreme Court of Canada).

### **B. The Factum**

All parts of the factum must accord with the legal citation rules as set out in the most recent *Canadian Guide to Uniform Legal Citation* (the *McGill Guide*).

#### **1. Components**

The factum is the written document outlining the legal position of one party in an appeal. It is used to inform opposing counsel so that they may prepare to meet arguments (both in written and oral form). The factum also informs the court of each party's position on the law. The facts are decided by the trial judge.

The form of the factum is based on Civil Procedure Rule 90.32. There are some modifications, however, designed to simplify the procedure before the *Supreme Moot*

*Court of Dalhousie*. Accordingly, the second year moot factum must consist of the following:

- Cover Page: This should include the name of the court (*The Supreme Moot Court of Dalhousie*); the names of counsel; and the side each represents;
- Table of Contents:
- Part I - Concise Overview of the Appeal

In a single page or less, this part summarizes the key facts, issues, and the party's arguments on each issue as well as the relief sought.

- Part II – Concise Statement of Facts:

For Appellant's Factum: A statement of all facts material to the Appeal. Do not simply repeat the facts set out in the memo. Consider which facts are material to the appeal, and which are not.

For Respondent's Factum: If the appellant has set out all of the material facts, the respondent may choose to simply indicate "The facts of the case are set out in the factum of the appellant," or the respondent may summarize the material facts from his or her perspective, or set out whatever additional facts the respondent considers material.

Where lower court decisions are available, counsel are not limited to arguing only those facts contained in the moot problem. Any facts mentioned by a lower court in the same case may be relied upon in support of either party's position.

- Part III – List of Issues:

This part sets out the points of law upon which the appeal is based and upon which submissions are being made. Since there are two issues per side, this part should be divided into two parts: First Issue/Second Issue.

- Part IV – Standard of Review for each Issue:

The standard of review is the amount of deference accorded to the lower court's decision. This part sets out the applicable standard of review for each issue under appeal. For more information on the standard of review, see Alvin B. Rosenberg and Marvin J. Huberman, *Appellate Advocacy* (Scarborough: Carswell, 1996).

- Part V – Argument:

The argument section should also be broken down into two parts: First Issue/Second Issue.

Please ensure the argument on the second issue starts on a fresh page so that the faculty judge marking the factum can separate each students' argument and return it to him or her separately after the moot.

- Part VI – Order or Relief Sought:

This is a brief statement of the relief or remedy sought from the Court. Both counsel must sign their names at the bottom of this page.

- Appendix A – List of Citations: List of all the cases referred to, with complete citations.

- Appendix B – Statutes and Regulations: List of all the statutes referred to (if any) with complete citations.

- Appendix C -- Bibliography of Secondary Sources: List of all secondary materials referred to (such as texts, law review or journal articles, newspaper reports etc.) with complete bibliographical citations.

- Back End Page: A blank page at the end of the factum.

## 2. Rules Relating to Factums

The total page limit for Part V (the argument section) of the factum is 20 pages. Each counsel has a maximum of 10 pages to deal with his or her issue. Page allotments cannot be traded (e.g. one counsel uses 7 pages, the other 13 pages.) None of the other parts of the factum are counted as part of the page limit.

The factum must be double spaced, except for the Table of Contents and the Appendices, which may be single-spaced. The document must have 1” margins on all sides with a 12 point Times New Roman font used throughout.

The pages of the factum must be single-sided and must be printed on good quality 8.5 x 11 inch paper. The pages must be bound or stapled so that the print is on the left hand side of the page, not the right, except for the cover page.

Paragraphs must be numbered consecutively after the table of contents and page numbers should appear on the lower left hand corner of every page (except the first one).

Quotations may be used. If a quote exceeds three lines, it should be single-spaced and indented on both sides. Shorter quotations may be incorporated within the paragraph itself, with clear quotation marks at the beginning and end. Full attribution must always be made whenever any source is directly or indirectly used.

Cite lower court decisions in your case as follows: "Reasons for Judgment of Court of Appeal for Ontario ("Court of Appeal Reasons"), at para. 10" or "Reasons for Judgment of Kiteley J. ("Trial Decision"), at paras. 3-10".

Counsel may cite no more than five cases each in the argument section of the factum. If there are sub-issues, (e.g. 1(a), 1(b)), the limit is still five cases per counsel. If one member of the team cites fewer than five cases, the other member of the team is still limited to five cases. Reference to any level of the case under appeal does not count towards the five case maximum. Quotes from a cited case that mention another case count as one case. Counsel may cite no more than two secondary sources, and only relevant legislation.

Sample factums are available on electronic reserve at the library. The current factum format differs slightly from some previous years because factums are now prepared based on the 2008 Civil Procedure Rules. You may also find it helpful to look at factums filed with the Supreme Court of Canada. To access SCC factums, visit <http://www.scc-csc.gc.ca/case-dossier/cms-sgd/search-recherche-eng.aspx> and type in the name of a case, click on the case number, then click on factums in the left sidebar. Factums may or may not be available for any given case. Factums filed with the Supreme Court of Canada follow Supreme Court of Canada rules. Factums filed in the Supreme Moot Court of Dalhousie must follow Dalhousie rules as set out in this manual.

## C. The Moot

### 1. Order of Oral Submissions:

- |      |   |            |
|------|---|------------|
| i.   | First Counsel for the Appellant:                  | 20 minutes |
| ii.  | Second Counsel for the Appellant:                 | 20 minutes |
| iii. | First Counsel for the Respondent:                 | 20 minutes |
| iv.  | Second Counsel for the Respondent:                | 20 minutes |
| v.   | Rebuttal by Counsel for the Appellant (optional): | 5 minutes  |

### 2. Procedure:

The court clerk (a first year student) has the responsibility of opening court when the judges arrive and take their seats on the bench. The court clerk will say:

All Rise.

Hear Ye, Hear Ye, the Supreme Moot Court of Dalhousie is now in Session, the Honourable Chief Justice \_\_\_\_\_ Presiding.

God Save The Dean.

The court clerk also times each counsel and will signal when his or her time is going to expire.

First counsel for the Appellant has some additional responsibilities not shared by other counsel. He or she introduces the matter to the Court, and must also make all counsel introductions. When given the signal to begin, first counsel for the Appellant should stand and say something along the lines of:

“Good Evening [*insert My Lords or My Ladies or My Lords and My Ladies as the case may be*]. This is the matter of [*insert case name*]. My name is [*insert name*] and I am appearing as counsel for the Appellant [*insert the proper name of your client here*]. I am joined by my colleague [*insert name of your partner, using a Mr. or Ms. designation*].

My friends [*insert proper names of both counsel for the other side; again using a Mr. or Ms. designation*] represent the respondent [*insert name of respondent client*].”

First counsel for the Appellant also has the responsibility of presenting the material facts to the Court. Often, the court is familiar with the facts and will ask counsel to proceed directly to argument. First counsel for the Appellant may say something like:

*“The facts of this matter are set out at pages X-Y of our factum [state the pages of the Appellant’s factum at which the Court can find the “Statement of Facts.”] Unless this Honourable Court should like me to recite the facts, I propose to proceed directly to argument. [Wait for the Court to decide whether a recitation of the facts is necessary. Be prepared to recite them in case the Court does want to hear them and make sure to budget your time accordingly if this happens].”*

After both respondent counsel have presented their cases, five minutes are allotted for optional rebuttal by one of the two counsel for the appellant. While both appellant counsel may contribute points for the rebuttal, they must decide between themselves which of them will deliver the rebuttal.

**APPENDIX I: FACTUM MARKING SHEET:**

**Student's Name:** \_\_\_\_\_ **; Judge's Name:** \_\_\_\_\_

<b>CRITERIA</b> Y=yes, S=sometimes, N=no	<b>Y/S/N</b> N/A	<b>COMMENTS</b>
<b>Formal Requirements:</b> Does the factum satisfy guidelines in the <i>Moot Court Manual</i> ?		
<b>Outline/Table of Contents:</b> Does this section succinctly “road-map” the major points?		
<b>Presentation of Legal Issues:</b> Is there clear itemization of the legal issues and are issues presented as reviewable errors of law?		
<b>Order of Submissions:</b> Does Counsel present arguments in a logical manner, with clear transitions and linkages?		
<b>Persuasiveness:</b> Are the arguments presented in a convincing and compelling manner?		
<b>Command over the Substantive Law:</b> Does Counsel apply the correct substantive law in crafting the legal arguments?		
<b>Authorities:</b> Does Counsel make effective use of the authorities and does he or she use these authorities clearly, succinctly, and persuasively?		
<b>Application of the Law to the Facts:</b> Does Counsel clearly show how the governing law applies to the specific facts of the matter on appeal?		
<b>Policy Issues and Considerations:</b> Does Counsel’s argument acknowledge and properly present relevant social, moral, religious, cultural, or economic factors?		
<b>Legal Citation and Style:</b> Is proper legal citation used consistently and properly throughout the factum (as per the <i>McGill Guide to Legal Citation</i> )?		

**FINAL GRADE**

**HONOURS**

**PASS**

**FAIL**

**APPENDIX II: ORAL PRESENTATION MARKING SHEET**

**Student's Name:** \_\_\_\_\_ ; **Judge's Name:** \_\_\_\_\_

<b>CRITERIA</b> Y=yes, S=sometimes, N=no	<b>Y/S/N</b> N/A	<b>COMMENTS</b>
<b>Appearance:</b> Is counsel properly attired for court?		
<b>Mannerisms:</b> Does counsel engage in any distracting physical or speech mannerisms?		
<b>Speaking Voice:</b> Does counsel present in a clear and audible voice?		
<b>Pace &amp; Rhythm:</b> Does counsel speak at a comfortable pace (i.e. not too quickly or too slowly)?		
<b>Use of Factum:</b> Does counsel make effective use of the factum?		
<b>Eye Contact:</b> Does counsel maintain good eye contact with all the Judges?		
<b>Deference and Respect:</b> Does counsel display the proper degree of deference when engaging with the Judges?		
<b>Answering Questions:</b> Does counsel seem receptive and welcoming to questions from the Bench?		
<b>Effectiveness of Responses:</b> Does counsel address questions in a convincing and persuasive manner?		
<b>Moving Between Submissions &amp; Answering Questions:</b> Does counsel move effectively and seamlessly from answering questions to presenting submissions?		
<b>Avoiding Redundancy &amp; Repetitiveness:</b> Does counsel adapt the presentation to reflect items already addressed through exchanges with the Bench?		
<b>Managing Time:</b> Does counsel effectively manage the time limits set out for argument?		
<b>Conclusion:</b> Does counsel properly and effectively conclude his or her submissions?		

**FINAL GRADE**

**HONOURS**

**PASS**

**FAIL**