



Adam F. Fanaki Competition Law Moot Rules

Academic Year 2023-2024



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General

Overview

Annually, the Competition Bureau partners with the Competition Tribunal and the Canadian Bar Association to host Canada's only competition law moot. This event provides Canadian law students with an exceptional opportunity to tackle timely, complex civil or criminal issues in a growing field of law that strives to balance private economic incentives with the public interest all the while improving the advocacy skills of participating students.

Definitions

Advisory Group: senior members of the Bureau, Bar and Bench responsible for providing guidance about the conduct of the Competition.

Committee: the administrators of the Competition responsible for the enforcement of these Rules.

Competition: the Adam F. Fanaki Competition Law Moot.

Factum Judging Panel: the panel of

- i) practitioners from the Bar or other fields related to competition law,
- ii) judicial members of the Competition Tribunal, Federal Court, or other Courts, and/or
- iii) representatives of the Competition Bureau or the Department of Justice, that will judge all of the factums submitted by the Schools.

Oral Judging Panel: a panel of

- i) practitioners from the Bar or other fields related to competition law,
- ii) judicial members of the Competition Tribunal, Federal Court, or other Courts, and/or
- iii) representatives of the Competition Bureau, the Department of Justice or the Public Prosecution Service of Canada, who will judge one or more oral Matches.

Match: a round of oral arguments between a Team representing the appellant and a Team representing the respondent.

Mooter: a student selected to represent a School in the Competition and who will present oral arguments, subject to the eligibility requirements set out in these Rules.

Moot Problem: the official problem for the Competition.

Organizing Partners: together, the Competition Bureau, the Canadian Bar Association and the Competition Tribunal.

Rules: these official Competition rules and any applicable supplements to these rules published by the Committee, as amended.

School: a law faculty participating in the Competition with:

- i) two Teams of two Mooters to represent each of the appellant and respondent sides, and
- ii) up to two coaches, one of which may be a student coach.

Team: a pair of Mooters.

Interpretation of the Rules

The Committee will interpret these official rules in the interest of fairness and equity, and in light of the ongoing COVID-19 pandemic, and will settle any questions that arise in the Competition. The Committee reserves the right to modify these Rules or promulgate additional measures as may be deemed advisable for the orderly conduct, quality, integrity and reputation of the Competition or to correct deficiencies in the Competition. Modifications shall not violate the spirit of these rules or the best interests of the Competition.

Administration of the Competition

Phases

The Competition will consist of a written phase and an oral phase.

- Each Team will submit one written factum during the written phase and make oral submissions during the oral phase of the Competition.
- The oral phase of the Competition shall take place in person. Should circumstances require the oral phase of the Competition to take place online, the Committee shall advise Schools as soon as practicable and the oral phase shall take place on a virtual platform to be chosen by the Committee.
 - All individuals attending the oral phase of the Competition and any related social events in person must familiarize themselves and comply with any applicable COVID-19 related public health measures for the venues, the City of Toronto and the Province of Ontario.

Rounds

- The oral phase of the Competition shall consist of two levels:
 - Two Preliminary Rounds, in which all Teams will participate, and a Final Round.
- Advancement of Teams through the Competition shall be determined based on the following rules:
 - The appellant Team and the respondent Team with the highest total Team score(s) in the Preliminary Rounds shall advance to the Final Round.
 - In the event of a tie, the Team with the highest factum score (among those tied Teams) shall advance.
 - In the event that the tie remains after considering factum scores, the Team with the highest individual oral score shall advance.
 - Ties are not allowed in the final round. To the extent that the scores of the finalist Teams are identical following the final Match, the tie-break rules above shall be applied mutatis mutandis to arrive at the final scores.
- Teams from the same School may compete against each other.

Registration

Initial Registration

Each School must complete initial registration using the [online registration form](#) by November 10, 2023, which date is subject to change without notice by the Committee. Each School shall indicate in its initial registration the official language in which its Teams will make written and oral submissions during the Competition. For greater certainty, both Teams from a given School shall moot in the same official language.

Each School must designate a team coordinator no later than November 24, 2023.

The team coordinator is responsible for i) updating the School's registration according to the provisions below, and ii) working with the Committee to ensure that the School complies with applicable requirements in advance of and during the Competition.

Updated Registration

As soon as possible, but no later than January 5, 2024 each Team coordinator must update their School's registration online to indicate which Mooters will be representing the appellant and respondent sides, and the order in which each Mooter on each Team will present their oral argument. In addition, each Team coordinator must indicate the first official language of each Mooter and whether any Mooter will be using their second official language.

Payment

The registration fee for each School is CDN\$500.

Each participating School must pay their fee no later than November 24, 2023.

If the registration fee is paid by cheque, it must be addressed to "Carolyn Stanbrook, Financial Operations at Blake, Cassels & Graydon LLP" using the contact information below:

Attention: Carolyn Stanbrook, Financial Operations
Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000
Toronto, Ontario
Canada
M5L 1A9

If the registration fee is paid by wire transfer, follow the instructions below:

Beneficiary Bank: Canadian Imperial Bank of Commerce
Bank Address: Main Branch 199 Bay Street, Toronto, Ontario M5L 1G9, Canada
Account With Institution: //CC001000002
Swiftcode: CIBCCATT
Beneficiary: Blake Cassels & Graydon LLP in Trust
Beneficiary Address: 199 Bay Street, Suite 4000, Toronto ON M5L 1A9, Canada

Following the final date of registration, Schools cannot withdraw from the Competition.

Coaches

Each School can register up to two coaches for the purpose of attendance at Competition events. One of the two coaches may be a student coach. Schools may avail themselves of additional coaching support at their discretion.

Participants

Eligibility

Only students enrolled at a faculty of law are eligible to participate as Mooters.

- Non-law faculty students may not participate in the Competition.
- Both the Mooters must be currently registered in a J.D or LLB program, or equivalent in Canada, unless otherwise agreed to by the Advisory Group.

Verification of a participant's status as a student may be required for registration.

Students on exchange from another country are eligible to participate under the host university.

Team Selection

Mooters may be chosen by any method approved by the School, including intramural competition.

School identification

Each School in the Competition will be assigned a number at random by the Committee.

This number must be the only form of identification used on the factum and at all times during the Competition.

Privacy

Each participant agrees that information regarding their participation in the Competition, including photographs, screenshots and other recordings may be published by any of the Organizing Partners.

Outside assistance

Teams shall not conduct practice rounds in front of any persons who will be part of a Factum or Oral Judging Panel in the Competition. Practice rounds in front of other persons are permitted.

Faculty Members

Assistance from librarians, computer research advisors, and other legal resource specialists in preparing the factum, and any other materials, shall be limited to answering specific questions regarding the location of legal sources or general legal research methods.

Coaches

It is permissible for coaches to discuss with the Mooters and the research student in general terms the issues raised in the moot problem, to suggest possible research sources and to provide instruction relating to advocacy techniques and the preparation of persuasive oral and written arguments. Ultimately, Mooters must determine which specific issues to raise.

Coaches may not prepare or draft any aspect of a Team's factum or oral arguments.

The official problem

Authors

The Moot Problem shall be drafted by a Problem Drafting Committee composed of members selected by the Committee.

The subject of the Moot Problem shall be determined by the Advisory Group and shall reasonably reflect current and relevant issues in the field of competition law.

Subject to the discretion of the Advisory Group, the Moot Problem shall consist of a hypothetical decision of the Competition Tribunal made further to an application filed by the Commissioner of Competition or a private party under one or more of the provisions of the *Competition Act*.

Jurisdiction of the Court

The court before which the Teams shall argue is the fictional "Competition Appeal Tribunal" (CAT). *Federal Court Rules* (SOR/98-106) apply to the CAT.

The CAT hears appeals of decisions made by the Competition Tribunal.

Mooters may reference, but are not expected to make submissions with respect to, the standard of review. Mooters and the CAT shall assume that for questions of law, the standard of review is correctness. For questions of mixed fact and law, there must be a palpable and overriding error for the CAT to intervene. Mooters and the CAT shall assume that no leave to appeal questions of fact was granted.

The CAT is bound to follow precedents from the Supreme Court of Canada.

Court decisions from other jurisdictions only serve as persuasive authority. Students are encouraged to consider decisions from other jurisdictions in their research.

Past Moot Problems (fictitious decisions) are **not** to be used as authorities. They will not be recognized by the judges of the Competition Appeal Tribunal.

Clarification questions

Procedure

Clarification questions regarding the Moot Problem must be submitted to the Committee in writing by January 19, 2024 at fanakimoot-concoursfanaki@cb-bc.gc.ca.

Requests for clarification received after the deadline shall not be accepted, except at the discretion of the Committee.

Requests must include a brief explanation as to why each clarification is necessary.

Eligibility of questions

Requests will be answered at the discretion of the Committee.

Questions cannot relate to the substantive legal issues (or sub-issues) raised by the Moot Problem.

Requests should be clear and only in relation to the interpretation of these Rules, procedural matters or the facts contained in the Moot Problem.

Notice

When a clarification is issued, both the request and the answer will be distributed to all Schools.

Judging Panels

Judges may not participate in any aspect of coaching during the academic year in which they will participate on a Judging Panel.

Members of a Factum or Oral Judging Panel have a duty not to disclose confidential information about the problem and must keep confidential their scoring deliberations. For greater certainty, the Factum Judging Panel shall not disclose their scoring or other factum-related information to any Oral Judging Panel.

Each member of a Factum or Oral Judging Panel will act individually and independently of other members of the same panel.

Judges will not robe for the purpose of the Competition. Judges shall wear business attire.

Factum

General

Each School shall submit both an Appellant and Respondent factum.

Language

Each School may submit its factums in either official language.

The choice of language is to be made at the initial registration.

Scope of the argument beyond competition law

Mooters are permitted to make statutory interpretation arguments if they relate to the *Competition Act* or its interplay with other statutes. Novel legal arguments may touch upon other areas of law to the extent that they serve to clarify a point of competition law.

Respondents' Factum

Respondents' factums are not required to reply specifically to any of the arguments set out in the Appellant factums that they receive.

Oral Judging Panels shall disregard any reference to an Appellant factum that is not before them.

Respondents may cross-appeal at their discretion and all argument related to the cross-appeal shall be dealt with during the oral phase of the Competition.

Format

Sections

The factums shall contain, at a minimum, in consecutively numbered paragraphs:

Table of Contents

Part I: statement of facts

Part II: statement of points in issue

Part III: statement of submissions

Part IV: remedy sought

Appendix A: list of authorities to be relied upon (Teams may include authorities in Appendix A of their factum that are not relied upon in written arguments but will be during the oral phase of the competition.)

Form

Factums must be typed and formatted to fit on standard letter size paper (8.5 x 11 inches).

Each page of the factum shall have margins of at least one inch, or 2.54 centimetres, on all sides, excluding page numbers.

Spacing

Parts I-III of the factum will be double spaced, except for: (1) references, footnotes and titles more than one line in length and (2) quotations of 50 words or more, which shall be indented.

Numbering

The pages of the factum shall be numbered.

Length

The substantive portion of the factum, including Parts I-IV, shall be no more than 20 pages in total length.

Covering pages (including Table of contents) and Appendix A will not be included in the page count.

Font

All parts of the factum, excluding covering pages and any footnotes, shall be in Times New Roman 12 point font.

Citations

All citations must be made in accordance with the most recent edition of the Canadian Guide to Uniform

Legal Citation (“McGill Guide”). Factum citations are to be included at the end of each paragraph and not placed as traditional numbered footnotes at the bottom of each page, all formatting related to factum citations should follow the McGill Guide. To the extent that there is any conflict with the Official Rules on the formatting of factum citations, the McGill Guide shall prevail.

Disclosure of factums

No Team shall be allowed to view or otherwise become privy to any factum other than the factum prepared by the other Team at the same School and the respective factums of scheduled opposing Teams.

Submissions

Submission by Email

The Committee shall provide the email contact information of scheduled opposing Teams to those Teams for the purpose of exchanging factums according to the format and schedule set out below.

Name of File

Each Team’s factum must be labeled using the file name : “ Team [insert Team#] Factum”

Format and Schedule for Submissions

Factums must be submitted in PDF format according to the following schedule:

- Appellant Factum: no later than Friday, January 26, 2024, 5:00pm Eastern time.
 - Each Appellant Team shall send their factum directly to their Respondent Team and copy the Committee at fanakimoot-concoursfanaki@cb-bc.gc.ca.
- Respondent Factum: no later than Friday, February 9, 2024, 5:00pm Eastern time.
 - Each Respondent Team shall send their factum directly to their Appellant Team and copy the Committee at fanakimoot-concoursfanaki@cb-bc.gc.ca.

The Team receiving a factum must acknowledge receipt within 24 hours by sending a message to the e-mail address from which the Factum was sent, with the Committee in copy (fanakimoot-concoursfanaki@cb-bc.gc.ca).

Hard Copy

Teams are not required to submit hard copies of their factums. However, members of the Factum or Oral Judging Panels may request hard copies of factums in writing by email to fanakimoot-concoursfanaki@cb-bc.gc.ca. Upon receiving a request, the Committee shall mail hard copies to the requesting panel members. For greater certainty, any factum-related penalties shall be assessed based on the original electronic submissions made by the Teams.

Changes

No Team may revise, substitute, add to, delete or in any other way alter its factum once it is submitted.

Publication

By participating in the Competition, all Mooters consent to the publication of their written submissions

or any portion thereof at the sole discretion of the Committee.

Book of Authorities

Books of authorities are not required and will not be reviewed as part of a Team's submissions.

Oral argument

Attire

Mooters are not required to robe for the oral phase of the Competition. Mooters are expected to wear business attire during this phase of the Competition.

Time of the Match

Each Match will begin at the time indicated in the schedule of Matches. If a Team fails to appear by the scheduled start time, after waiting five minutes, the Match may proceed *ex parte*.

Scope of the argument

The scope of a Mooter's oral argument may expand upon issues raised in their factum, but the oral arguments must still relate to the written submissions found in their factum, or to the written submissions found in the factum of the Team against which they are competing. The Mooters may choose to provide a brief overview of the facts, but doing so is not a requirement and they will not be penalized for not doing so.

Communication

Judging Panel

During a Match, oral communication is limited to the Oral Judging Panel and the Mooters.

No materials may be handed up to the Judging Panel during oral argument.

Team

Communication between a Team and its coach(es) is prohibited during presentation of the arguments.

Mooters shall avoid all behaviour which may disrupt or detract from the oral argument in progress.

Language

Each Team will present its oral arguments in the language of its factum.

Questions

Questions from the Oral Judging Panel to a Mooter shall be posed in the language being used by that Mooter.

Interpretation

Simultaneous interpretation is available upon request for the Final Round for any Mooter who needs that service in order to understand the submissions of his/her opponents.

Electronic devices

The use of electronic devices (e.g., laptop, tablet) is permitted for Teams. However, they must be set to silent. All cellular phones must be set to silent.

Spectators

Participating Teams

During the Preliminary Rounds, coaches may only attend Matches where Mooters from their School are participating.

Anyone who has not moved on to the final round may attend the final round.

Outside spectators

All rounds are open to the public, except for the period of time during which the Oral Judging Panel provides its oral feedback to the Teams.

Spectators are urged to show the utmost respect while oral arguments are in progress.

Electronic Devices

All spectators are prohibited from taking pictures or videos during a Match. All electronic devices must remain in silent mode throughout the Match.

Time allocation

General

Each of the appellant and respondent Teams will have a total of 45 minutes in which to present oral argument and receive and respond to questions from the Oral Judging Panel.

Before the start of the Match, the official timekeeper of the Match will ask each Team how it wishes to allocate that time between the two Mooters. Neither Mooter may argue for longer than 25 minutes in a single Match.

Enforcement

Time limits will be strictly enforced. At their discretion, the Oral Judging Panel may allow a Mooter to conclude briefly at the expiry of the allocated time, up to an additional minute.

Warning

The timekeeper will give a warning of remaining time for each Mooter when there are 10 minutes, 5 minutes and 2 minutes left to their allocated time.

Rebuttal

Each Mooter will argue once. There will be no rebuttal or sur-rebuttal.

End of Match

Once the last Mooter has finished making submissions, the Match will end.

The Oral Judging Panel will then have twenty minutes to provide oral feedback to the Teams *in camera*, once spectators have left the room.

Recording

The Organizing Partners reserve the right to make audio and/or video recordings of any Match, or to take photographs or screenshots during a Match.

By participating in the Competition, all Mooters consent to the recording and broadcasting of their oral arguments, and to the reproduction of any photographs or screenshots thereof.

Scoring

All scores shall be expressed in whole numbers, with no decimal or half points.

Factum Score

Factums are scored out of a total of 40 points. The scores awarded by each member of the Factum Judging Panel for a given factum will be averaged to arrive at the final score for that factum.

Factums will be judged prior to the preliminary oral rounds.

Factums shall be assessed and points allocated in accordance with the following criteria:

Scoring criteria	Maximum points
Introduction, facts and issues <ul style="list-style-type: none">- Overall quality of introduction- Effective outline of facts- Clear statement of issues and position- Persuasive framing of facts and issues	15
Legal arguments <ul style="list-style-type: none">- Correct substantive law- Quality of legal research- Effective application of the law to the facts- Proper development of arguments- Persuasiveness, originality and creativity	30

Presentation <ul style="list-style-type: none"> - Accuracy, clarity, conciseness - Logical structure - Adherence to rules 	20
Remedy and conclusion <ul style="list-style-type: none"> - Effective linking of arguments and conclusions - Persuasiveness of conclusion - Logical and effective remedies sought - Good use of authorities relating to remedies 	15
Stylistic considerations <ul style="list-style-type: none"> - Writing style and grammar - Proper use of sentence and paragraph structure 	10
Authorities and citations <ul style="list-style-type: none"> - Application of sufficient and persuasive legal authorities - Application of correct legal citations 	10
Total Factum Score (this score out of 100 will be converted by the Committee to a score out of 40)	100

Excellent: 90-100

Very Good: 80-89

Good: 70-79

Fair: 60-69

Oral Score

Each Mooter shall receive a score out of 30 points for their oral submission. The scores awarded by each member of the Oral Judging Panel for a given Mooter will be averaged to arrive at the final oral score for that Mooter.

A Team's score for oral submissions shall be the sum of the final scores for each of its Mooters.

Each Mooter's oral arguments shall be assessed and points allocated in accordance with the following criteria:

Scoring Criteria	Maximum Points
Facts <ul style="list-style-type: none"> - Knowledge of the facts - Persuasive framing of the facts - Facts interpreted fairly and accurately 	10
Issues <ul style="list-style-type: none"> - Correct and articulate analysis of the issues - Persuasive framing of the issues 	10

<p>Law and arguments</p> <ul style="list-style-type: none"> - Familiarity with the legal authorities - Correct articulation of the law - Correct use of appropriate authorities - Persuasive framing of the law - Effective distinguishing of authorities where appropriate - Logical and effective remedies sought - Effective linking of arguments and conclusions - Persuasiveness of conclusion - Overall quality of legal research and arguments - Opposing arguments effectively addressed - Originality, persuasiveness, creativity 	30
<p>Organization of arguments</p> <ul style="list-style-type: none"> - Introduction or roadmap provided - Logical organization of arguments - Logical division of argument between speakers - Concise and effective summary of the arguments - Structure and time management 	10
<p>Style and delivery</p> <ul style="list-style-type: none"> - Clarity of speech - Appropriateness of tempo, tone, volume - Posture, gestures, eye contact - Maintenance of composure under stress - Engagement with panel 	20
<p>Responses to questions</p> <ul style="list-style-type: none"> - Questions answered directly (rather than evasively) - Concessions made effectively and where appropriate - Answers tied back to argument - Willingness to answer questions 	10
<p>Professionalism, courtesy and etiquette</p> <ul style="list-style-type: none"> - Courtesy and respect for bench and counsel - Respect for moot rules - Overall professionalism 	10
<p>Total Oral Score (this score out of 100 will be converted by the Committee to a score out of 30)</p>	100

Excellent: 90-100

Very Good: 80-89

Good: 70-79

Fair: 60-69

Total Score

The total score for a Team, expressed as a number out of 100, shall be the final factum score added to the Team's combined final oral scores.

Each Team will receive their final scores after the Competition.

The scores will not be made public.

Final Round

The Appellant and Respondent Teams with the highest Total Scores, respectively, will advance to a Final Round.

In the Final Round, the Oral Judging Panel shall not consider these Teams' factums. They will only score the Mooters on these Teams on their oral submissions during the Final Round, using the oral scoring criteria set out in the Rules.

Each Team that participates in the Final Round will receive their final scores after the Competition. The scores will not be made public.

Penalties

Delayed submission

5 points when received at any point within 24 hours after the submission deadline.

1 additional point will be deducted for each additional 24 period.

Exceeding length of factum

2 points when a factum exceeds the page limit by one page.

4 points when a factum exceeds the page limit by two pages.

A factum that exceeds the page limit by three or more pages will result in disqualification.

Disclosure of identity

2 points if any form of identification other than the Team number assigned by the Committee is used anywhere in a Team's factum.

Other formalities

1 point per each infraction up to a total of four points:

- Margins, interlinear space, font, order of sections, missing or additional section, etc.

Ethical violations

Every Mooter, Coach and research student must conduct themselves in a civil, courteous, respectful and professional manner at all stages of the competition, and in no case act in a manner that is detrimental to the integrity of the Competition.

An ethical violation may result where any Team or participant acts contrary to the spirit and content of this section or of the Rules, generally.

Any incident or allegation of ethical violations shall be referred to the Committee.

At the Committee's discretion, a Team may be sanctioned for an ethical violation by deduction of points

from its overall score, or by any other sanction up to and including disqualification.

Awards

The following awards shall be awarded based on the relevant scoring:

Award	Relevant Scoring
Best Factum - Appellant	Highest final score - factum
Best Factum - Respondent	Highest final score - factum
Best Oralist - Appellant	Highest final score – oral argument
Best Oralist - Respondent	Highest final score – oral argument
Best Team – Appellant	Highest total score (sum of i) final oral scores from the Preliminary Rounds for each Mooter and ii) final score – factum)
Best Team – Respondent	Highest total score (sum of i) final oral scores from the Preliminary Rounds for each Mooter and ii) final score – factum)
Winning Team – Final Round	Highest final score – Final Round oral argument (as between the two Best Teams) Note that this score does not include any factum scores.
Best Faculty	Highest combined total score (sum of the Total Score for the Appellant and Respondent Teams from a given Faculty) Note that this score does not include any oral argument scores from the Final Round.

The nature of the prize to be awarded for each award shall be determined by the Committee at its discretion.

Additional awards may be awarded at the discretion of the Committee.