

**SECOND YEAR MOOT
LAWS 2201X/Y.01
2018-2019**

SYLLABUS

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Office: Room W418
Office Hours: Fall: Fridays 10:30 a.m. – 12:30 p.m.
Winter: Mondays 3:00 – 5:00 p.m.
Tuesdays 3:30 – 4:30 p.m.
or by appointment (either term).

Fall Term 2018 Date/Location	Topic
Mon. Sept. 17 8:30 – 9:20 a.m. Room 105	Written Advocacy I Fundamentals of Persuasive Advocacy; How to Write a Persuasive Factum
Mon. Sept. 24 8:30 – 9:20 a.m. Room 105	Written Advocacy II How to Write a Persuasive Factum (cont'd)
Wed. Oct. 3, 7:30 p.m. Room 105	Smith Shield Moot
Weeks of Oct 1-5 and Oct 8-12	No Classes; work on factum
Mon. Oct. 15 8:30 – 9:20 a.m. Rooms TBA	Fall Moot Workshops Workshop materials will be posted to Brightspace on October 1.
Fri. Oct. 26 9:00 a.m.	Appellant factums due on Brightspace and to opposing counsel
Fri. Nov. 2 9:00 a.m.	Respondent factums due on Brightspace and to opposing counsel
Winter Term 2019 Date/Location	Topic
Mon. Jan. 9	No Class – take this time to review factums and caselaw
Mon. Jan. 14 8:30 – 9:20 a.m. Room 105	Oral Advocacy I Review of Proper Courtroom Decorum; Preparing your Oral Argument
Mon. Jan. 21 8:30 – 9:20 a.m. Room 105	Oral Advocacy II Presenting your Oral Argument and Answering Questions from the Bench
Mon. Jan. 28 8:30 – 9:20 a.m. Rooms TBA	Winter Moot Workshops Winter moot workshop materials will be posted to Brightspace on January 21
Feb. 4 - 7 Rooms TBA	Moots Scheduled for 5:00 - 7:00 p.m. or 7:00 – 9:00 p.m.

Moot Court Manual and FAQs

The basics of the program and factum requirements are set out in the Moot Court Manual 2018-19. This is an expanded version of the Moot Court Manual you may have received in preparation for your 1L small group moots. Please review it thoroughly. In addition to setting out the requirements for your factum and oral argument, it contains helpful advice on preparing your factum (including on the standard of review) and your oral argument.

I have also prepared an FAQ handout for the course. It is posted on Brightspace. Please be sure to review this handout early in the term as well.

Readings

All readings and handouts are available electronically on the class Brightspace site. I have not attached the fall and winter readings to a particular class, but you will want to work through all of each term's readings before attending that term's moot workshop. Each term's readings are a highly curated version of some of the very best writing on the subject of appellate advocacy.

There is also a Supplemental folder on Brightspace that contains optional additional material, if you wish to delve deeper: some resources on persuasive legal writing generally, some on factums, and resources on particular issues that come up regularly in moots (e.g. standards of review, making an argument for exclusion or admission of evidence under s 24(2) of the *Charter*). It is well worth your while to peruse this folder.

Fall Readings

The Honourable Mr. Justice John I. Laskin, "Forget the Windup and Make the Pitch: Some Suggestions for Writing More Persuasive Factums" (Summer 1999) 18 *Advocates' Soc. J. No.2*, 3-12 online: Ontario Courts <<http://www.ontariocourts.on.ca/coa/en/ps/speeches/forget.htm>>.

The Honourable Mr. Justice David W. Stratas, "Some Factum Writing Suggestions" online: <<http://davidstratas.com/queensu/Tab19.pdf>>.
(Please read pp 1-27 and 48-60)

The Honourable Mr. Justice Robert G. Richards, "Going Fishing: Some Thoughts on Successful Advocacy in the Court of Appeal", Saskatchewan CPLED Program (Law Society of Saskatchewan, 2009) online: Law Society of Saskatchewan <<http://library.lawsociety.sk.ca/inmagicgenie/documentfolder/CPLED200910CivProAppellateAdvocacy.pdf>>
(For the fall term, please read pp 1-7, 16-31, plus the sample TOC and intro at the end of the article)

The Honourable Mr. Justice Marvin Catzman, "The Wrong Stuff: How to Lose Appeals in the Court of Appeal" (Summer 2000) 19 *Advocates' Soc. J. No. 1*, at 1-5 online: <<https://www.scai-ipc.ca/pdf/Catzman-TheWrongStuff.pdf>>

Winter Readings

The Honourable Mr. Justice Robert G. Richards, "Going Fishing: Some Thoughts on Successful Advocacy in the Court of Appeal", Saskatchewan CPLED Program (Law Society of Saskatchewan, 2009) online: Law Society of Saskatchewan <<http://library.lawsociety.sk.ca/inmagicgenie/documentfolder/CPLED200910CivProAppellateAdvocacy.pdf>>
(For the winter term, please read pp 34-44)

The Honourable Mr. Justice John Sopinka, Mark Gelowitz and W. David Rankin, *Sopinka and Gelowitz on the Conduct of an Appeal*, 4th ed. (Toronto: LexisNexis, 2018) at 448-459 (on Brightspace)

The Honourable Mr. Justice Sydney L. Robins, "Appellate Advocacy," (October 1997) 16 *Advocates; Soc. J. No. 3*, 11-15 (on Brightspace)

Exchange of Factums

Each team of two students must submit one PDF copy of their factum as an assignment via the class Brightspace site using the following file naming protocol: Factum A v B – Appellant – Smith_Jones.pdf where A v B is the short name of the case, followed by the side (Appellant or Respondent) and the last names of counsel, separated with an underscore. Geordie Lounsbury will make copies of the factums for each judge.

Students must also arrange to provide both opposing counsel with a PDF copy of the factum whether by e-mail, drop box or some other agreed upon method. Students may also agree to exchange hard copy. Your ethical obligation as a barrister requires that opposing counsel must receive their copies of your factum immediately after the factum is submitted on Brightspace.

Workshops

There are two small group moot workshops, one in the fall term and one in the winter term. Each workshop is facilitated by one or two senior lawyers who do appellate work. Each workshop has 20 students assigned to it, all of whom will be working on the same moot problem, issue, and side. Workshop exercises are ungraded.

The Fall Workshop

The fall moot workshop is designed to help you write your factum. It focuses on developing, honing and responding to arguments. You will have a chance to brainstorm your case with the other students working on the same moot problem, issue, and side as you, with the guidance of your workshop instructor.

To prepare for this workshop, please do the assigned readings, review the fall moot workshop materials, answer the questions asked, and come to class prepared to discuss your moot problem in detail. You will get the most from your workshop if you are fully conversant with the facts and law of your case and have thought about the arguments you want to make. Ideally, you should be almost ready to begin writing your factum when you attend the workshop.

The Winter Workshop

The winter moot workshop focuses on oral advocacy. To prepare for this workshop, please review the winter moot workshop materials and come to your workshop with a list of questions you anticipate you may be asked at your moot. At the workshop, you will have a chance to discuss anticipated questions and craft persuasive responses. You will also have the opportunity to practice answering questions and will receive feedback on your responses from your classmates and your workshop instructor.

Moots

The moots will take place in the evenings the week of February 5 – 8, 2019, with half the moots taking place from 5:00 – 7:00 p.m. and the rest from 7:00 – 9:00 p.m. Court dockets will be posted to Brightspace in September setting out the date and time for each moot. They will be updated in January with room assignments and names of the judges on your panel. You will moot before a panel of three judges made up of a 3L Chief Justice, a practitioner and a faculty member.

Please note that 2L students are not permitted to attend or observe any moot except their own, though moots may include 1L observers.

From time to time, inclement weather requires closure of the university on an evening when moots are scheduled. If this occurs, the affected moots will be

rescheduled for the same time the following week. Please keep this time available in case your moot needs to be rescheduled.

Evaluation

This class is worth 1 credit (0.5 credits each term.) It is evaluated based on two assignments: a written factum and an oral argument, both marked by faculty members. The assignments are graded on an Honours/Pass/Fail basis. Honours is roughly equivalent to a grade of A+, A, or A-. Pass covers work between B+ and D, and Fail is awarded for work that would receive a numerical grade of less than 50%. The factum and oral argument are weighted equally. Your final grade will be a combination of the two.

Students who receive the same grade on both the factum and oral argument will receive that grade as their final grade for the course. In the event that the grades differ (e.g. Honours on the factum, Pass on the oral argument), the faculty member will weigh the two components together in deciding on a final grade of Honours or Pass.

Factums must be submitted by the due date and time set out in the syllabus or as provided as accommodation. Late factums will go to the Studies Committee for assessment of penalty and may not be accepted.

Observing Appellate Advocacy

All students are encouraged to attend the **Smith Shield Moot** on Wednesday, October 3, 2018 at 7:30 p.m. in Room 105. This Dalhousie tradition since 1927 showcases the very best advocates in the third year class. The moot is videotaped and posted so that you can watch it online later. Here is a link to the 2017 Smith Shield Moot: <https://www.dal.ca/faculty/law/programs/jd-admissions/mooting.html>. Scroll down to the Smith Shield Moot and click on the orange plus sign, then scroll further down for the video.

Previous Smith Shield Moots from 2015 onward are also posted to Youtube:

2017: <https://www.youtube.com/watch?v=Dtqt-gZlpFw&t=1s>

2016: <https://www.youtube.com/watch?v=eA1D6VJXH0A>

2015: https://www.youtube.com/watch?v=rs2n96h7c_k

I also encourage all students to watch the webcast of an appeal hearing at the Supreme Court of Canada or observe an appeal in person at the **Nova Scotia Court of Appeal** at some point during the school year.

The Nova Scotia Court of Appeal is located at the Law Courts, 1815 Upper Water Street, Halifax. The court is open to the public. The court's docket gives a brief summary of each appeal along with the date and time of the hearing. It is posted on-line at: http://www.courts.ns.ca/Appeal_Court/NSCA_dockets.htm. Some Court of Appeal hearings are webcast. You can find the archive here: http://www.courts.ns.ca/Webcasts/webcasts_archive_trials.htm

Webcasts of **Supreme Court of Canada** arguments are available on the Supreme Court of Canada website at: <http://www.scc-csc.gc.ca/case-dossier/cms-sgd/search-recherche-eng.aspx>. Type in the name of a case, click on the case number, then click on webcast in the left sidebar. Not every Supreme Court of Canada case is webcast. Another alternative is to watch SCC hearings on CPAC. In Halifax you will find CPAC on channel 118 or you can watch online by visiting: <http://www.cpac.ca/en/programs/supreme-court-hearings/>.

Communication

Announcements will be made at the beginning of class and posted to the class Brightspace site. I may also communicate with the class via e-mail to each student's dal.ca account. As students are deemed to have received all e-mail

sent to the dal.ca account, students should ensure their account is activated and check it regularly.

Class Changes and Cancellations

Class changes and cancellations will be communicated in class and via Brightspace and e-mail.

Submission of Assignments

Assignments must be submitted in the manner stipulated by the instructor. 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

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.

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, Academic Michael Deturbide or the Director of Student Services and Engagement Dana-Lyn Mackenzie as soon as possible, before a scheduled exam or a deadline for an assignment, and will generally require 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 (902) 494-2836.