

**MOOT COURT MANUAL**

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

**2019-2020**

When men and women are brought into the civil or criminal courts, for whatever reason, they should be able to turn for assistance at what may be the critical moments of their lives to a trained body of advocates, independent and fearless, who are pledged to see that they are protected against injustice and that their rights are not wrongly invaded from any quarter. The vocation of the advocate calls for the nicest sense of honour and for a complete devotion to the ideals of justice, and I believe it to be a lofty and necessary calling which is vital for the maintenance of that way of life in which we have come to believe. To that great calling men and women might well devote their greatest gifts and their highest powers.

- Lord Birkett

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## **I. INTRODUCTION**

### **A. The First-Year Mooting Program**

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. All first years are also strongly urged to attend the Smith Shield Mooting Competition, which takes place the first Wednesday in October at 7:30 p.m. in Room 105. Each first-year student will also be encouraged to volunteer as a court clerk or observe a second-year moot in February.

### **B. The Second-Year Mooting Program**

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

All second-year students at the Schulich School of Law participate in the Second Year Moot, which is worth 0.5 credits per term (1 credit total). Students are marked on an Honours/Pass/Fail scale. They do not receive a letter grade for the course.

The marking sheets used for the factums and oral advocacy can be found in the Appendix at the back of this Manual.

The Second Year Moot involves:

- (i) Four classes on written and oral advocacy skills. Subjects covered include persuasive legal writing, preparation of factums, proper courtroom decorum, preparing and delivering oral argument.
- (ii) Two workshops on advocacy skills, one in the Fall Term and one in the Winter Term. The workshops are designed to assist students in preparing their factums and oral argument. The Fall workshop focuses on developing, evaluating, honing and responding to arguments. The Winter workshop focuses on answering questions from the bench.
- (iii) Observing the Smith Shield mooting competition conducted by the top advocates chosen from last year's class. The Smith Shield moot takes place the first Wednesday in October at 7:30 p.m. in Room 105.
- (iv) Students are assigned to a particular moot problem, issue and side and must argue the case assigned to them.
- (v) 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 seven cases, two secondary sources, and only relevant legislation). The factum is submitted during the fall term and will be marked and returned with feedback after the conclusion of the moots in the winter term.

(vi) Students submit factums via Brightspace and 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. (In recent years, considerably more time has been given – three to five weeks.) The submission and exchange of factums will occur in the fall term. Due dates are listed in the course syllabus.

(vii) Presentation of oral arguments, which will take place in February. Each moot is scheduled for either 5:00 p.m. – 7:00 p.m. or 7:00 p.m. – 9:00 p.m. While there will be approximately 40 moots scheduled for the week, each student will moot only once. Check the Moot Court Dockets (posted in late September) for the date and time of your moot. The dockets will be updated in January with the location of each moot and the names of the judges on each panel.

(viii) The panel 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 oral argument. Some panels may proceed with fewer than three judges. There will always be a faculty judge.

(ix) The faculty judge will be the only individual marking the students' moots. Neither the Chief Justice nor the practitioner mark factums, oral advocacy or assign grades, though practitioners are invited to provide feedback on the factum if they wish to do so.

(x) Each judge will provide critique and feedback on the oral argument immediately after the moot. Both the faculty judge and practitioner have agreed to provide additional feedback to students if requested. Please contact the relevant judge to arrange a meeting.

(xi) All judges are responsible for submitting nominations for the following year's Smith Shield Moot. Students who receive a final grade of Honours and unanimous nominations receive an automatic invitation to try out for the Smith Shield moot. Students who receive a final grade of Honours and are nominated by two of the three judges on the panel may also receive an invitation to try out for the Smith Shield moot. Try-outs take place in March each year before members of the Moot Committee.

## **2. Classes and Readings**

Generally, there are two classes and a workshop each term. The fall classes and workshop focus on preparation of the factum, while the winter classes and workshop focus on preparing and delivering oral argument. The course ends in February after students complete their respective moots.

The assigned readings are posted on the class Brightspace site. The site also includes folders of sample factums and supplemental material. While the material in the supplemental folder is not required reading, it contains some exceptional resources on subjects such as persuasive legal writing, the standard of review, and other common legal

argument that appear frequently in the moots. It is well worth your time to peruse these resources.

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### **C. The Smith Shield Moot**

Second-year students who perform superbly in the Second Year Moot 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 apply for a place on one of the competitive mooting teams. Some moots may be used to satisfy the major paper-writing requirement, if the student wishes to count the moot as a major paper. 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 but not the Smith Shield moot). With a few exceptions, moot teams are chosen in the spring of each year. Notice will be given regarding application times for the various moots.

Performance at the Second Year Moot is often considered when students apply for competitive moots. Students may be asked to submit their factum and oral advocacy marking sheets for the Second Year Moot as part of competitive moot applications.

## **II. THE SECOND YEAR MOOTING PROGRAM**

### **A. Objective**

The purpose of the second-year moot program is to assist students in developing 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 the very best will be invited by the Moot Court Committee to try-out for the following year's Smith Shield moot competition.

Each second-year student will be assigned a case to moot. Students will also be assigned the role of either appellant or respondent, and an issue to argue.

Each moot normally consists of four students: two appellants and two respondents. Accordingly, students will work together with co-counsel to prepare their written and oral submissions. Some moots may have more or fewer than four students. Please review the Second Year Moot FAQs for instructions on how to proceed and contact Professor Shapiro if you have questions.

Trading of moot problems, issues or sides is not permitted. You must write your factum on the case, side and issue(s) assigned to you. If you do not, you will receive a grade of zero for the factum and will also be required to write a new factum on the correct case/side/issue (for which you will not receive a grade) and to do your oral argument on the correct case/side/issue. Double check that you are writing on the correct case, side and issue before commencing work on your factum.

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 presents the 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 made up of three judges).

In the Schulich School of Law'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**

### **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 trial judge decides the facts.

The form of the factum is based on Nova Scotia 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 page must include the name of the court (*The Supreme Moot Court of Dalhousie*), and immediately under the name of the court, the court number (far left column on the docket), hearing date and time (e.g. Court #1, Monday February 3, 2020). You should also include the names of all counsel, their designation as A1/A2 or R1/R2, and the side each represents. The names of counsel for the appellant are typically listed on the left side of the page and counsel for the respondent on the right side.
- Table of Contents: Prepare a detailed table of contents that will act as a road map of your argument, setting out each key point and your position on it.

- Part I - Overview of the Appeal: This part summarizes the key facts, issues, and the party's arguments on each issue as well as the relief sought in no more than a page or two.

- Part II – 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 moot problem. Consider which facts are material to the appeal, and which are not. Use the facts persuasively to tell the story from your client's perspective.

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 set out whatever additional facts the respondent considers material. If the respondent considers the appellant's version of the facts to be slanted or unfair, the respondent may set out the facts from his or her client's point of view.

Where lower court decisions are available (which is not the case this year), counsel are not limited to arguing only those facts contained in the moot problem. Any factual findings may be relied upon in support of either party's position. Evidence taken from transcripts or Supreme Court of Canada factums (if available) may not be used unless accepted by a lower court as a proven fact in the case.

- 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, with each student responsible for one issue.

The student given the role A1 will argue the first issue for the appellant. Student A2 has the second issue. Similarly, the student assigned to the role R1 will take the first issue for the respondent, while R2 will argue the second issue.

Students may rephrase the issue if they wish, but they must argue the issue assigned to them and no other issues. Students may choose to concede sub-issues and focus their argument on the aspects of their issue that are most likely to succeed.

- Part IV – Standard of Review: This part of the factum sets out the applicable standard of review for each issue under appeal. The standard of review is the amount of deference accorded to the initial court's decision by an appellate court. The standard depends on whether a particular issue involves a question of fact, a question of law, or a question of mixed fact and law.



Generally, a court or tribunal's findings of fact, inferences drawn from facts, and a judge's exercise of discretion are subject to great deference by appeal courts, as the trial judge or adjudicator was in the unique position of having heard the evidence. An appeal court must generally accept the trial judge's findings of fact. It is not entitled to substitute its own view of the facts for that of the trial judge. The appeal court will only intervene where it finds a "palpable and overriding error." That standard is met when the lower court makes a finding of fact that is unreasonable, or unsupported by the evidence, and that would have affected the result. Another way of putting it is to ask whether the finding was "clearly wrong."

At the other end of the spectrum are pure errors of law and issues of procedural fairness. Courts and tribunals must generally be correct in their application and interpretation of the law. Another way of putting this is that the appeal court is entitled to substitute its view of the law for that of the trial judge. Questions of statutory interpretation are pure questions of law. Note that appeal courts do exercise deference on the law to specialist tribunals interpreting their own statutes or closely connected statutes and in situations where tribunals have developed expertise in interpreting a particular area of the law (e.g. labour law).

Issues of mixed fact and law hold a middle ground where the standard of review lies on a spectrum between palpable and overriding error on one end and correctness on the other. The closer the alleged error is to a question of fact, the more deference the lower court will receive. In many cases, the standard will be that of palpable and overriding error, just as if the issue was one of fact. On the other hand, an extricable error of law is held to a standard of correctness.

Often, questions of mixed fact and law concern whether a particular set of facts satisfies a legal test. For example, if a trial judge considered all the evidence, applied the correct legal test, and concluded that a defendant was not negligent, an appeal court will exercise great deference to this finding. If the trial judge misstated the test for negligence and thereby came to an incorrect result, that amounts to an extricable error of law that is reviewed on a standard of correctness.

The most advantageous standard of review for the party seeking to overturn the decision of the trial court is that of correctness, and the most advantageous standard for the party seeking to uphold a decision is palpable and overriding error.

It is not unusual for counsel to disagree on the applicable standard of review, given the complexity of the law in this area. It is worth thinking about and framing the standard in a way favourable to one's case. However, counsel will lose credibility with the court if they try to shoehorn a case into a particular standard of review simply because it is advantageous.

Where a moot problem involves a real case, the Court of Appeal may have already identified and set out the standard of review. It is open to students to argue that the standard identified is incorrect.

The leading cases on ascertaining the correct standard of review are *Housen v Nikolaisen*, 2002 SCC 33 and *H.L. v (Canada) Attorney General*, 2005 SCC 25. For judicial review, the leading case is *Dunsmuir v New Brunswick*, 2008 SCC 9.

Here is a table summarizing the applicable standard of review in a very basic way:

Type of Error	Standard of Review
Question of law	Correctness
Question of fact	Palpable and overriding error
Factual inference	Palpable and overriding error
Question of mixed fact and law	Standard lies on a spectrum between correctness and palpable and overriding error

For more information on this complex area of the law, see: The Honourable John Sopinka, Mark A. Gelowitz and W. David Rankin, *Sopinka and Gelowitz on the Conduct of An Appeal*, 4th ed (Toronto: LexisNexis Canada, 2018) and Mike Madden, “Conquering the Common Law Hydra: A Probably Correct and Reasonable Overview of Current Standards of Appellate and Judicial Review” (January 2010) 36 *Advocates’ Quarterly* No 3 at 269-294. (relevant portions available on Brightspace). You will explore standards of review in much more detail if you take Administrative Law.

- Part V – Argument:

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

Please insert a blank page between the argument on the first and second issues so that the faculty judge marking the factum can separate each students’ argument and return it to him or her separately.

In order to ensure your factum is focused, try to follow the ‘rule of three’ in your argument: pick your top three arguments and jettison the rest. For each of your arguments, include (a) the controlling law; (b) the pertinent facts; and (c) your reasoning and conclusion.

The argument section of the factum is limited to 10 pages for each issue. You should use your allotted page count to maximize your client’s chance of success on the appeal. This may mean conceding one or more sub-issues, or addressing them only briefly, to make space for a more fulsome argument on the sub-issues or arguments you conclude have the greatest chance of success.

- Part VI – Order or Relief Sought: This is a brief statement of the relief or remedy sought from the Court. Both counsel sign this page. Counsel may choose to use electronic signatures in addition to typing their names or simply type their names. Either is acceptable.
- Appendix A – List of Citations: List all the cases referred to, with complete citations. Double check that neither counsel exceeded the seven-case limit.
- Appendix B – Statutes and Regulations: List of all the statutes and regulations referred to (if any) with complete citations. You may make reference to all applicable statutes and regulations. If you wish to excerpt the relevant portions of a statute or regulation here to save pages in the argument portion of your factum, you may do so.
- 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. Up to two such citations are permitted per issue.
- Back Page: A blank page at the end of the factum.

## 2. Rules Relating to Factums filed with the Supreme Moot Court of Dalhousie

Counsel may cite no more than seven cases each in the argument section of the factum. Cases cited in any other section of the factum, such as the standard of review section, do not count toward the total. If there are sub-issues, (e.g. 1(a), 1(b)), the limit is still seven cases per counsel. If one member of the team cites fewer than seven cases, the other member of the team is still limited to seven cases. Reference to any level of the case under appeal does not count towards the seven case maximum. Quotes from a cited case that mention another case count as one case. Respondent counsel may mention cases cited in the Appellants' factum in order to respond to them without the case counting toward their limit, but if the case is used to support the Respondents' argument, it counts toward the seven case limit. Counsel may cite no more than two secondary sources, and only relevant legislation.

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.

All parts of the factum must follow the rules set out in the most recent *Canadian Guide to Uniform Legal Citation* (the *McGill Guide*).

The factum must be double spaced, except for: the Table of Contents and the Appendices, headings, footnotes and block quotes, all of which may be single-spaced. The document must have 1” margins on all sides with a 12-point Times New Roman font used throughout. Do not reduce the font size of block quotes.

The pages of the factum must be single-sided and any hard copies required must be printed on good quality 8.5 x 11 inch paper. The pages of hard copies must be 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. Each page of the factum must include a footer with the page number in the lower left-hand corner of every page except the first.

Each student is responsible for the work on his or her own issue throughout the factum (e.g. table of contents, list of issues, standard of review, argument). Students should divide responsibility for the common parts of the factum (the cover page, overview, facts, and order or relief sought, appendices) fairly between them. Faculty will assume that the student responsible for a particular issue did all of the work on that issue unless otherwise noted. For the overview, facts, order or relief sought sections, and appendices, faculty will assume joint responsibility unless otherwise noted (use a footnote for this purpose).

Quotations may be used. Please do so sparingly – for key points and tests only - and keep the quote as short as possible. Paraphrasing is encouraged, provided that the idea is properly attributed. If a quote exceeds four lines, it should be single-spaced and indented on both sides – follow the rules for block quotes in the *McGill Guide*. 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.

Unless otherwise instructed (as in the problems this year) cite the 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".

There are a number of different citation methods used in factums across Canada, including in-text citations, footnotes, and end of paragraph citations. **The Supreme Moot Court of Dalhousie requires end of paragraph citations.** Cases and other sources are cited in the order that they appear at the conclusion of the paragraph(s) in which they are mentioned. For paragraphs with multiple case citations, include the short name of the case in parentheses at the conclusion of the point the case supports. For example, “Warrantless searches are *prima facie* unreasonable (*Hunter*).”

The usual rules pertaining to academic honesty apply to the preparation of factums. When citing a source that would not normally be cited in a factum (such as the actual Supreme Court of Canada factum), to comply with the rules pertaining to academic honesty, place the citation in a footnote to distinguish it from other citations.

Sample factums are available on the class Brightspace site. Factums written before 2009 will have a slightly different format, as they were prepared in accordance with the prior 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, and 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 the rules as set out in this Manual.

If an SCC factum for your assigned case is available, you may wish to prepare a draft of your factum before reading the SCC factum. This will assist you in complying with the provisions on academic honesty and avoid any risk that your thinking could be clouded by the manner in which previous counsel approached the case.

### **3. Submission of Factums**

Factum assignments must be submitted electronically via Brightspace by the due date and time. Each factum should be submitted as a single PDF file using the following naming protocol: Factum A v B – Appellant – Smith\_Jones.pdf where A v B is the name of the case (short form is fine) followed by the side (appellant or respondent) and the last names of counsel. Students are responsible for exchanging factums with opposing counsel and must do so immediately after submitting the factum on Brightspace in order to comply with their ethical obligations as barristers.

If more than one version of the factum is submitted, the last version submitted will be used. If this version is submitted after the deadline, the factum will be considered late and referred to the Studies Committee for assessment of penalty, even if it is identical to a version of the factum submitted prior to the deadline.

## **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 (be sure to confirm the correct pronunciation of each counsel's surname). When given the signal to begin, first counsel for the Appellant should stand and say something along the lines of (but it does not need to be exactly this word for word):

*Good Evening [insert My Lords or My Ladies or My Lords and My Ladies as the case may be, starting with the Chief Justice's gender]. 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, if desired by the Court. Generally, the Court is familiar with the facts and will almost always 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 would 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.

### **3. Preparing for Oral Argument:**

You will receive instruction on persuasive oral advocacy in class. Most students find it extremely helpful to observe oral argument in a case before delivering their own argument. You will have multiple opportunities to observe oral argument this year, commencing with the **Smith Shield** moot in October.

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. You can watch online by visiting: <http://www.cpac.ca/en/programs/supreme-court-hearings/>.

The **Nova Scotia Court of Appeal** recently began webcasting select cases at: [http://courts.ns.ca/Webcasts/webcasts\\_live.htm](http://courts.ns.ca/Webcasts/webcasts_live.htm).

You may also choose to visit the Nova Scotia Court of Appeal to observe a hearing. Most cases are open to the public. The Court is located at 1815 Upper Water Street in Halifax. You can access online dockets (with a brief description of each case) at: [http://www.courts.ns.ca/General\\_Content/dockets\\_on\\_line.htm](http://www.courts.ns.ca/General_Content/dockets_on_line.htm).

Note the start time for the appeal you wish to attend and arrive at least ten minutes early. Once seated, do not leave the courtroom while the appeal is in progress. Wait for a break in the proceeding. Appeals commencing at 10:00 a.m. typically run until 12:30 p.m. Appeals commencing at 2:00 p.m. run till 4:30 p.m. Full and multi-day appeals include a break from 12:30 – 2:00 p.m. You do not have to observe the entire appeal, as long as you wait for a break in the proceeding to leave the courtroom. A court clerk or sheriff may ask for your name and your reason for attending the proceeding. If you are asked, just provide your name and advise that you are a student at the Schulich School of Law and wish to observe the proceeding. If you are going in a group of three or more students, please call ahead to the clerk of the court at 424-4900 to let them know you will attend.

**APPENDIX I: MARKING SHEETS**



**FACTUM MARKING SHEET**

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

CRITERIA AND JUDGE'S COMMENTS	1 of 2 pages
<b>Key: Y=yes, S=sometimes, N=no, N/A. Please include comments where desired.</b>	
<b>Formal Requirements:</b> Does the factum comply with the rules set out in the <i>Moot Court Manual</i> ?	
<b>Table of Contents:</b> Does counsel provide a framework or road map for the argument and succinctly outline all major submissions?	
<b>Overview:</b> Does counsel clearly and effectively set out what the case is about, identify the issues, and set out his or her position on each issue? Does counsel begin to show that a judgment for his or her client would be legally correct and morally right?	
<b>Statement of Facts:</b> Are the facts set out logically? Are only relevant facts used? Are damaging facts addressed appropriately? Does counsel use the facts to tell a persuasive story?	
<b>Issues:</b> Does counsel state his or her issue concisely and accurately? Is the issue well framed?	
<b>Standard of Review:</b> Has counsel identified and set out the correct standard of review? Does counsel demonstrate in the factum how that standard of review has been met (or not)?	
<b>Organization:</b> Does counsel organize the arguments in a logical fashion, with clear transitions? Does counsel make effective use of headings and other organizational aids? Is the factum visually pleasing? Does it contain enough white space?	
<b>Writing:</b> Is the writing clear and concise? Does counsel make use of point-first writing and give context before details? Does the writing flow? Has the factum been proofread and edited, or does it contain typographical or other errors?	

<b>2 of 2 pages</b>	
<b>Command of Substantive Law:</b> Does counsel accurately identify and apply the substantive law?	
<b>Application of the Law to the Facts:</b> Does counsel clearly apply the law to the facts?	
<b>Persuasiveness:</b> Has counsel identified and used the strongest arguments and winnowed the weakest arguments? Are the arguments presented persuasively? Does counsel capture the moral high ground in the case? Is the factum scrupulously fair and honest? Has counsel remained objective?	
<b>Policy Issues:</b> Does counsel identify and address all relevant social, moral, religious, cultural, or economic issues?	
<b>Creativity/Ingenuity:</b> If applicable, does counsel employ original or creative arguments or approaches while respecting existing law? Is this use effective?	
<b>Authorities:</b> Does counsel identify the relevant authorities and use them clearly, succinctly, and persuasively? Does counsel offer the court the most straightforward way to a judgment for his or her client? <b>The Supreme Moot Court of Dalhousie limits counsel to citing no more than seven cases in argument on each issue, up to two secondary sources, and only relevant legislation.</b>	
<b>Legal Citation and Style:</b> Is proper legal citation used consistently throughout the factum (as per the current edition of the <i>McGill Guide to Legal Citation</i> )?	
<b>Order or Relief Sought:</b> Does counsel state the order sought in clear language that could be inserted directly into the order or judgment?	

**FACTUM GRADE:**

**HONOURS**

**PASS**

**FAIL**

**ORAL ADVOCACY MARKING SHEET**

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

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

<b>CRITERIA AND JUDGE'S COMMENTS</b>	<b>1 of 2 pages</b>
<b>Key: Y=yes, S=sometimes, N=no, N/A. Please include comments where desired.</b>	
<b>COURTROOM MANNER</b>	
<b>Appearance:</b> Is counsel properly attired for court?	
<b>Mannerisms:</b> Does counsel engage in any distracting physical or speech mannerisms?	
<b>Speech and Pace:</b> Does counsel speak clearly and at the correct pace?	
<b>Eye Contact:</b> Does counsel maintain good eye contact with the judges?	
<b>LEGAL ANALYSIS</b>	
<b>Use of Factum and Authorities:</b> Does counsel make effective use of the factum and authorities cited?	
<b>Substantive law:</b> Does counsel understand the issues and law for and against counsel's position?	
<b>Legal Analysis:</b> Does counsel understand and deal with the strong and weak points in the case?	

<b>2 of 2 pages</b>
<b>INTERACTION WITH THE BENCH</b>
<b>Questions from the Bench:</b> Does counsel address questions in a convincing and persuasive manner, then move back to argument? Can counsel then adapt the argument to reflect items already addressed?
<b>Deference and Respect:</b> Does counsel display the proper degree of deference when engaging with the Judges?
<b>OVERALL ORGANIZATION</b>
<b>Clarity:</b> Is counsel's argument presented in a clear and logical manner?
<b>Managing Time:</b> Does counsel allocate his or her time effectively and manage the time limits set out for argument?
<b>Conclusion:</b> Does counsel conclude effectively?
<b>ADDITIONAL COMMENTS (if any)</b>

**ORAL ARGUMENT GRADE:      HONOURS                  PASS                  FAIL**

**OVERALL GRADE IN COURSE:      HONOURS                  PASS                  FAIL**