

Appendix - Mooting at Law School

When involved in a Moot Court experience, first locate and review the rules of the Moot Court that govern the moot. The rules will typically provide the rules for document preparation and oral argument.

A. Introduction to Moot Court Advocacy for first year law students

For Moot Court competitions at law school, students are assigned to either an Appellant team or a Respondent team, usually two student mooters per team. The Appellant team appeals a given judicial decision on behalf of the client to a higher level court called a "Moot Court". The Appellant team first writes a factum outlining the basis for the appeal, and the Respondent team writes a factum in response to the Appellant factum. Both factums are submitted to the Moot Court judges in advance of the oral argument. The judges for Moot Court competitions usually consist of a panel of three judges per moot, and the Moot Court judges can include official judges, practising lawyers, law professors and upper year law students. There are strict time limits for moot court competition, often 15 minutes for each student mooter.

There is often a mandatory moot court competition as part of the oral advocacy component of a legal writing and research course during first year at law school and there are opportunities to voluntarily moot in internal law school competitions after first year. There are also positions on various competitive moot teams that students may apply for to represent their law school at national moot court competitions, for which credit may be given in lieu of a traditional course credit.

For law school moot competitions, "Moot Court" is the highest possible "Court" level in Canada, meaning that precedent judicial decisions relied upon in the legal research for the appeal are not BINDING at the Moot Court. Any Canadian case law precedent, even if it is from the Supreme Court of Canada, can be overruled by the Moot Court. However bear in mind that the hierarchy of the other Courts still stand, therefore a Trial Court decision is subject to an Appeal decision and a Supreme Court decision trumps them both.

The Moot Court is an appeal court. The litigators appear in front of a panel of judges and argue each side of the case. There are specific rules and procedures that must be followed, in order to maintain courtroom decorum and to show respect for the judges. The details of the required behaviour in the courtroom will be discussed in the following pages.

B. Preparing for Oral Argument

How to get started:

Review Chapters 10-13 of the class text for instruction on legal writing, legal argument, and factum writing.

- The student team against whom you are mooting are called "friends" in moot court etiquette. Once student teams receive the factum of the opposing team, students should take time to go through their friends' factum and their own factum again carefully.
- Focus on two important themes:
 - What are the weaknesses in the other side's factum arguments?
 - What are the 3 strongest arguments for each issue in your own factum?
- Each mooter should select on average three arguments to put forward in his or her oral presentation to support his or her legal issue. It is not advised to try to make more points. Try and stick to three concise arguments.
- A factum will contain more than three arguments for each issue. Not every argument in a factum will be mooted as there is not enough time for that. Often it is possible to combine more than one argument and also to point out the opponent's weaknesses at the same time.
- When mooting partners sit down as a team to discuss the issues and arguments remember to put forward the strongest arguments and develop these.
- Think about the **Theory of the case** ("Theory"). A Theory is the unifying explanation of the facts of the case that, if supported by the law and accepted by the Moot Court, will result in a legal conclusion that is favourable to the client. This will force a team to develop a **Theme of the case** ("Theme"). The theme provides an overall cohesive structure to both the oral and written argument; it helps the Court make sense of the facts and law.
- In practice, both Theory and Theme would be determined before trial. However, because there is no trial in Moot Court, the teams will not have had the benefit of reading the transcript of the court or tribunal that made the original decision.

The hardest part of mooting is establishing the *mantras*. Each mooter should have three key arguments to put forward in his or her oral argument. Each argument must be reduced down to one sentence called a "mantra" which a speaker can come back to during questions.

- The student mooter will present each argument in detail, but the mantra can be used to remind the court of the key points that support the overall theme. Sometimes this can be used in response to questions from the bench.
- REMEMBER: three key arguments that can be summarized in one line each- THIS IS THE MANTRA
- Once the student team has decided who will present which issue and which are the three strongest arguments for each issue, then prepare oral argument for presentation at Moot Court.

First Mooter of a Team			Second Mooter of a Team		
Issue 1			Issue 2		
ARGUMENTS IN SUPPORT OF ISSUE 1			ARGUMENTS IN SUPPORT OF ISSUE 2		
Argument 1	Argument 2	Argument 3	Argument 1	Argument 2	Argument 3
↓	↓	↓	↓	↓	↓
MANTRA	MANTRA	MANTRA	MANTRA	MANTRA	MANTRA

Oral presentation

- The Moot is divided up into a prepared portion of arguments. Questions may be posed by the judges when they seek clarity on a point at any time during oral argument.
- Each student mooter in a team must moot within the maximum time limit. The time limits are strict and the clerk times the mooter. If each person has 15 minutes to moot then the team for the Appellant has a total of 30 minutes and the team for the Respondent has 30 minutes. The time can be divided as follows:
 - Prepare 8 minutes of oral argument in advance – this consists of the introduction including the Roadmap, the prepared three argument

submissions and the closing. Organize the presentation notes in a three ring Moot Binder or on a single sheet of paper.

- Remaining time – this is used for the judges to ask questions and for the mooter to answer on the spot
- A judge can ask questions at any time during submissions. The mooter is then required to stop, answer and resume the argument where he or she left off. Proper courtroom etiquette, high standards of professionalism and deference to the Court are necessary at all times. Answer the question posed, even if interrupted by a judge mid-sentence.
- The mooter must not read the entire submission as though one is presenting a lecture to the judges. Persuasive advocacy comes from engaging the judges with knowledge, and mastery of the facts of the client's case and the relevant law.
- If one is an experienced public speaker, reduce the oral presentation to notes which can be used as an aid to ensure the the relevant points are covered. If the mooter is less experienced at public speaking, he or she may wish to follow a prepared submission, but the mooter should know it well enough that he or she can have a conversation with the bench, discussing the contents of the submission rather than reading the submission verbatim.

Practice the argument as often as possible alone and with a moot partner in front of an audience. Invite questions. Upper year law students are usually willing to hear submissions and they can provide valuable feedback. The order of speaking at Moot Court is as follows:

- First Appellant will present – 15 mins; Second Appellant will present – 15 mins
- First Respondent will present – 15 mins; Second Respondent will present – 15mins
- REPLY (optional) 1 minute – Appellant.

NB: Oral argument is a conversation with the bench, and not a speech. Reading a prepared submission is not persuasive – it allows the inference that counsel is so unpersuaded by their submission that they could not remember it without reading it verbatim.

NB: Prior to the moot, a mooter may not discuss any aspect of their submission with their “friends”, i.e. counsel mooting the other side of their argument. Mooters must not practice their argument with their friends against whom they will moot. Mooters may not discuss their case with any of their prospective judges, nor may they practice before the judges who will hear their submission. If it is necessary for mooters to speak to their friends concerning a question about the factum, they must first come to their Legal Writing Professor or mooting coach for guidance.

	1ST APPELLANT
Introduction	" My name is _____. I, along with my Co counsel, _____, appear on behalf of _____.
Fact Summary	" Before moving to my argument, I remind the court of two facts that are critical to this appeal". <i>{only include the essential facts that support the argument- do not waste time on summarizing the whole case} *Alternative statements – see below.</i>
Issue Identification	" I will address the Issue of _____. My co- counsel address the issue of _____.
Roadmap	" I will make three points today in support of our _____ argument, which can be found at paragraphs ____ of our Factum : First: Second: Third:
Arguments	Prepared
Extension of Time	" May I have a brief extension of time to conclude?"
Closing	"In conclusion _____ <i>{insert 3 mantras to summarize each argument in one sentence}</i> Unless I may be of some further assistance to the Court, these are my submissions. My co-counsel will continue our argument on the issue of _____. Thank-you"
Corrections* (first speakers make corrections)	I would like to draw the Court's attention to a correction on page _____. The correct wording should be " _____ "
Reply* (optional after second Respondent has finished)	"In reply to the point _____ the Respondent raised, the Appellant submits..."

2ND APPELLANT	
Introduction	" My name is ____ and I appear on behalf of ____"
Fact Summary	NA
Issue Identification	"My Co counsel addressed ____ . I will be addressing the next issue of ____ and will argue that ____"
Roadmap	"I will make three points, which can be found in paras ____ of the Appellant's factum: First: Second: Third:"
Arguments	Prepared
Extension of Time	" May I have a brief extension of time to conclude?"
Closing	"In conclusion ____ <i>[insert 3 mantras ie summarize each argument in one sentence]</i> Subject to any additional questions, these are my submissions . Thank-you"
Corrections* (first speakers make corrections)	NA
Reply* (optional only after second Respondent has finished)	NA

1ST RESPONDENT	
Introduction	" My name is ____ . I, along with my Co- counsel, ____ , appear on behalf of ____"
Fact Summary	" Before moving to my legal argument I would like to emphasise three essential facts critical to this appeal" <i>[only include essential facts which support and reinforce the argument]</i>
Issue Identification	"The issue on appeal is ____ . I will address _____ , while my co-counsel will argue that _____."
Roadmap	" I will make three points today in support of our ____ argument, which can be found at paragraphs ____ of the Respondent's factum: First: Second: Third:"
Arguments	Prepared
Extension of Time	"May I have a brief extension of time to conclude?"
Closing	"In conclusion ____ <i>[insert 3 mantras ie summarize each argument in one sentence]</i> These are my submissions, subject to additional questions. My co-counsel will now address ____ (issue). Thank-you"
Corrections* (first speakers make corrections)	I would like to draw to the court's attention to a correction on page ____ . The correct wording should be " _____"
Reply* (optional after second Respondent has finished)	NA

	2nd RESPONDENT
Introduction	" My name is ___ and I appear on behalf of the Respondent ___"
Fact Summary	NA
Issues Identification	" I will argue that ___."
Roadmap	" I will cover three points found at paragraphs ___ of the Respondent's factum; First: Second: Third:
Arguments	Prepared
Extension of Time	"I see that my time is up. May I have a brief extension of time to summarize my submissions or must I move to my conclusions"
Closing	"In conclusion ___ [<i>insert 3 mantras to summarise each argument in one sentence</i>] Unless I may be of some further assistance to the court these are my submissions. Thank-you."
Corrections* (first speakers should make corrections)	NA
Reply* (optional after second Respondent has finished)	NA

NB: these points are general suggestions only – each student is encouraged to tweak these notes to reflect his or her own personal style. **DO NOT** simply print off these notes word for word; this will not result in persuasive advocacy.

***Fact Summary**

The first Appellant should be prepared to briefly explain the key facts for the Justices hearing the appeal. Prepare a maximum 1-2 paragraph fact summation.

DO NOT SAY "Would the Court like a brief recitation of the facts?"

This is weak unpersuasive opening. Instead, determine the facts that are central to the argument and ensure the court is aware of them. As well, do not bore the court with a long summation of all the facts. The key facts should be in the factum. However, take the opportunity to highlight the important facts that are central to the argument before proceeding, especially, if the facts are contentious. After the facts have been presented, proceed to the next stage, which is a delineation of the issues to be addressed during oral argument.

"This case concerns (add relevant facts)" or "Before proceeding to my oral argument, I would like to draw the court's attention to /remind the court of/summarize the three central facts that are critical to this appeal (add relevant facts and then move to the issues on appeal)".

Moot Court Advocacy – Helpful Hints:

- Mooters address the judges as “JUSTICE NAME” or simply “JUSTICE”
- The oral argument is restricted to the material that was presented in the factum
- Only one Appellant will reply if necessary. The Reply is only used if new information has been raised by the Respondent that the Appellant did not have a chance address in their submission. It is NOT an opportunity to repeat points already raised.
- A mooter should note in their moot binder where each point of can be found in the factum in case a Judge asks for the citation reference.
- A mooter cannot practice his or her submissions with their opponents (Friends) against whom they are mooting, and they cannot discuss the Moot at all with their opponents (friends).
- PRACTICE, PRACTICE, PRACTICE the oral argument

Some common questions a mooter may encounter at the Moot and some suggested responses:

A judge asks the mooter a question regarding the issue that his or her co-counsel will be covering: Response: “Justice, my co-counsel will be addressing your question in detail; however, briefly, ___ (answer in one sentence)”.

1. A judge asks the mooter a question that he or she does not know the answer to: First, try to clarify the question, but if it is outside the scope of the mooter’s preparation, he or she should admit it. Response: “I am unable to assist the Court on this point”. Sometimes you can *bring the question to one of the three mantras you have established* . such as “It is our position that ___”.
2. The mooter does not understand the question from the judge: Response: “Justice, could you please repeat the question?” or “Justice, if I understand you correctly, you would like me to address _____.”
3. After a question has taken the mooter away from a prepared submission and the mooter needs to transition back to the rest of his or her argument: Response: “ Returning to my argument that...”
4. The mooter does not address an argument and he or she sees the time is running out: Response: “I would like to draw the Court’s attention to para X in the factum, which summarizes our argument about _____.”

Moot Binder organization:

- An essential part of mooting is how the mooter organizes their materials
- How each Mooter organizes his or her material is an individual choice
- Use large print font and leave room on the page to add in any additional information. It is common to leave the bottom half of the page blank and to use extra-large font for the speaking notes on the top half of the page. A sample moot binder is included at the end of this section.
- Use file dividers to divide the 3 ring Moot binder into the following sections:
 - Oral presentation**
 - Copy of the Respondent factum
 - Copy of the Appellant factum
 - Legislation
 - Case law (use case briefs and only have the official case sections that the mooters refer to)
 - Rehearsed potential arguments/questions and answers
- Highlight and flag the parts of the legislation, factum and case law which the mooter thinks will come up.
- It may be useful to brainstorm some question the mooter thinks will likely be asked and type up a quick response to have on hand.

Time keeping at the Moot

- A Time keeper (“student clerk”) will be present and will backcount the time therefore the time that is shown is the TIME REMAINING moving from 15 to “time up”. Each mooter must stop speaking at TIME UP and either ask the Court for an extension of time or in the alternative simply say “If there are no further questions, these are my submissions” or “Thank-you, I see that my time is up. May I be of any further assistance to the Court?” Always follow the direction of the Court. The strict time rules must be respected by all mooters.
- The mooter should know how long his or her closing should take so that they leave enough time to move to their conclusion – always prepare a one minute conclusion in advance.

C.**On the Day of the Moot**

Arrive at the Moot Court or designated area twenty minutes before the scheduled moot. Gown as directed. Moot Court is a formal environment. Dress and manner should reflect this formality. All Mooters are required to be dressed appropriately for the Moot – no jeans, hoodies, sports caps, etc.

- The Appellants sit to the left of the podium and the Respondents sit to the right of the podium, facing the bench.
- The first speakers of each side sit on the seat closest to the podium.
- A time keeper (“student clerk”) and possibly a videographer will be in the room. Others may also be in the room observing; however, at law school, for moot competitions, review the moot court rules – a mooter cannot observe a classmate’s moot prior to his or her own moot.
- All persons in the Courtroom rise when the Judges enter the room.
- The judges will bow to counsel to show respect for the mooters, the client and the judicial proceedings. Return their bow. Wait until the judges are seated or until they say “be seated” before sitting down.
- The First Appellant approaches the podium immediately. The speaker process continues as discussed above.
- Counsel’s role is to assist the bench to understand the law as it affects the facts of the case and to advocate for the client’s position. Counsel has expert knowledge to provide to the court. Interactive discourse between counsel and the justices will bring forth relevant facts and law and a just result.
- Counsel appears before the court with leave of the court. Respect by all parties for all parties is mandatory. Strive for the highest standard of advocacy.
- A mooter can be guided by the judiciary as he or she advances their argument. What does the judiciary want to know about the client’s case? Listen to the questions posed by the justices. Do not interrupt a justice who is speaking. If the mooter is interrupted by a justice, listen, and do not talk while the justice is speaking.
- The audience must respect the court. Inform any guests about these rules. Audience members must not talk while the justices are seated. Turn off cell phone ringers. Remove head-covering (unless it has religious significance).
- If a law student enters the courtroom after the judges are seated, stop, they should face the bench and bow to the justices seated on the bench upon entering, then proceed to their seat. When leaving the court, if court is still in session, stop at the door, turn, face the bench and bow before exiting the room

- After oral argument, the judges will then leave to deliberate – when the judges stand up, everyone in the room must stand. The Court will rise when they exit.
- When the judges re-enter, all persons in the court room will stand until the judges are seated.

D. Evaluation

- Following is sample of the type of evaluation typically given at a first year law school Moot competition .

SAMPLE FIRST YEAR MOOT EVALUATION FORM

1. EFFECTIVENESS OF ORAL ARGUMENT	Developing	Good	Excellent
Evidence of preparation			
Development of argument			
Strength/creativity of argument			
Familiarity with issues/authorities			
Persuasiveness of Argument			
Integration of Facts and Law			
Integration of oral argument with written argument			
2. PRESENCE	Developing	Good	Excellent
Etiquette/Deportment			
Voice Level			
Diction			
Eye contact			
Pacing			
3. RESPONSE TO QUESTIONS	Developing	Good	Excellent
Directness of response			
Reference to authorities			
Interaction with bench			
Ability to return to argument			
STANDING _____			
Fail/Pass/Pass With Distinction			
4. COMMENTS AND OVERALL ASSESSMENT			

E. Sample Moot Binder

(Sample Opening/Introduction Page)

SLOW DOWN

Good afternoon Justices.

**My name is _____ .I appear on behalf of the
Appellant _____ in this matter.**

STOP

The Appellant has 3 submissions today:

**FIRST: Section.6(1) of the Charter should be
interpreted broadly and purposively without
OVERSHOOTING the intended purpose of the section .
(PARA x AND y OF THE FACTUM)**

STOP

**SECOND: a passport is NOT ESSENTIAL to exercise
mobility rights (PARA x AND y OF THE FACTUM)**

STOP

**THIRD: If a section 6 (1) right violation is found, each
term in section 10(1) of the Order is sufficiently
precise to be prescribed by law (PARA x AND y OF
THE FACTUM)**

STOP

Moving to my first submission, which can be found in paras X and Y of the Appellant/Respondent factum:

- **The cases of *Big M and Hunter* have established that a broad and generous approach must be adopted when considering Charter rights.**
- **However Big M cautions that, although a broad interpretation must be used, it is important not to **OVERSHOOT** the actual purpose of the section in question.**

....argument follows.....

(Sample Closing)

These are my submissions on the section 6 Charter violation.

Subject to any further questions, my co counsel will now address the final issue in our submission regarding the section 1 analysis. Thank-you.