

GALE CUP MOOT 2023

RULES



MARCH 3-4, 2023

RULES FOR THE GALE CUP MOOT COMPETITION

March 3-4, 2023

The following are the rules for the Gale Cup Moot Competition (“the Competition”) which is open to all Canadian law faculties. The winning law faculty will receive possession of a trophy donated by the former Chief Justice of Ontario, the Honourable George A. Gale, for one year.

1. ORGANIZATION

- 1) The Competition is supervised by the Gale Cup Moot Committee (“the Committee”).
- 2) The Committee shall
 - i) make rules governing the Competition;
 - ii) compose or choose the problem to be argued;
 - iii) designate the date on which the Competition is to be held and the date for filing Facta;
 - iv) make arrangements to host the Competition, and carry out the task of organizing the Competition, obtaining Judges and making general arrangements;
 - v) at its discretion, post information about the Competition and its participants on its website at www.galecupmoot.com; and
 - vi) act as the final authority to decide all questions regarding the conduct of the Competition.

2. MOOTING ROUNDS

i) Primary Round:

Each school shall compete in two moots in the primary round, once as Appellant and once as Respondent. There is no prohibition against members of any team attending any moot of any other team.

ii) Final Round:

Those four schools which qualify to enter the final round shall moot once each in the final round with an oralist team of two students, either as Appellant or Respondent, as chosen by the Committee by way of random draw - See Rule 12 (1).

3. TEAMS

Each law faculty in Canada may enter one team in the Competition. A team is composed of four students in any year of the J.D., LL.B, or B.C.L. program at the invited law faculty. Permission to enter a team consisting of two or three students may be granted by the Committee in special circumstances. Law students enrolled at the invited law faculty other than team members may assist with the research for the preparation of the Factum and may sign the applicable Factum along with the team members, who will be identified and designated as such. Two students shall represent their team in every moot. Each law faculty shall designate two student members of the team as Appellant’s counsel and two as Respondent’s counsel. Unless permission to do so is granted by the Committee, no student shall participate in the oral moots as both Appellant’s and Respondent’s counsel.

If it is desired to have only one student represent the team in a moot, special permission must be obtained, based on special circumstances, from the Committee (if the permission is sought prior to commencement of the actual oral moot) or from the Judges of the moot (if the permission is sought during the oral moot competition itself). All members of a team must participate in an oral moot. Mooters are to note that, if special permission is granted to allow a team to be represented by only one student in a moot, then the normal scoring rules are modified, as set out in Rule 11. Such special permission to use only one mooter must be sought by the requesting team immediately after the need for the request has arisen.

No person may be a member of a team if he or she has ever at any time been called to the Bar or otherwise qualified to practise law in any jurisdiction.

4. STATE OF THE LAW

Subject to the fact that the Moot Court is not bound by any previous judicial decision, the law for the moot is the law in Canada as it stands on the date that the Appellant’s Factum is due. To the extent that a team does not appeal a particular finding or conclusion of the lower court in its factum, the Court shall assume that team does not take issue with it for the purposes of the appeal. If a team wishes to refer to case law in oral argument that has not been cited in its factum or the factum of the opposing team, it must promptly, and in any event no later than February 21, 2023, advise the opposing team and the Committee of its plan to do so.¹

5. FORM OF FACTA

- 1) The appeal shall be to the Moot Court of the Gale Cup. In an appeal to the Moot Court, the Appellant shall prepare a factum entitled “**Appellant’s**

¹ Any additional case law to be referred to should be minimal.

Factum” signed by counsel in the order in which they will speak, containing, under numbered parts, the following:

PART I

who is appealing, the court appealed from, and the result in the court below;

PART II

a concise summary of the facts relevant to the issues on the appeal, with such reference to the judgment appealed from as may be necessary; no reference shall be made to any facts not appearing in the judgments below;²

PART III

the issues to be raised,³ each issue being followed by a concise statement of law including cases and authorities relating to that issue;

PART IV

a statement of the order that the appellate court will be asked to make.

In addition, each Appellant’s Factum must contain an appendix setting out the statutory provisions and listing the authorities referred to in argument.

The Appellant’s Factum, exclusive of the cover page(s), index, and appendix, may not under any circumstances exceed 20 pages in length.

- 2) The Respondent shall prepare a factum entitled “Respondent’s Factum”, signed by counsel in the order in which they will speak, containing, under numbered parts, the following:

PART I

- a) a statement of the facts in the Appellant’s summary of the relevant facts that the Respondent accepts as correct and those with which it disagrees;
- b) a concise summary of any additional facts relied upon, with such reference to the judgment appealed from as may be necessary; no reference shall be made to any facts not appearing in the judgments below;

² The grounds of appeal may be chosen from the reasons of the justices of the Supreme Court of Canada. However, the grounds chosen should be legal rather than social science or other categories of grounds.

³ Please note that leave to appeal is not required.

PART II

the position of the Respondent with respect to the issues raised by the Appellant, each issue being followed by a concise statement of the law bearing on the issues, including cases and authorities relating to that issue;

PART III

any additional issues the Respondent intends to raise, each issue being followed by a concise statement of the law bearing on the issues, including cases and authorities relating to that issue;⁴

PART IV

a statement of the order that the appellate court will be asked to make.

In addition, each Respondent's Factum must contain an appendix setting out the statutory provisions and listing the authorities referred to in argument.

The Respondent's Factum, exclusive of the cover page(s), index and appendix, may not under any circumstances exceed 20 pages in length.

RULES APPLICABLE TO ALL FACTA

- 3) Each Factum must be typewritten on 8½" x 11" paper with double spacing between each line of text (with the exception of headings, citations and quotations of more than four lines, which may be single spaced). Every page will be numbered and the paragraphs in the Factum will be numbered consecutively. A margin of 1½" will appear at the left of each page and a margin of 1" shall appear on the top, bottom and right-hand sides of each page. The mooted school will be identified on each Factum. All type must be no smaller than 12-point font.
- 4) All citations must be complete. Parallel citations are only required when citing to an electronic source which is also available in a printed report. Footnotes are not permitted. Teams are required to add hyperlinks to cited authorities that are available through CanLII or an equivalent reliable electronic source where available.
- 5) All Facta will be submitted in electronic form as a PDF.
- 6) All Facta submitted must use the following naming convention for the PDF file name: School – Appellant/Respondent. For example: Western – Appellant.

⁴ The response to the Appellant's specific arguments should be found in Part II. If the Respondent is not making additional arguments, this may be briefly stated in Part III without further elaboration.

7) The language of each Factum must be the same as the language in which the team will present its oral argument, subject to rule 10(3).

8) Facta in Bilingual Moots:

All teams participating in a bilingual moot shall, when quoting from a case which has been reported in both French and English, include citations from both the French and English reports. If a statute which was enacted in both languages is being quoted, the text should be given in both languages. Space taken by the statute quotations in the language other than the language of the Factum will not be counted as part of the 20-page maximum length of Facta under Rule 5.

Teams participating in bilingual moots are responsible for arranging for translation of the factum received from the opposing team if they require it.

6. RECORDS

1) The Committee will prepare a book containing the case under appeal at all relevant levels (“Gale Cup Moot Appeal Book”). Copies of the Gale Cup Moot Appeal Book will be delivered to all Judges and will be available to teams electronically at www.galecupmoot.com.

2) Teams will only use facts and evidence contained in the written reasons for judgment in the Gale Cup Moot Appeal Book in preparation of their Facta and in their presentation of oral argument. No additional facts and evidence introduced at the prior trial and/or appeal levels may be used in written or oral argument. This prohibition extends to references to other parts of a document quoted in the judgments below and includes all factual or evidentiary material such as reports or Hansard.

7. SUBMISSION OF FACTA

1) Each Appellant school shall send:

i) directly to its Respondent, copying the Committee at Galecup@criminallawyers.ca, the Appellant’s Factum in electronic form no later than 4:00 p.m. local time of the Appellant, Friday, January 20, 2023;

2) Each Respondent shall send:

i) directly to its Appellant, copied to the Committee at Galecup@criminallawyers.ca, the Respondent’s Factum in electronic form no later than 4:00 p.m. local time of the Respondent, Thursday, February 9, 2023;

- 3) Each Factum must be delivered electronically via a single e-mail in PDF format, unless the recipient and the Committee have been contacted first and have agreed to a different method of sending of the Factum.
- 4) The recipient of a Factum must acknowledge receipt within 24 hours by sending a message to the e-mail address from which the Factum was sent, unless the sender has requested another form of acknowledgment.

8. REVISION OF FACTUM & COMMUNICATION WITH OPPOSING TEAM

- 1) A team may not revise its Factum after the submission of the Factum.
- 2) Teams are not to communicate with opposing teams regarding complaints about the opposing team, except for complaints regarding delays in meeting of deadlines, and in the latter case a copy of the complaint is to be sent to the Rule Interpretation contact. Complaints about matters other than delays are to be directed to the Rule Interpretation contact. The Rule Interpretation contact shall make the Committee aware of the complaint and a penalty may be imposed in accordance with Rule 9.

9. FAILURE TO COMPLY WITH RULES AND DEADLINES

- 1) Teams may be penalized for failure to comply with the rules and deadlines of the Competition. The Committee may impose a penalty for any non-compliance unless the offending party shows cause why no penalty or a lesser penalty should be adjudged against them, in which case the Committee or, if the non-compliance occurs at the time of the Moot, the Committee and/or the Court may determine the appropriate penalty.
- 2) The maximum offending penalty for late delivery of materials shall be five points off the average raw score for the team for oral argument in the primary round for the first late day, and one point off for each day thereafter. Adjustment of the numerical score may or may not affect the judgment point totals (see Rule 11).
- 3) If any team files its Factum late, and if the Committee feels that prejudice has occurred, the Committee shall inform the Judges of the primary round, who shall deduct the maximum penalty unless at the time of the Moot the offending party shows cause why no penalty or a lesser penalty should be adjudged against them, in which case the Court shall determine the appropriate penalty.

10. ORAL ARGUMENT - PRIMARY ROUND

- 1) With the exception of one counsel for the Appellant, each counsel shall be allowed 30 minutes for oral argument. This initial time allotment may be extended at the discretion of the Court; however, the total time for each counsel will not exceed 40 minutes.

- 2) Following the oral arguments of the second counsel for the Respondent, one counsel for the Appellant shall be permitted an additional five minutes for the purpose of reply.
- 3) It is the intention of the Committee that individual mooters should be able to moot in the official language of his/her choice subject to Rules 10(4) and following below.
- 4) Each participating school will deliver its Facta in a single official language and, subject to Rule 10(5), all representatives of the school shall deliver oral argument in the same language.
- 5) The representatives of a school which is selected to compete in a bilingual moot may, with the approval of the Committee, deliver oral argument in an official language other than the language of the Factum. Simultaneous interpretation services are provided for bilingual moots.
- 6) Each participating school may, by notice given in accordance with Rule 10(8), designate either official language as the language to be used in the Factum submitted by that school.
- 7) If a participating school does not designate an official language as provided for in Rules 10(6) and 10(8) its Facta shall be delivered in the language designated below:

English

Victoria

U.B.C.

Alberta

Calgary

Saskatchewan

Manitoba

Osgoode Hall

Toronto

Ottawa

Queen's

Western

Windsor

New Brunswick

Dalhousie

TMU

French

Laval

Montréal

Sherbrooke

Moncton

McGill (bilingual)

8) The designation referred to in Rule 10(6) must be made prior to **November 12, 2022**. A team which elects to designate a language other than that designated in Rule 10(7) must notify the Rule Interpretation contact (see Rule 14) before November 12.

9) Counsel shall gown for the oral argument by wearing a barrister's robe over their business suit. Counsel shall not wear a barrister's waist coat or vest, wing collar shirt, tabs or striped legal trousers. It will be the responsibility of each participating law school to obtain their own gowns for the moot.

10) Members of the judging panels shall be addressed in same manner as utilized at the Supreme Court of Canada, i.e. the mooter shall state the name of the Judge, preceded by "Justice".

11. MARKING - PRIMARY ROUND

1) Factum Assessment

A board of lawyers and/or Judges who are all experienced in appellate advocacy will be appointed in advance of the Competition to review all Facta. In assessing the merits of the Facta, members of the board shall consider the following criteria:

accuracy
clarity
conciseness
adherence to rules
writing style
persuasiveness

While non-compliance with formal requirements will be taken into account, such non-compliance shall not be subject to automatic deduction of points. The fixing of the score shall be in the discretion of the board and shall be arrived at after due consideration of all of the above factors.

The board shall determine a team score from 0 to 100 based upon the above noted criteria to be awarded each team for its Factum. While participants are permitted to review the Facta filed in the Courts below, the written argument in the Moot Court must be their own work product.

This Factum score for each team will not be disclosed to the Judges of the oral argument.

2) Oral Argument Assessment: Raw Score

Team scores for oral argument for each moot in the primary round shall be based on an initial assessment of the oral argument as being either outstanding, very good, average or needs improvement according to the following ranges:

Outstanding	(90 – 100)
Very Good	(80 – 89)
Average	(70 – 79)
Needs Improvement	(69 and below)

The legal merits of the argument are not to be considered. Factors to be considered in making this initial assessment, without regard to order of importance, include, but are not limited to

- i) Correct and articulate analysis of the issue;
- ii) Familiarity with authorities;
- iii) Response to questions;⁵
- iv) Poise;
- v) Clarity;
- vi) Ingenuity;
- vii) Organization;
- viii) Persuasiveness; and
- ix) Courtesy/ethics.⁶

While it is permissible to cite case law in oral argument, teams should refrain from lengthy or numerous direct quotations from case law, which may detract from a persuasive presentation.

During the argument, each Judge should tentatively determine whether the argument was outstanding, very good, average or needs improvement, and then assess a percentage value for each oralist at the conclusion of his or her presentation. Following the argument, the Judges shall retire to deliberate and exchange opinions. They shall then individually assess each

⁵ Although it is generally impermissible to refer to case law not discussed in a team's factum, a mooter may do so where it is reasonably necessary to address a question from a Judge.

⁶ For example, judges may take into account in scoring the fact that a team has raised a new point not dealt with in its factum, or other breaches of rules of civility and fairness.

oralist. The Judges will then return to the courtroom and make such comment as they see fit BUT WILL NOT ANNOUNCE THE WINNER OR THE MARKS AT THAT TIME. The scores awarded shall be given to the Committee.

3) Oral Argument Assessment: Judging Points

- i) Each team in each moot shall receive the average awarded by each Judge.

Accordingly, a team may be awarded a maximum of 300 points (being the average of the score awarded by 3 separate judges) for its oral argument.

- ii) If a team in any moot is represented by only one student, then the “average raw score for team” as mentioned in Rule 11 (3) (i) will be determined by averaging the average score for the one student in that particular moot with the average score which students on that team received in the other moot.

4) Two Member Judging Panel

In extraordinary circumstances and with special permission of the Committee, two-member judging panels may be utilized for judging oral arguments. In awarding points for the oral arguments, a hypothetical third Judges’ score will be created by adding it to an amount of points equal in number to 50% of those given by each of the two panel members. For example, on a two-Judge panel, if Judge A awarded an argument 85% and Judge B awarded it 89%, the hypothetical assessment would be 87% (42.5% + 44.5%).

5) Winners of the Primary Round

The winners of the primary round shall be the top two Appellant teams and the top two Respondent teams (i.e. those teams with the highest average when combining the Factum score out of 100 and the oral argument score out of 300).

For example: A team may be awarded 84% for its Factum, 90% by one Judge in oral argument, 95% by another Judge, and 95% by the third Judge. The team ranking will be determined by averaging these four scores.

If there is a tie, and 4 winners cannot be chosen based on the average of their Factum and oral argument scores, then any tie will be broken in favour of the team that has received a higher combined oral score.

The winners of the primary round who qualified for the final round will be announced Saturday at lunch or at the beginning of the afternoon.

12. FINAL ROUND

1) Participants

i) The top two Appellant teams shall advance to the final rounds, to moot against the top two Respondent teams.

ii) No school shall have more than one team in the final rounds. If both teams from a school would otherwise qualify to advance to the final rounds, the team with the higher score will advance only and the next highest Appellant or Respondent team shall replace the team with the lower of the two scores, as the case may be.

2) Case and Argument

i) The problem to be mooted will be basically the same as the case in the primary round, with certain changes in the factual and/or legal situation as designated by the Committee to each Appellant-Respondent pair one hour before their moot.

ii) With the exception of one counsel for the Appellant, each counsel shall be allowed 15 minutes for oral argument. Each Appellant's counsel shall present their arguments consecutively followed by each Respondent counsel. Following the oral argument of the second counsel for the Respondent, one counsel for the Appellant shall be permitted an additional 5 minutes for Reply. No Facta will be filed in the final round, although textual reference may be made by mooters to the Gale Cup Moot Appeal Book and passing reference may be made to other cases. Argument may take place in either English or French, at the option of each mooter.

3) Winner of the Competition

The winning school of the final round (and thus of the Competition), together with the 2nd, 3rd and 4th-place teams, shall be selected by the judging panel based on the same factors on which the oral argument was assessed in the primary round. The placement of the teams will be announced following the final round.

13. PRIZES

1) Prizes for the top mooters, top Facta, and top oralists will be awarded following the final round. More information about prizes will be made available at www.galecupmoot.com.

14. INTERPRETATION OF RULES

- 1) Interpretation of these Rules shall be made by the Rule Interpretation contact in consultation with the Committee. All queries regarding rule interpretation shall be sent to:

Gale Cup Moot Committee
Email: Galecup@criminallawyers.ca

15. PRIVACY

- 1) By participating in the Gale Cup Moot, every team and participant agrees that information regarding their participation in the Gale Cup Moot, including written materials, results, and photographs taken at the Competition and related events may be posted on the Competition's website at www.galecupmoot.com and on social media.
- 2) By participating in the Gale Cup Moot, every team and participant also consents and agrees to their moots being live-streamed on YouTube and recorded for later release at the discretion of the Committee.