

GALE CUP MOOT 2021

RULES



FEBRUARY 26 AND 27, 2021

RULES FOR THE GALE CUP MOOT COMPETITION

February 26 and 27, 2021

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, on the basis of 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 10, 2021, 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 Factum**” signed by counsel in the order in which they will speak, containing, under numbered parts, the following:

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

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;

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;

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 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) 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).

7) 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.

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.

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, copied to the Committee at Galecup@criminallawyers.ca, the Appellants’ Factum in electronic form no later than **4:00 p.m. local time of the Appellant, Monday, January 11, 2021;**

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, Monday, February 1, 2021;**

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 through 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:

<u>English</u>	<u>French</u>
Victoria	Ottawa (Civil Law)
U.B.C.	Laval
Thompson Rivers	Montréal
Alberta	Sherbrooke
Calgary	Moncton
Saskatchewan	Université du Québec à Montréal (UQAM)
Saskatchewan (Nunavut)	
Manitoba	
Lakehead	
Osgoode Hall	
Toronto	
Ottawa (Common Law)	
Queen's	
Western	
Windsor	
McGill	
New Brunswick	
Dalhousie	

8) The designation referred to in Rule 10(6) must be made prior to November 12, 2020. 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 present for oral argument wearing business attire. Counsel need not wear a barrister's robe.

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;

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.

- 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 oralist. The Judges will then return to the virtual 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).

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.

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 will be announced following the end of the second installment of the primary round on Saturday, February 27, 2021.

12. FINAL ROUND

1) Participants

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

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) Judging Panel

The same judging panel, composed of 3 Judges, will judge both moots in the final round, one after the other.

3) 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. Counsel presenting oral argument shall dress in business attire on the same basis as section 10(9) above.

4) **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 rounds.

13. **PRIZES**

1) Prizes for the top mooters, top Facta, and top oralists will be awarded following the final rounds. 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.

16. **REFERENCE & ETIQUETTE FOR ELECTRONIC HEARINGS**

During the COVID-19 pandemic, and in any event for the 2021 moot, the Competition will be conducted via electronic hearings and not in person.

Even though the hearings take place electronically and judges, participants, parties, and court staff may attend remotely, they remain formal affairs. The following are some best practices for the electronic hearings.

Before the Hearing

1) Download and install the application at least one month before the moot and ensure that it works. Hearings will be conducted using the Zoom videoconferencing application. Download the application here to the device that you will be using on the day of the hearing. Once downloaded, follow the installation instructions. Enter your name and

email address when prompted. Name yourself with your school name abbreviated first and then your proper first name and last name (e.g. UofT – Joanne Smith). Ensure your Zoom profile photo is a professional photo.

2) Understand and test the application. Once the application is downloaded and installed, familiarize yourself with the Zoom settings. Hover your arrow towards the bottom of the viewing screen to see the Control buttons (Mic, Video, Share Content, Participants, Chat, More options, End or Leave Meeting).

i) Mic – Click to mute or unmute.

ii) Video – Click on button to display or hide video

iii) Share Content – Not to be used

iv) Participants – Click to view a list of the participants that are connected

v) Chat – Not to be used

vi) More options – Not to be used

vii) End or Leave Meeting

3) Test the application by running a practice moot to ensure the program runs smoothly.

4) Connecting to an electronic hearing: You can join a Zoom hearing using a stand-alone webcam or the built-in camera/microphone on your laptop or desktop computer. This method requires a high-speed internet connection. A LAN (hard) line is optimal or wireless 5gh. (preferred method). Make sure to select “use computer audio” upon entering the hearing.

5) Have appropriate lighting. Try to face a window or situate yourself in an area where you are exposed to plenty of light. If it is not possible to sit facing a window, it will help to position a lamp behind your device so that you are exposed to plenty of light.

6) Frame yourself appropriately. The farther away or more obscured you appear, the less engaging you will be. Your head and the top of your shoulders should dominate the screen. If your head is cut off at the top or bottom, you are too close. If your entire torso is in view, you are too far away. If only half of your head is in sight, adjust your camera accordingly. If using a laptop or mobile device, try to position it so that it is higher than desk level so that the camera is directed at you rather than looking up at you. Placing a thick book under the device will work well.

- 7) Set your device's volume so that your microphone does not pick up your speaker volume. Headphones are recommended for optimal sound quality.
- 8) Be aware of your surroundings. Ensure your background is professional, appropriate, and free of excessive background noise. Try to attend from a room with a closed door to minimize visual and audio interruptions.
- 9) Ensure that you have access to the mute button and use it when appropriate (see below).
- 10) Silence or mute all telephones in the room. Close down or disable all other apps and browser windows to eliminate notifications. Ensure that others around you are aware that you are in a meeting so as not to disrupt you or the proceedings.
- 11) If you are connecting from a boardroom, ensure that the microphone is placed directly in front of those who will be speaking (and not off to the side), and ensure that you have the ability to mute the microphone when necessary.
- 12) Materials: Ensure you have access to all of the documents that you will need, such as authorities and Facts. If you are accessing documents electronically from a device, ensure that everything is working beforehand and that accessing that material does not disrupt your video feed.

During the Hearing

- 13) Be on time and ready to proceed. Join the hearing 15 minutes in advance of the start time. When prompted, click on "Join Meeting". You will either be placed in the electronic hearing or in the "Lobby". Once the court is ready and all participants have joined, the clerk will lock the meeting so that no others may join.
- 14) Familiarize yourself with the Zoom settings. See #2 above regarding steps to take before the hearing.
- 15) Introductions: When you first join the electronic hearing, judges may or may not already be present. A clerk will be present. Identify yourself and your school when you join. If you have co-counsel attending from the same room, have them introduce themselves as well. Only assigned Teams should use the assigned video conference link.
- 16) Use pen and paper. Avoid using a keyboard to take notes. If you must type notes, ensure that you are on mute.
- 17) Minimize background noise. Mute your microphone when not speaking. (But do not forget to unmute before you start to speak.) When not muted, refrain from shuffling papers. Microphones that are located close by will amplify the noise made by the shuffling creating a distraction to other participants. As is the case in a courtroom, all audio is recorded. Note that the clerk, as host, has the ability to mute (and unmute) microphones.

Ensure that others around you are aware that you are in a meeting so as not to disrupt you or the proceedings.

18) Speak clearly. When speaking, ensure you speak clearly and slowly enough for everyone to follow what you are saying. Remember that sound quality is very important in this medium. It is helpful if you identify yourself each time you speak to ensure the recording system clearly captures the discussions. Although there may be unavoidable lags due to slower connections, do your best to ensure no one speaks over anyone else. If you find it necessary to object to, respond to or comment on something that an opposing party has said and it cannot wait, if on video, raise your hand to signal to the court and the clerk that you wish to speak.

19) Focus on your camera. Direct eye contact is important. When speaking, look into the camera rather than at the picture of the person(s) you are speaking to. Ensure your device's camera is open and not obscured by post-it notes or otherwise concealed.

20) Time limits: A warning will be provided when 5 minutes remain and again when the time has expired.

21) No food or drink. As in a courtroom, refrain from eating or drinking anything but water during the hearing. Ensure that you have a court-appropriate appropriate vessel for water, such as a water glass or a reusable water bottle. No plastic water bottles are permitted.

22) Zoom views: Each participant will appear in the Zoom application in a separate box. If all judges are in one courtroom, there will be one box for all of them (displaying the entire bench). If one or more judges are attending from a second courtroom in the opposite city or remotely, there will be a separate box for each. View settings can be changed by clicking on the Layout button at the top right of the viewing window. There are three choices:

i) Active speaker video view – only the active speaker will appear on the screen

ii) Active speaker and thumbnail video view – the active speaker will fill the majority of the screen while all other participants will be minimized and appear in a row at the bottom of the screen. This is the default view.

iii) Grid view – all participants appear in equal sized boxes evenly displayed across the screen (the “Brady Bunch” look).

In options a and b, the image will change each time the speaker changes. In option iii), the image never changes. You may find option iii) to be the least distracting.

In addition, there is a “Floating panel view” option. Clicking this button will change the current view to full screen for whatever option you choose. You may find full screen and option c to be the best for viewing and least distracting.

Your own image will appear in a smaller box. Click and drag it to change the position of it on the screen. You can also hover your mouse on top of your image and click “Minimize my self view video”. If you do this, your image will disappear from your screen but will continue to be visible by all other participants.

Note that view options may be different if using a phone or tablet to connect rather than a laptop or desktop computer.

23) Technical difficulties: In the event of low bandwidth, the image and sound quality may be interrupted. It is possible that the image will disappear but sound will continue. In other words, while the participants may not be able to see each other, they may still be able to hear each other. Confirm that this is happening before continuing to speak. The image will reappear once bandwidth has returned to normal. If bandwidth issues continue to occur, it may be necessary for some of the participants to turn off their video. In the event that the session is terminated unexpectedly, please try re-connecting or wait for further instructions.