

2016 Paralegal Cup Mooting Competition Guide

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INTRODUCTION

What is a moot?

Mooting is competitive mock trial competition. Mooting is done within an appellate court. Mooters are not interested in questions of evidence. Mooters examine errors of law and submit arguments as to what the correct finding should be. In addition to writing a legal argument, mooters are required to consider the public's interest associated with each decision. Who has an interest in this decision? Who will be made vulnerable? Will this decision support the purpose of the legislation or not?

Mooting is designed to make students think critically about issues within law. It teaches students to pin-point issues within law, to interpret legislation, and to prepare students for advocacy in tribunals and at court. Students are not practicing their examination skills; they are practicing proper argumentation and expressing their argument in front of a panel.

Who competes in a moot?

Mooting is traditionally a law school exercise. Mooting is partaken in law schools all over the world. Some law schools require students to moot as part of their curriculum. Other law schools only compete in tournaments. Canadian undergraduate university students also compete in provincial competitions.

How does a moot work?

Mooters are required to prepare submissions for both the Appellant and Respondent. In undergraduate mooting, mooters typically compete in four rounds. They present their argument for the Appellant twice and the Respondent twice. Mooters do not debate back and forth between sides. Opponents in a moot are not allowed to object or respond to points. There is no opportunity for rebuttal or reply in the Paralegal Cup Intercollegiate Moot.

Who judges a moot?

The judges consist of licensed paralegals, lawyers, professors and appointed judges.

What are the judges looking for?

The judges are looking for well-organized and clear positions about law. They are looking for students to be articulate, prepared and for their arguments to be persuasive. The judges look for students to properly and fully address their questions. They score students using the prescribed scoring sheet. They do not reveal to mooters who has won the round.

Formalities

In the honourable Supreme Court of the Paralegal Cup, mooters are required to comply with formalities. If they do not comply, they lose marks.

Mooters are required to address the judges. If there are multiple judges, the mooter should call the panel, “Members of the Court,” or “Honourable Justices of the Court.” If a mooter is speaking directly to one particular judge, they will use the title, “Your Honour.” Judges refer to the mooters as “Counsellors” or “Licensee.” Alternatively, judges can refer to the mooter by the title, “Mr.” or “Ms.,” followed by their last name.

Mooters refer to their partner as their “Colleague” and refer to their opponent as their “Friends.” Students are not to refer to their opposing team as their “Opponents” or their “Learned Friends.” If mooters refer to the opposing team as such, they lose marks under the professionalism category.

In undergraduate mooting, both partners are equal teammates. There is no senior or junior counsellor. If mooters use either title, they lose marks under the professionalism category.

Mooters are to be dressed conservatively in business attire. Mooters should dress as they would to real court. Mooters are required to stand when they address the judges, unless they require a support device.

CREATING SUBMISSIONS



Oral Argument Issue

The 2016 Paralegal Cup case is *Ontario (Workplace Safety and Insurance Appeals Tribunal) v. Fraser Health Authority*, 2016 SCC 99. The mooters, coaches and judges will only refer to the edited version of the case and use quotations of the case law expressly included in the decision and materials provided by the editors. Mooters can refer to very general principles articulated in cases mentioned by the Justices of the Supreme Court, but only to discuss progression or developments in case law that have changed the authorities that are quoted in this case.

Oral arguments will focus on causation and the lower threshold that the *Workplace Safety and Insurance Board* is statutorily permitted to use. In particular, mooters should focus on how a tribunal can infer causation and the conflict between the case law (*Snell*) and *Workplace Safety and Insurance Act*, particularly section 124(2). Mooters will answer the following questions:

Did the Workplace Safety and Insurance Board appropriately determine causation between fact and law? Did the WSIB come to a satisfactory connection stemming from the facts and the law?

Dividing the Issues

In a moot with a partner, you must decide which speaker addresses which issue(s). For the 2016 Paralegal Cup Moot, the speakers appear as a team as the Appellant and the Respondent (two rounds as the Appellant and two rounds as the Respondent).

Both speakers will have to focus on two legal issues which are connected. The first speaker will have to address the legal issue of case, which remains, was the WSIB's decision reasonable, and was their interpretation of legal causation correct. The second speaker will focus on the policy issues behind the statutory provisions of the *Workplace Safety and Insurance Act* and how the statutory provisions formed by the legislature are complicated by the Board's own authoritative internal policies and manual. Both speakers are responsible for discussing the public policy associated with their respective issue.

In a real court situation, the Appellants present their appeal to the court first. The Respondents will present their appeal after the Appellants.

Your interpretation requires applying a legal test. Be sure to apply the test or interpret the test in a way that supports your position as the Appellant or Respondent. After the test has been outlined and discussed, address any other issues. It is wise for a team to finish their submissions with a clear and short summary of their submissions and what their desired remedy is. It is important that a team divide issues with their time limit in mind.

In this matter, the Appellant is the Fraser Health Authority. The Appellant requests that the Supreme Court of Canada's decision is overturned, and in effect, the WSIB's decision be restored.

The Respondents, Katrina Hammer, Patricia Schmidt and Anne MacFarlane, want the Supreme Court of Canada's decision to be reaffirmed and that the WSIAT's decision be confirmed: that they received employment coverage. They want to dismiss the Supreme Court of the Paralegal Cup to dismiss this appeal.

Structure of the Submission

Mooters are required to follow a submission format. Each moot is allotted an hour and ten minutes. The Appellants always speak before the Respondents. Each representative must introduce themselves and briefly outline their position and how their argument is composed. This roadmap is extremely important so that the judges understand the position the representative will take, and that the judges know what arguments to expect.

Each speaker's opening should begin after the panel indicates that they are ready to begin. The introduction should say something similar to "Good morning Members of the Court. My name is _____. We represent the Appellant." The first speaker for the Appellant should ask the judges, "before I begin, would the Honourable Justices like a brief Summary of the Facts? ... (The judges will say no.) ... We have x amount of submissions to make."

Briefly outline the submissions as sub-points and then begin.

Note: The judges are to decline this brief summary of the facts. Do not prepare one. This is merely a formality of moot court.

Important: Do not state which school you attend as part of your introduction. Your name and team number are sufficient to identify yourself.

PRESENTING SUBMISSIONS

Preparing a Script

A mooter should write a script in an essay format so that they can put together what they want to say. Writing the essay makes it easier to structure the points, provide the case law reference to back up the point and state the significance of the submission. However, in a moot, a mooter should not depend upon reading from their script.

It is recommended that a mooter make a point form list of what their points are and how the case law applies to stay on track when the judges take the mooter off their script.

It is highly recommended that a mooter can discuss their sub-points in any given order. A judge may very well not want to hear your subpoints in the order you have prepared. In the event this happens, a mooter must be able to deliver what the judge wants to hear. It is better to make good, complete submissions that the judge asks for, rather than saying everything you wanted to.

Partners need to know their teammate's case. The judges may take a mooter entirely out of their planned issues and take them into their partner's arguments. This is entirely acceptable. If the judges do this or force the mooter to change the order of their submissions, just answer the judges' questions and give good arguments.

Do not defer a question to your partner or say that you will address that issue later. You will lose marks.

Your submissions and analysis need to fill your entire ten minutes. You will lose marks if you run under time. You will also lose marks if you go over your time. Whether you have to cut material or have to ramble to fill your time, you want to fall right upon 10 minutes. You are

allowed to ask for more time. However, this extra time is to summarize your submissions and ask for your remedy. If you ask for more time, and the judges agree to give it to you (they do not have to give you extra time), do not start a new point so that you can say everything that you wanted to.

Note: Teammates cannot divide their time different from the ten minutes each.

Speaking Tips

Mooters are being marked on their arguments, but also upon their ability to deliver their argument.

Presentation tips to assist with your preparation:

- Do not read from your script. Your notes are a prompt, at best. Make eye contact with the judges as much as possible. A moot should be formal, but very conversational. Making eye contact makes you look prepared, which is persuasive.
- Do not recite long case law quotes to the judges. Short and relevant quotes that back up your point are good, but you do not want to interrupt the flow of your conversation with the judges.
- Speak as slowly as possible.
- Mooting is a serious occasion. Do not be sarcastic, dramatic or overly emotional in your voice. Do not try to be funny.
- Do not fidget, sway, wave your hands in gesture or shake when you deliver your submissions. It is distracting to the judges. Try to appear as comfortable as possible.
- Do not use words that are unfamiliar to you. If you use words incorrectly or use a reference about which you are not sure, it will show in your body language or in your face.

LEGAL MEMO SUBMISSION

Task

Students are required to write a legal memo on behalf of the Appellant for *Ontario (Workplace Safety and Insurance Appeals Tribunal) v. Fraser Health Authority*.

Legal Memo Structure

The team legal memo must consist of the following:

A cover page that includes the name of the court to which the matter is being appealed, the title of proceedings, the title of the document (e.g. Appellant's Legal Memorandum), and the team number. The team legal memorandum must not include the any competitor names or post-secondary institution name;

- a) Part I – Overview;
- b) Part II – Facts;
- c) Part III – Issue(s);
- d) Part IV – Law;
- e) Part V – Analysis; and
- f) Part VI – Conclusion.

Students are expected to properly cite all sources included in their factum. Footnotes shall be formatted in accordance with the *Canadian Guide to Uniform Legal Citation, Eighth Edition*.

Length

Parts I-VI of the memo shall be no more than five (5) pages in total length. The pages of the memorandum shall be numbered with continuous Arabic numerals beginning at Part I and ending on the final page of Part VI. Part II (Statement of Facts) cannot be more than one (1) page in total.

Spacing

Parts I-VI of the memorandum must be double spaced, except for: (i) footnotes, and titles more than one line in length, which may be single spaced; and, (ii) quotations of fifty (50) words or more, which may be single spaced and shall be indented 1/2 additional inches on both the left and right margins. All portions of the factum other than Parts I-VI may be single spaced. Please follow the style presented in the example provided.

Font and Type

All parts of the memorandum, except the cover page, and including any footnotes, shall be in Times New Roman 12-point font.

Margins

Each page of the factum shall have margins of at least one inch on all sides, excluding page numbers.

Printing and Page Format

Electronic copies of the memorandum must be submitted in .PDF format and can be submitted by email to paralegalcup@gmail.com before 5:00 PM on Friday, November 20, 2015. Hard copies of the memorandum shall not differ from the electronic copy submitted. Hard copies shall be printed double-sided on white paper, 8 1/2" x 11" in size, and must be fastened by staple. The hard copy of memorandum is to be submitted at Registration desk before 9:00 AM on Saturday, November 21, 2015.

Scoring Factors

Scoring factors to be considered (not in any particular order) include, but are not limited to:

- Correct and articulate analysis of the issues;
- Familiarity with and use of the relevant authorities;
- Knowledge of the substantive issues;

- Clarity;
- Creativity;
- Persuasiveness and logical flow;
- Application of legal principles directly applicable to the facts; and
- Correctness of format, citations, and grammar.

QUESTIONS?

If you have any questions about the case materials, please contact the 2016 Paralegal Cup Case Material Editors at info@paralegalcup.ca

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