

**LASKIN 2022**

**RULES**

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## 1. GENERAL

### 1.01 Overview

The Laskin is an annual national bilingual moot court competition in Canadian administrative and constitutional law. It is named in memory of one of Canada's greatest legal scholars and jurists, the late Chief Justice of Canada, Bora Laskin.

### 1.02 Objectives

The Laskin is a unique opportunity for law students, judges, law teachers and practitioners from across Canada to meet and to debate problems of current importance.

The Laskin seeks to foster a deeper understanding of the law, to support legal education and bilingualism, and to promote in the legal community a spirit of cooperation and understanding that transcends linguistic and provincial boundaries.

### 1.03 Administration

The organization behind the Laskin is the Moot Court Canada Fund, a not-for-profit administered by volunteers (the **Administrators**). The Administrators will apply these rules so that the Laskin proceeds in a fair and orderly way. They may vary the rules as necessary to further that goal.

## 2. PARTICIPANTS

### 2.01 Teams

Each participating law faculty (a **School**) sends four students who will present oral argument (**Mooters**). Two Mooters (a **Pair**) will present on behalf of the appellant, and two Mooters will present on behalf of the respondent in each appearance against an opposing School (in a **Match**). Schools may also send coaches and student researchers.

### 2.02 Mooters

Mooters must be enrolled in an LL.B., J.D., B.C.L. or LL.L program at the School. Mooters may be chosen by any method approved by the School.

Each Mooter will present oral argument in one language only – either English or French. At least one of each School's Mooters must present in English, and at least one of each School's Mooters must present in French.

### 2.03 Simultaneous Interpretation

All judges in Matches will hear submissions without the assistance of simultaneous interpretation. Judges will ask questions of a Mooter in the same language in which the Mooter is presenting.

When a Mooter registers for the Laskin, they will say whether they need interpretation to understand the submissions of an opposing Mooter who is presenting in the other language. A Mooter who requests interpretation and whose co-counsel will present in the other language will not receive interpretation during their co-counsel's submissions, unless interpretation was already requested by an opponent in that Match, in which case the Mooter may also use the service.

#### 2.04 Outside Assistance

Coaches, faculty members and others may discuss with Mooters in general terms the issues raised in the problem, suggest research sources and provide instruction relating generally to advocacy techniques and the preparation of persuasive oral and written arguments. Beyond this, no one other than the Mooters and any student researcher may take part in the preparation or presentation of any aspect of a School's factums or oral argument.

#### 2.05 Privacy

Each participant agrees that information regarding their participation in the Laskin, including their name, School affiliation, written materials, results, photographs, and video and audio recordings, may be published, including on the Laskin's website.

### 3. REGISTRATION

#### 3.01 Schools

Each participating School must pay a registration fee of \$700, to be received no later than January 27, 2022. An invoice will be issued only on request sent to [finance@laskin.ca](mailto:finance@laskin.ca).

The fee may be paid by:

- (i) PayPal, directed to [finance@laskin.ca](mailto:finance@laskin.ca); or
- (ii) cheque **payable to "Moot Court Canada Fund"** and mailed to:

Tamiko Barker  
McCarthy Tétrault LLP  
Suite 5300, TD Bank Tower  
Toronto-Dominion Centre  
66 Wellington Street West  
Toronto ON M5K 1E6

#### 3.02 Identification of Schools

Each School will be assigned a number, which must be used on the School's factums (see rule 6.01). No factum may contain any information that would identify the School or the geographic location of the School. Judges of factums and of Matches will use School numbers only. Until the competition is concluded, no Mooter or any other representative of a School, nor any Administrator, may disclose to a judge a School's name, a School's geographic location, or a participant's School affiliation.

#### 3.03 Mooters – Initial Registration

As soon as the School has selected its Mooters, but no later than November 19, 2021, each Mooter must register online at [laskin.ca](http://laskin.ca), and in doing so indicate:

- (i) the language in which they will be making oral submissions; and
- (ii) whether or not they will require simultaneous interpretation during the competition (see rule 2.03).

### **3.04 Mooters – Updated Registration**

As soon as possible, but no later than January 12, 2022, each Mooter must update their registration online, to indicate whether they will be representing the appellant(s) or respondent(s), and whether they will be the first or second member of the Pair to make oral submissions.

Any subsequent request to change the order of presentation must be submitted by e-mail to admin@laskin.ca. Any such request submitted on or before February 11, 2022, may be allowed at the discretion of the Administrators. The Administrators' decision will depend primarily on whether the requested change will have implications for the provision of simultaneous interpretation. No request submitted after February 11, 2022, will be allowed.

### **3.05 Other Individuals**

Coaches and researchers must also register online at laskin.ca.

## **4. PROBLEM**

### **4.01 Content**

The competition uses a fictional problem written by one or more judge(s), law professor(s) or lawyer(s) selected by the Administrators. The problem concerns a subject of timely interest within the jurisdiction of the Federal Court. The problem is delivered to all Schools in both English and French. Both versions are equally authoritative.

### **4.02 Jurisdiction of the Court**

The competition consists of an appeal to the Canadian Court of Justice. This is a fictional court established to hear appeals from the Federal Court of Appeal. No decision of any Canadian court, including the Supreme Court of Canada, is binding on the Canadian Court of Justice.

### **4.03 Clarifications**

Schools may request clarification on points that are unclear in the problem and that must be clarified in order to submit a proper argument. Such requests must be made by e-mail sent to admin@laskin.ca, must include a brief explanation as to why each clarification is necessary, and must be submitted by November 26, 2021.

Requests for clarification will be answered selectively, at the discretion of the Administrators and the author(s) of the problem. Where a clarification is to be issued, the request and answer will be distributed to all Schools.

## **5. STRUCTURE OF THE COMPETITION**

### **5.01 Regular Matches**

Each Pair will participate in two regular Matches. Each School will argue twice as appellant and twice as respondent. The Administrators will assign the Pairs to the Matches randomly. No School will meet any other School more than once in the regular Matches.

**5.02 Final Matches**

Immediately following the conclusion of the regular Matches, two final Matches will take place. The Pairs in the final Matches will be determined according to rule 8.01.

**6. FACTUMS****6.01 Contents**

Each School will prepare an appellant's factum and a respondent's factum. A factum will consist of:

<b>Appellant's factum</b>	<b>Respondent's factum</b>
<b>Front Cover</b>	
The title of proceeding, the title of the document (e.g., "Factum of the Appellant") and the School number (see rule 3.02).	
<b>Part I - Overview</b>	
A brief summary of the issues and argument. Maximum two pages (see Rule 6.03).	
<b>Part II - Statement of Facts</b>	
A concise statement of facts.	A statement of the respondent's position on the appellant's statement of facts, together with a concise statement of any other facts that the Mooters consider relevant.
<b>Part III</b>	
<i>Objections by Appellant to Judgment Appealed From</i>	<i>Statement of Respondent's Position Concerning the Points in Issue</i>
<b>Part IV - Argument</b>	
Main body of the factum. A statement of the submissions to be made to the court.	
<b>Part V - Order Sought and Names of Counsel</b>	
(i) A concise statement of the order desired. (ii) Printed names of Mooters (in the order in which the Mooters will speak), but no other identifying information (such as School name or city). Signatures are permitted but not required.	
<b>Appendix A - List of Authorities Referred To</b>	
A list of authorities (including decisions, statutes, regulations, books and articles) referred to in the factum. Copies of authorities are not to be included.	

**6.02 Language**

Parts I, II, III and V of the factum may be in English or French. Each Mooter will submit the corresponding portion of Part IV of the factum in the same language in which they are presenting in the Matches.

Quotations appearing in Part IV of the factum should be reproduced in the language in which they appear in the cited source, and need not be translated.

**6.03 Length**

The entire factum (excluding the cover pages) must be no longer than 40 pages.

Part I must be no longer than two pages.

Parts IV and V together must be no longer than 25 pages.

**6.04 Form**

Each page must be numbered, and all paragraphs must be numbered consecutively.

Left and right page margins must be 3.2cm, and top and bottom margins must be 2.5cm. All character spacing must be standard, and no advanced features (*e.g.*, scale, custom spacing, kerning) may be used.

Parts I, II, III and V, and Appendix A, may be single-spaced. Part IV must be double-spaced except that long headings and footnotes may be single-spaced. Quotations of fifty words or more may be single-spaced, and shall be indented an additional 1.3cm on the left and right margins. There must be double-spacing between each heading and the text that follows.

**6.05 Footnotes and Citations**

All citations to cases or other authorities must be in the form of footnotes only (*i.e.*, they shall neither be in-line nor following the paragraph). Footnotes shall be limited to the actual citation only and shall not include additional text.

Citations must be made in accordance with the current edition of the *Canadian Guide to Uniform Legal Citation* published by the *McGill Law Journal*. In the event of any conflict between these rules and that guide, these rules shall prevail.

**6.06 Font Size**

All text, including footnotes, must be in a 12-point font. Any font type is permissible. Copies of factums delivered to judges, opposing Schools, and interpreters (where applicable) will be as submitted by the School. However, for the purpose only of assessing compliance with rule 6.03 (page limits), the Administrators will convert the text of the factum to Times New Roman 12-point font.

**6.07 Submission**

Each factum must be submitted in **both** Microsoft Word and PDF formats, sent by e-mail to admin@laskin.ca by 8:00pm Eastern time on:

- (i) January 17, 2022, for the appellant's factum; or
- (ii) January 31, 2022, for the respondent's factum.



**6.08 Strict Compliance**

Upon receipt of each factum, the Administrators will review it for strict compliance with the rules relating to form. Where a factum does not comply, the Administrators may take such action and/or may impose such penalty as they consider appropriate.

**6.09 Delivery of Factums to Opposing Schools**

The Administrators will send each factum to the two Schools who are opposing the submitting School in the regular Matches. The Administrators will send the PDF version by e-mail to every individual who registered on behalf of the receiving School.

**6.10 Respondent Factums**

Respondents are not required to reply specifically to any of the arguments set out in the Appellant factums that they receive. Respondents may choose to write the factum in general terms. However, Respondents may at their option refer specifically to either or both of the Appellant factums. Judges of oral Matches will disregard any reference to an Appellant factum that is not before them.

**6.11 Complaints**

Complaints about factums must be sent to admin@laskin.ca within three days of delivery by the Administrators to the Schools.

**6.12 Assessment**

Each factum will be given a score by each of three factum judges. The score will be determined in accordance with Appendix A to these rules.

In extraordinary circumstances, it may be necessary for factums to be assessed by two judges. In this event, the Administrators will create a hypothetical third judge's score by awarding each factum the average of the two judges' scores.

**6.13 Publication**

All rights in and to the factums will become the property of the Laskin, perpetually and throughout the world. The Laskin publishes winning factums on its website.

**7. REGULAR MATCHES****7.01 Mooters**

Only two Mooters may argue on behalf of a School during any single Match.

Subject to rule 2.02 (language of presentation), any Mooter may act as a mooter during a Match, provided that the language of oral argument is the same as the language of the corresponding portion of the factum. However, in order to be eligible for any oralist award, a Mooter must have argued at least twice.

**7.02 Judges**

Each regular Match will be judged by three judges. Judges will hear submissions without the use of simultaneous interpretation and will pose all questions to a Mooter in the language in which the Mooter is making submissions.

**7.03 Time**

Each Match will begin promptly at the scheduled time.

Each Mooter will argue once. There will be no reply. Each of the appellant and respondent Pairs will have a total of 40 minutes in which to present oral argument. Before the start of the Match, the court clerk/timekeeper will ask each Pair how it wishes to allocate that time as between the two Mooters. The 40 minutes may be allocated as the Mooters see fit, provided that neither Mooter may argue for longer than 22 minutes in a single Match.

Each Mooter will be limited to the allocated time. Unused time by one member of a Pair will not be transferred to the other member of that Pair. Judges of Matches have been instructed to strictly enforce the time limits, although judges may in their discretion permit a Mooter to conclude briefly at the expiry of the allotted time.

**7.04 Scope of Argument**

The scope of a Mooter's oral argument, including reference to any authorities, is not limited to the scope of the factum.

**7.05 Dress Code**

Mooters should wear business attire. Neither judges nor Mooters will wear robes.

**7.06 Recording**

The Administrators may make audio and/or video recordings of any Match, or part of a Match. By participating in the Laskin, all Mooters consent to the recording and broadcasting of their oral arguments.

**7.07 Conduct During a Match**

During a Match, the two members of a Pair of Mooters may communicate with each other but with no one else.

Mooters should address judges as "Justice" or "Your Honour".

Mooters may not submit any materials (including authorities) to the judges at any time.

**7.08 Complaints**

If a Mooter observes a rule violation during a Match, and if the Mooter wishes to make a complaint regarding the violation, then:

- (a) if the violation can be adequately addressed following conclusion of the Match, the Mooter must, within five minutes following the conclusion of the Match, advise an Administrator of the complaint; or
- (b) if the violation warrants interruption of the Match, the Mooter should immediately advise the judges that a complaint is to be made. The Mooter must not disclose any further information regarding the nature of the complaint. In this case, the Match will pause while the Administrators address the complaint. Judges of Matches will not be involved in the adjudication of the complaint. Once the complaint has been addressed, the Match will resume.

**7.09 End of Match**

Once the last Mooter has finished making submissions, the Match will end. The judges will neither give a decision nor give any assessment (numerical or otherwise) of the Mooters' performance.

**7.10 Assessment**

Each judge will assign a score to each Mooter based solely on the Mooter's oral argument and without consideration of the Mooter's factum. The score will be determined in accordance with Appendix B to these rules.

**7.11 Results**

The Win-Loss-Tie record for a particular Pair or a particular School will not be considered for any purpose, including the selection of the four finalist Pairs (see rule 8.01) or the determination of award recipients (see rule 10).

**8. FINAL MATCHES****8.01 Selection of Pairs**

The two highest ranking appellant Pairs and the two highest ranking respondent Pairs will advance to the final Matches. The ranking of a Pair will be based upon the total of the oral scores for the Pair's two regular Matches.

A Pair that changes its composition from its first regular Match to its second regular Match will not be eligible to participate in the final Matches.

Where two or more Pairs are tied in total score, the Pair with the highest factum score will advance. If two or more Pairs are still tied, the Pair to advance will be determined by random selection.

**8.02 Matches**

There will be two final Matches. In one Match, the highest-ranking appellant Pair will argue against the second highest-ranking respondent Pair. In the other Match, the second highest-ranking appellant Pair will argue against the highest-ranking respondent Pair.

If the above would result in two Pairs from the same School arguing against each other, then the highest-ranking appellant Pair will argue against the highest-ranking respondent Pair in one Match, and the second highest-ranking appellant Pair will argue against the second highest-ranking respondent Pair in the other Match.

**8.03 Time**

In the final Matches, each Mooter will have a maximum of 15 minutes in which to present their oral argument. There will be no reply.

**8.04 Judges**

Both final Matches will take place before the same panel of three judges. Judges will hear submissions without the use of simultaneous interpretation, and will pose all questions to a Mooter in the language in which the Mooter is making submissions.

No information about the performance of the four finalist Pairs in the regular Matches will be disclosed to the final Match judges. The judges will rank the four finalist Pairs for the purpose of the awards referred to in rule 10.02.

**9. PENALTIES****9.01 General**

The Administrators, either on their own initiative or upon receiving a complaint, may assess a penalty for any violation of the rules. The Administrators will make every effort to allow Schools or Mooters accused of rule violations to submit a response prior to the determination of a penalty. Following such a response, the Administrators will make a ruling, from which no appeal may be taken. The Administrators will communicate a decision as soon as practicable, and will provide reasons orally or in writing.

**9.02 Assessment**

The number of penalty points to be assessed will be in the discretion of the Administrators. The Administrators will be guided by the objective of maintaining the integrity of the competition, and will consider the following factors:

- (a) the extent of any prejudice caused to other participants in the competition;
- (b) the extent of any advantage gained as a result of the violation;
- (c) whether the violation was intentional or inadvertent;
- (d) whether the violation was beyond the control of the Schools or Mooters involved; and
- (e) the extent of any inconvenience caused to the Administrators and/or to other participants.

**9.03 Factums**

Penalty points assessed against a factum will be deducted from each factum judge's score for that factum.

**9.04 Oral Matches**

Penalties assessed in relation to oral argument may be either Pair penalties or individual Mooter penalties. In the case of Pair penalties, the penalty points will be deducted from the score awarded by each judge to each member of the Pair during the Match in which the violation occurred. In the case of individual Mooter penalties, the penalty points will be deducted from the score awarded by each judge to the penalized Mooter only.

**10. AWARDS****10.01 Best Schools**

Awards will be presented to the four best Schools, ranked by total score. Neither the determination of the four finalist Pairs (see rule 8.01) nor the results of the final Matches (see rule 8.04) will affect the determination of the best Schools.

**10.02 Best Pairs**

Awards will be presented to the four best Pairs, as selected by the judges in the final Matches (see rule 8.04).

**10.03 Best Oralists**

Awards will be presented to the four best Individual Mooters, ranked by their total oral scores.

A Mooter must argue at least two Matches to be eligible for an oralist award. If a Mooter argues more than two Matches, the Mooter's first two Matches will be used for the calculation.

A Mooter's performance in a final Match will have no impact upon that Mooter's score for the purposes of the best oralist awards.

**10.04 Best Factums**

Awards will be presented to the Schools with the four highest total factum scores, computed by totaling all factum scores received for the appellant and respondent factums for that School.

**APPENDIX A - SCORING CRITERIA FOR FACTUMS**

<b>Introduction and facts</b> <ul style="list-style-type: none"> <li>properly outlines the core issues</li> <li>clearly sets up the position(s) to be argued</li> <li>effectively presents a summary of the facts</li> <li>persuasively frames facts and inferences</li> </ul>	10	Excellent: 9 - 10 Very good: 7 - 8 Good: 6 Fair: 5
<b>Quality of the arguments</b> <ul style="list-style-type: none"> <li>demonstrates thorough research</li> <li>effectively applies the law to the facts</li> <li>properly develops the arguments</li> <li>presents the arguments persuasively</li> <li>makes creative arguments</li> </ul>	50	Excellent: 45 - 50 Very good: 40 - 44 Good: 35 - 39 Fair: 30 - 34
<b>Presentation of the arguments</b> <ul style="list-style-type: none"> <li>uses a logical structure to present arguments</li> <li>is clear and concise</li> <li>demonstrates correct grammar and punctuation</li> <li>limits the number of arguments presented</li> </ul>	30	Excellent: 27 - 30 Very good: 24 - 26 Good: 21 - 23 Fair: 18 - 20
<b>Conclusion and remedies</b> <ul style="list-style-type: none"> <li>properly links arguments and conclusions</li> <li>has a persuasive conclusion</li> <li>seeks logical and effective remedies</li> <li>makes good use of authorities relating to remedies</li> </ul>	10	Excellent: 9 - 10 Very good: 7 - 8 Good: 6 Fair: 5

**APPENDIX B - SCORING CRITERIA FOR ORAL ARGUMENT**

<p><b>Knowledge and use of the law</b></p> <ul style="list-style-type: none"> <li>states rules of law accurately and clearly</li> <li>knows facts and holdings of relevant authorities</li> <li>gives appropriate emphasis to authorities</li> <li>skilfully applies law to the facts of this case</li> <li>distinguishes unfavourable authorities</li> <li>uses the law persuasively</li> </ul>	30	<p>Excellent: 27 - 30</p> <p>Very Good: 24 - 26</p> <p>Good: 21 - 23</p> <p>Fair: 18 - 20</p>
<p><b>Response to questions</b></p> <ul style="list-style-type: none"> <li>welcomes questions</li> <li>answers questions directly</li> <li>shows ingenuity in responding to questions</li> <li>makes appropriate concessions</li> <li>seamlessly ties answer into argument</li> </ul>	25	<p>Excellent: 23 - 25</p> <p>Very Good: 20 - 22</p> <p>Good: 17 - 19</p> <p>Fair: 15 - 16</p>
<p><b>Style and demeanour</b></p> <ul style="list-style-type: none"> <li>speaks clearly</li> <li>shows formality and respect for bench and counsel</li> <li>uses good posture and gestures</li> <li>interacts with bench easily</li> <li>maintains eye contact with bench</li> <li>maintains composure</li> </ul>	18	<p>Excellent: 17 - 18</p> <p>Very Good: 15 - 16</p> <p>Good: 13 - 14</p> <p>Fair: 11 - 12</p>
<p><b>Knowledge and use of the facts</b></p> <ul style="list-style-type: none"> <li>knows the facts of this case</li> <li>interprets the facts fairly and accurately</li> <li>uses the facts persuasively</li> </ul>	15	<p>Excellent: 14 - 15</p> <p>Very Good: 12 - 13</p> <p>Good: 10 - 11</p> <p>Fair: 9</p>
<p><b>Structure and time management</b></p> <ul style="list-style-type: none"> <li>demonstrates a logical structure to the argument</li> <li>deals appropriately with opposing argument</li> <li>allocates time appropriately to the issues</li> <li>maintains a good tempo</li> <li>adapts well to how active the bench is</li> </ul>	12	<p>Excellent: 11 - 12</p> <p>Very Good: 9 - 10</p> <p>Good: 8</p> <p>Fair: 7</p>