



**BLACK LAW STUDENTS
ASSOCIATION OF CANADA**

**L'ASSOCIATION DES ETUDIANTS NOIRS
EN DROIT DU CANADA**

The Julius Alexander Isaac Diversity Moot

Official Rules 2016

I. INTERPRETATION

A. Purposes and Objectives

The *Julius Alexander Isaac Moot* is administered by the Black Law Students' Association of Canada (hereinafter "BLSAC") through its appointed Moot Coordinator (the "Administrator"). The Moot is designed to promote advocacy and excellence in the social justice through the development and application of critical race theory, human rights and equality legal analyses. It will provide participants with the opportunity to interact with jurists and experienced practitioners from across the country who have worked at all levels of Canadian courts.

The Official Rules are designed to facilitate the fair and proper conduct of the competition and shall at all times be interpreted in accordance with these purposes and objectives.

B. Interpretation of Rules

1. Referees

There will be a panel of up to three referees available up to and during the competition, responsible for the interpretation and enforcement of the Official Rules. The BLSAC Moot Coordinator shall serve as a referee. Referees can include the BLSAC Moot Advisor, the Moot Question author or a representative designated by the Moot sponsor.

2. Rules

Any question that arises during the competition concerning the interpretation regarding the interpretation or enforcement of these Official Rules will be decided by a majority decision of the Referees. No other persons (Timekeepers, administrative assistants, Judges or others) have the authority to interpret the Official Rules. Any reliance by a team on direction provided by a person or person other than the Referees will not prevent a penalty from being imposed if the Official Ruling of the Referees differs from that of such other person or persons. All Official Rulings are final and binding

3. Additional Powers

The Referees may promulgate such other measures as they may deem advisable for the fair and orderly conduct of the competition, provided that these do not conflict with any of the Official Rules and are in the best interests of the Moot.

II. PROCEDURES AND GUIDELINES

A. Jurisdiction of the Court

The Moot is an appeal to The Diversity High Court of Canada. No decision of any Canadian Court, including the Supreme Court of Canada, is binding on the Diversity High Court of Canada.

B. Fact Problem

The hypothetical fact problem upon which the Moot will be based, will be written by a legal academic or practitioner with established expertise in critical race theory or equality/social justice theory and practice. The subject matter will raise issues of racism and other equality matters that are of timely interest (the “Official Problem”). The Official Problem will be delivered to all participating schools.

C. Clarification

1. Official Problem

Participants may submit requests for clarification of matters that are unclear in the Official Problem as required to enable them to submit a proper argument. Such requests must be made in writing to the BLSAC Moot Coordinator. Direct communication with the other Referees, including the author of the Official Problem, is not permitted. The request for clarification must include a brief explanation as to why the clarification is necessary for a proper understanding and development of the legal issues involved. Requests for clarification shall be answered selectively, at the discretion of the Referees and the author(s) of the Official Problem. Any answers will be distributed to all participating teams. Requests for clarification will be received by Friday November 13, 2015. Any requests made after that date may not be acknowledged or may be subject to penalties at the discretion of the Referees.

2. Official Rules

Participants may submit requests for clarifications regarding the Official Rules by Friday November 13, 2015. Such requests must be made in writing to the BLSAC Moot Coordinator. It must include a brief explanation of why the clarification is necessary. Requests for clarification will be forwarded to the Referees for their consideration. Such requests shall be selectively answered, at the discretion of the Referees. Any answers will

be distributed to all participating teams. Any requests for clarification after the deadline may be subject to penalties.

D. Eligibility

Any law school recognized by the Federation of Law Societies, accredited by the American Bar Association or their equivalents in other jurisdictions are entitled to send up to two teams to the competition. Graduate students registered in that program are eligible in the discretion of the law school. No team can be comprised of members from more than one law school.

A team shall consist of 4 students being two team members for the Moving and Responding party, respectively. Students are not permitted to switch roles between the Moving and Responding Parties. Team can include an additional member, at its discretion, as “counsel” who would have full participatory rights.

E. Application

All participating schools must submit an application form and fee of \$CAD600.00 per team no later than Friday October 30, 2015 to the BLSAC Moot Coordinator.

F. Team Identification

Each team in the competition will be assigned an identification code by the BLSAC Moot Coordinator. This identification code must be used on all Facta and at all times during the competition. Neither the personal name of the participant or the school name shall appear on any submissions, on the person (such as name tags or insignia) or be referenced during the competition itself. The names of the team participants are not to appear on the Facta. The Facta are not to be signed with any geographic identifiers. Failure to comply with these requirements may result in a penalty, up to and including disqualification.

G. Outside Assistance

1. No person or persons other than the team members may participate in the preparation or presentation of any aspect of the team facta or oral arguments. The team facta (including research, interpretation, drafting and editing) and the oral arguments of each mooter must be the work of the team members only.

2. Notwithstanding subparagraph (1) above, it is permissible for team coaches, faculty members and others to discuss in *general terms* the issues raised in the Official Problem, to suggest possible research sources, and to provide instruction relating generally to advocacy techniques and the preparation of persuasive oral and written arguments. Any

persona acting as judges in oral argument “practice rounds” shall be advised both orally and in writing by the team of the requirement that such “practice rounds” must so confine their comments and feedback.

3. In circumstances where there are two teams from the same school, collaboration between and amongst both teams and their coaches is permitted, subject to the general caveats of this section.

4. Teams shall not conduct “practice rounds” in front of persons who will be judges in the current year’s moot. It is the responsibility of teams to make such inquiries of potential “practice round” judges as necessary to comply with this rule. Teams shall submit a final list of all judges from the “practice rounds” to the BLSAC Moot Coordinator prior to the competition. In addition, no team shall request that persons serving as authors of the Official Problem or Facta Evaluators assists with “practice rounds” or otherwise assist in the team’s preparation. Representatives of the Moot sponsor may serve on “practice rounds” but their participation would render any member of the sponsoring firm from serving as a judge at any level of the competition itself.

III. FACTA

A. Required Facta

Each team shall prepare an Appellant's Factum and Respondent's Factum.

B. Form

1. General

Each Appellant's factum and Respondent's factum shall consist of:

- i. Cover page limited to the following details: the name of the court appealed to; the style of cause; the title of the document (i.e. "Factum of the Appellant" or "Factum of the Respondent"); and the team identifier.
- ii. Table of Contents setting out the headings used in Part I – IV of the factum;
- iii. Part I – Overview;
- iv. Part II – Statement of Facts (a concise statement of facts by the Appellant or a statement by the Respondent of their position with respect to the Appellant's statement of facts, together with a concise statement of such other facts considered relevant;
- v. Part III – Statement of Points in Issue;
- vi. Part IV – Argument;
- vii. Part V – Order(s) Sought (a concise statement of the order(s) desired);
- viii. Part VI – List of Authorities and Statutes to be referred to (the full text and/or copies of statutes, regulations, or other reference materials should not be included in Part VI); and
- ix. A blank back page.

2. Length

Part I to V of the factum will be no more than thirty (30) pages in total length. The papers of the factum shall be numbered with continuous Arabic numerals beginning at Part I and ending on the final page of Part VI.

3. Spacing

Part I to V of the factum must be double-spaced; except for:

- (i) References, 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 to V may be single-spaced.

4. Type

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

5. Printing and Page Format

Electronic copies of the Facta must be submitted in Microsoft Word format. Hard copies of the facta shall not differ from the electronic copy submitted. Any tracked changes must be removed from the electronic copy. Hard copies shall be printed on white paper, 8.5 x 11 in size, and must be fastened by cerlox binding.

Margins: each page of the factum shall have margins of at least 1 inch on all sides excluding page numbers.

Colours of cover and back pages: the cover page and back page of the Appellants factum shall be on buff/beige paper. The cover page and back page of the Respondent's factum shall be on blue paper.

6. Citations

All citations shall be made in accordance with the *Canadian Guide to Uniform Legal Citation*, which is the Official Citation Guide adopted by BLSAC. Should a provision of the *Canadian*

Guide to Uniform Legal Citation conflict with any Official Rule herein, the Official Rule shall prevail.

C. Submission of Facta

Each team shall deliver 10 hard copies of each of its Appellant and Respondent's facta to the Moot Coordinator. The hard copies of the facta must be delivered by courier or local post to arrive by 16h30 EST on Friday, January 22nd (confirmed by a receipt obtained from the courier company or a postmark for the post office) to reach the BLSAC Moot Coordinator no later than Tuesday February 27, 2016 at the address below:

**Julius Alexander Isaac Diversity Moot
Black Law Student Association of Canada
c/o Beverly Sarfo
University of Ottawa Faculty of Law, Common Law Section
57 Louis Pasteur, Room
Ottawa, ON K1N 6N5**

Each team must also deliver electronic copies of the Appellant's and Respondent's facta in Microsoft Word format (.doc or docx file extension) via email to moot@blsacanada.com by 16h30 on Friday January 22, 2016 electronic facta must be labeled and submitted with the anonymous identifier provided by the BLSAC Moot Coordinator in the following format: "Team [insert identifier code] Appellant Factum" and Team [insert identifier] Respondent Factum.

D. Revision of Facta

No team shall revise, add, delete or in any manner alter its facta after submission.

E. Ownership of Facta

All rights with respect to the facta remain with the team save for the entitlement of BLSAC to electronically post on its website and communicate orally and in writing with reference to its authors or anonymously, at its discretion, with direct relevance to the Diversity Moot Competition in the year it was submitted.

IV. ORAL ARGUMENT

A. Procedure

1. Rounds

The competition shall consist of preliminary rounds of oral argument, followed by a final round between the two highest-ranking teams. The team standings will be determined according to the Rule VI, below. Every effort will be made to have no team meet any other team more than once prior to the final round.

2. Argument

Any team member may act as an oralist during any round. Eligibility for the oralist award is dependent upon having argued at least twice during the competition. Only two oralists may argue during any single round.

3. Time

Each team shall be allowed forty-five (45) minutes per round for oral argument. This time limit may be extended by the Judges in their discretion to a maximum of ten (10) minutes per round. No single oralist shall argue longer than twenty-five (25) minutes of the forty-five (45) minutes given to each team. Included in the forty-five (45) minutes is a reply for the Appellant. Prior to the beginning of each round, the Appellant may reserve time for reply; no more than ten (10) minutes may be reserved. Respondents are not entitled to make a sur-reply and shall not reserve time for a sur-reply. If the Judges in their discretion extend total team time beyond forty-five (45) minutes, then and only then may an oralist argue longer than twenty-five (25) minutes.

4. Judges

The Judging panels shall consist of justices, lawyers and other professionals. A panel of three (3) Judges shall be utilized whenever possible for the preliminary rounds. The number of Judges for the final round, normally five (5), shall be at the discretion of BLSAC.

Judges in the preliminary and final round are encouraged to provide feedback to participants regarding their performance at the completion of rounds of oral argument if time and scheduling permits.

When addressing a Judge, mooters shall call the Judge "Justice [surname]".

B. Counsel

During each round, one other team member may sit as counsel at the counsel table with the two oralists. The person acting as counsel must be one of the team members.

C. Scope of Argument

The scope of a participant's oral argument is not limited to their factum. The scope of the Appellant's reply *is* limited to the scope of the Respondent's oral argument.

D. Scouting Prohibited

It is prohibited for team members to attend the rounds of opposing teams against whom they will argue. Deliberate scouting of opposing teams will be considered unsporting behavior and may result in penalties under section VI, below.

No taping of oral arguments will be allowed under any circumstances except with the advance permission of the Referees and the two participating teams. It is incumbent on teams to inform the colleagues from their schools. Penalties may be incurred by the team for taping by members of their school.

E. Courtroom Communication

Oral and written communication may take place between the counsel table and an oralist while the oralist is presenting their argument.

No oral or written communication may take place between the counsel table and any coach, spectator or team member who is not at that counsel table during the round.

No materials of any kind may be submitted directly to the Judges by team members, including during oral argument.

F. Electronic devices

Devices such as laptops, iPads or tablet computers are permitted at the counsel table for the purposes of: (a) taking notes; and (b) for counsel's reference to notes, submissions and authorities that were prepared or compiled in advance of the oral argument round.

No electronic device of any kind shall be used by any team member at counsel table during the oral argument round to access the Internet, to communicate with any individual, or to

otherwise search for any content or authorities not prepared or compiled in advance of the round. Any device capable of connecting to the Internet shall have its send/receive functions turned off for the duration of the oral argument.

G. Spectators

The competition is open to the public, subject to space limitations.

H. Robes

Robes are not to be worn by the participants during the competition.

V. PENALTIES

A. Procedure

1. General

The Referees, on their own initiative or upon receiving a complaint, may assess a penalty for any violation of the Official Rules. The Referees shall make every effort to allow the team(s) or individual(s) accused of Official Rules violations to submit a response prior to the penalty determination. Following such reply, the Referees from which no appeal may be taken shall make an Official Ruling. The Official Ruling, which shall be prepared at the first reasonable opportunity, will inform the team(s) involved of the penalty. The Referees shall provide oral or written reasons at their discretion.

2. Complaints

Complaints pertaining to oral argument or other violations of these Official Rules must be reported immediately or at the first reasonable opportunity.

Any violations of the Official Rules occurring during oral argument that is not brought to the attention of the Referees immediately following the round will not be considered by the Referees and cannot result in the assessment of penalty points against the violating team.

A request to the Judges for a ruling on a breach of the Official Rules is not appropriate and may result in an assessment of penalty against the requesting team.

B. Quantum

1. General

The number of penalty points to be assessed against a team for a violation of the Official Rules will be at the discretion of the Referees. The Referees shall make every effort to assess penalties in a fair manner with regard to maintaining the integrity of the competition. In considering the quantum of penalty, the following factors will be taken into account:

- i. Prejudice caused to the other teams in the competition;
- ii. Advantage gained as a result of the Official Rules violation;
- iii. Inadvertence or misadventure;
- iv. Occurrences beyond the control of the team(s) or individual(s) concerned;
- v. Inconvenience caused to the organizers and to the other teams involved; and
- vi. All the circumstances surrounding the violation including any reply submitted pursuant to paragraph A (1) above

2. Late Facta Submission

The quantum for a penalty in the case of a factum submitted later than the deadline will normally be assessed at two (2) points per day.

VI. SCORING

A. Judges' Points

There are nine (9) possible Judges' points for each round. Judges' points are awarded as follows:

Factum Points – Three (3) Total

One (1) point is given for each time a team's factum is scored higher than its opponent's factum. In the case of a tie between a factum Judge's score for a particular Appellant and Respondent's factum, the factum with the highest total score will be awarded the point. If the total score for the factums is tied, one-half (1/2) of a Judge's point will be awarded to each team.

Oral Points (Preliminary Rounds) – Six (6) Total

Two (2) points are given for each oral argument Judge that scores a team higher than its opponent in oral argument.

Oral Points (Final Rounds)- Ten (10) Total

Two (2) points are given for each oral argument Judge that scores a team higher than its opponent in oral argument.

In extraordinary circumstances and with special permission of the Referees, two member Judging panels may be used for factums or oral argument. For factums, a hypothetical third Judge's score will be created by awarding the factum the average of the other two scores. Where a two Judge panel is used for oral argument, a hypothetical third score is not created. Three points are given each time one of the Judges scores a team higher than its opponent.

B. Penalties

1. Factums

Penalty points assessed against a factum will be subtracted from each factum Judge's score for that particular factum before determining the scores awarded to the penalized factum. For example, if the three factum Judges award the scores of 38, 36, and 40 to a factum which is penalized two (2) points for lateness, the scores of that factum for all purposes will be 36, 34, and 38 respectively.

2. Oral Argument

Penalties assessed during oral argument may be either team penalties or individual penalties as determined by the Referees:

(a) In the case of team penalties, the amount of the penalty will be subtracted from the score awarded by each oral argument Judge to each mooter during the round in which the violation occurred. For example, if the three oral argument Judges awarded scores of 38, 36, and 40 and 40, 36, and 38 to the two members of a team penalized two (2) points, the oralist scores for that round for all purposes will be recorded as 36, 34, and 38 and 38, 34, and 36 respectively.

(b) In the case of individual penalties, the amount will be subtracted from the score awarded by each oral argument Judge to the penalized mooter during the round in which the violation occurred. The score of a non-penalized team member will not be altered by the assessment of an individual penalty against a teammate.

3. Other

In the case of penalties not arising specifically out of a factum or a particular round or oral argument, such as for unsporting behavior, the Referees shall assess penalties by subtracting penalty points from the total points awarded to the penalized team in whatever round the Referees, in their discretion, deem appropriate. The assessment of these penalty points will affect the Judges' points totals only but may nevertheless lead to a change in the winner of a round.

C. Winner of the Round

The winner of each round will be the team with the highest number of Judges' points for that round. If the two teams remain tied after comparing total Judges' points for the round, the team with the highest raw score in that round will be the winner of the round. If the two teams remain tied after comparing both Judges' points and raw score, the round will be declared a tie.

D. Winner of the Competition

Following the completion of the preliminary rounds, the teams will be ranked highest to lowest according to the ranking procedure set out below. The two highest-ranking teams will participate in the finals. The winner of the final round, as determined by the final round Judges, will be the winner of the competition.

1. Total Raw Score

Teams will be ranked according to total raw score, calculated as follows:

Total raw factum scores plus (Total raw oral argument scores minus two (2) highest and two (2) lowest oral argument scores)

Total raw score is therefore out of 1300, comprised of 300 total possible points for both factums and 1000 total possible oral argument points (after subtraction of the two highest and two lowest oral argument scores).

2. Judges' Points

If two or more teams remain tied after comparing total raw scores, the team with the greater number of Judges' points shall be ranked highest. (There are thirty-six (36) possible Judges' points per team for the competition.)

3. One-on-One Tiebreaker

If two winners cannot be chosen after comparing total raw scores and total Judges' points, then any tie will be broken in favour of any team who has competed against and beaten, in the preliminary round, another team with which it is tied.

4. Win/Loss/Tie Record

If two teams remains tied after applying paragraphs D (1)-(3) above, the team with the better Win/Loss/Tie record shall be ranked highest.

A 4-0 team (4 wins, 0 losses) is automatically ranked higher than a 3-0-1 team (3 wins, 0 losses, 1 tie), which is ranked higher than a 3-1 team (3 wins, 1 loss), which is ranked higher than a 2-0-2 team, etc.

5. Discretion

If the teams are still tied after comparison of scores after applying paragraphs D (1)-(4) above, a determination of the rank as between the teams in question will be made by the Referees in consultation with the Judges.

E. Top Factums

The winners of the top factum award shall be the team with the highest total factum scores, computed by totaling all of the factum scores received from the facta graders.

F. Top Oralist

The winner of the top oralist award will be the person with the highest individual oral scores, which shall be calculated as follows:

(Total of individual oral argument scores received minus the highest and lowest oral argument scores received) divided by (number of Judges that scored the oralist minus two (2)).

An oralist must argue at least two rounds to be considered for an oralist award. In no event shall the score for the final round be used to calculate best oralist results.

ANNEX "A" ORAL ARGUMENT SCORING INSTRUCTIONS TO JUDGES

Each team is given forty-five (45) minutes to argue, of which no more than ten (10) minutes may be reserved for reply by the Appellant. The Respondent is not entitled to make a sur-reply. No single oralist shall argue longer than twenty-five (25) minutes. Extensions of team time beyond forty-five (45) minutes, which in no case shall exceed ten (10) minutes beyond the total time allocated for presentation, shall be within the discretion of the Judges. The timekeepers will assist you with these timekeeping matters.

Strict anonymity of school identity shall be ensured as far as possible. Teams shall be identified through the rounds only by number, not by school name. During the argument, each Judge should tentatively score each oralist at the conclusion of his or her oral presentation. Following the argument, the Judges shall retire to deliberate. They shall then individually mark their scoring summaries without comparisons to the scoring summaries of their fellow Judges. The Judges do not return to the courtroom to declare a winner, however they may return to give reasons or to comment orally on the performance of the teams. We invite and highly encourage Judges to attend the reception awards dinner on Saturday February 13, 2016.

Judges are asked to carefully complete the individual sheets attached to the score sheets, which will be delivered to each mooter at the close of the competition. Mooters value these personal comments as a very important part of the learning process. Please be as specific as you can; the time you spend providing these comments will be appreciated by the mooters. It is up to you whether or not you choose to indicate your name on the evaluation sheets.

Please evaluate each advocate independently rather than in comparison to the other advocates in the round (or other rounds you may have judged). A score between thirty (30) and fifty (50) (inclusive) should be assigned to each advocate. An average score for the competition is thirty-eight (38). In order to ensure fairness in scoring between Judges and Judges' panels, you should try to score all advocates that you judge such that the average of all the scores that you assign – in other words, your personal scoring average – is approximately thirty-eight (38).

Factors to be considered in assessing points (without regard to order of importance) include, but are not limited to:

1. Correct and articulate analysis of the issues;
2. Familiarity with and use of the relevant authorities;

3. Knowledge of the substance of the topics in issue;
4. Response to questions;
5. Clarity;
6. Ingenuity;
7. Knowledge of the facts and of the legal principles directly applicable to the facts; and
8. Persuasiveness and style.

References in a Respondent's factum to an Appellant's factum that is not before the panel should be disregarded for the purposes of the oral argument scores.

Judges should be familiar with the problem, the law, and the teams' factums before judging. The Bench Memorandum outlines most of the issues in the case and should be read carefully. However, the Bench Memorandum does not represent a resolution to the problem and should not be regarded as such.

Judges should feel free to question oralists at any point in the argument, but should also bear in mind the importance of affording oralists the opportunity to make their arguments. However, the Administrators strongly encourage the Judges to take an active role in the proceedings. A moot is not a public speaking contest. A mooter must have an excellent command of her material and must be able to easily and smoothly field questions from the bench. Bear in mind that mooters spend vast amounts of time perfecting their arguments; not to test them with penetrating questions results in a moot which is unrewarding for all participants.

The substantive merits of the case shall not be considered in judging the oral argument.

ANNEX “B” FACTUM SCORING INSTRUCTIONS TO FACTA GRADER

Factums shall be scored individually by each factum Judge independently of her colleagues by assigning a grade between thirty (30) and fifty (50), inclusive. An average factum score for the competition is thirty-eight (38).

Scoring factors to be considered (without regard to the order of importance) include, but are not limited to:

1. Correct and articulate analysis of the issues;
2. Familiarity with and use of the relevant authorities;
3. Knowledge of the substantive issues;
4. Extent of research;
5. Clarity;
6. Ingenuity;
7. Persuasiveness;
8. Application of legal principles directly applicable to the facts; and
9. Correctness of format, citations, and grammar.

The substantive merits of the case shall not be considered in judging the factums.