

# THE RULES

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## WILLMS & SHIER ENVIRONMENTAL LAW MOOT OFFICIAL COMPETITION RULES 2022

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## **1 PURPOSE**

The Willms & Shier Environmental Law Moot Court Competition (“Willms & Shier Moot” or “competition”) is Canada’s first and only national moot court competition devoted exclusively to environmental law. It is intended to promote written and oral advocacy and enhance awareness of environmental law by bringing together Canadian law students, judges, legal academics and environmental law practitioners to explore cutting-edge environmental law issues in the context of a simulated legal proceeding.

The purpose of the Rules is to facilitate the fair and orderly conduct of the competition. These Rules were approved by the Moot Committee and apply only to the 2022 competition.

## **2 DEFINITIONS**

“Co-Chairs” means the Co-Chairs of the Moot Committee.

“Competition website” means the website established at the following URL:  
<http://moot.willmsshier.com>.

“Moot Administrator” means the Willms & Shier Moot Administrator referred to in Rule 4.2.

“Moot Committee” means the Willms & Shier Moot Committee referred to in Rule 4.1.

“Problem” means the competition problem published under Rule 10.1 as modified by any clarifications issued under Rule 10.2.

“Referee” means the competition Referee referred to in Rule 3.1.

“Rules” means these Official Rules and any additional rules made under Rule 3.3.

“Willms & Shier Co-Chair” means the Willms & Shier partner serving as Co-Chair of the Moot Committee.

## **3 INTERPRETATION**

### **3.1 REFEREE**

The Willms & Shier Co-Chair shall be the competition Referee. He or she shall designate another person as Acting Referee in the event that he or she is unavailable or has a conflict of interest as defined in Rule 9.2. A member of the Moot Committee may serve as Acting Referee. The Acting Referee shall not have a conflict of interest as defined in Rule 9.2.

### **3.2 AUTHORITY TO INTERPRET THE RULES**

The Referee has sole authority to interpret the Rules. Any question concerning the interpretation or enforcement of the Rules shall be decided by the Referee.

### **3.3 ADDITIONAL RULES**

The Referee may promulgate such additional rules as the Referee deems advisable for the fair and orderly conduct of the competition, provided that these additional rules are not inconsistent with these Rules.

### **3.4 NO APPEAL**

All decisions made under the authority of these Rules, including decisions of judges, the Co-Chairs, Moot Committee, Referee or Moot Administrator, are final, binding and not subject to review or appeal except as specifically provided herein.

## **4 ORGANIZATION**

### **4.1 MOOT COMMITTEE**

The competition is governed by a volunteer Moot Committee made up of prominent environmental law practitioners and legal academics. The Moot Committee approves the competition rules, policies, problem and clarifications, and provides overall oversight and guidance for the competition.

The Moot Committee has two Co-Chairs. One Co-Chair is a partner of Willms & Shier Environmental Lawyers LLP. The other is a full-time member of the faculty of a Canadian law school.

### **4.2 MOOT ADMINISTRATOR**

The day-to-day administration of the competition is the responsibility of a Moot Administrator appointed by the Co-Chairs. The Moot Administrator has such powers and responsibilities as are necessary to administer the competition, including but not limited to those specified in these Rules. The Moot Administrator may delegate his or her powers and responsibilities provided that his or her delegate does not have a conflict of interest as defined in Rule 9.2.

### **4.3 STRUCTURE AND FORMAT**

The competition takes the form of a simulated appeal of a judicial decision to a Canadian court of last resort, known as the Supreme Environmental Moot Court of Canada. The doctrines of precedent and stare decisis apply to the Supreme Environmental Moot Court of Canada in all respects as if it were the Supreme Court of Canada.

Teams are evaluated on the basis of written factums and oral argument. Factums are exchanged several weeks before the oral phase. The oral phase of the competition takes place on a single day and consists of a Preliminary Round and a Playoff Round. Each team submits a factum for one side in the dispute, but presents oral argument for both sides. Each team argues for one side in its first Preliminary Round match and for the other side in its second match. The four highest ranked teams advance to the Playoff Round, which consists of two semi-final matches and a championship match.

#### **4.4 AMENDMENTS TO THE RULES**

The Moot Co-Chairs may propose amendments to the Rules. Amendments are approved by the Moot Committee. The Moot Administrator shall notify all registered teams promptly of any amendments and shall post the amended rules on the competition website without delay.

#### **4.5 OFFICIALS' NAMES AND CONTACT INFORMATION**

The Moot Administrator shall post the names of the Moot Committee members, Moot Co-Chairs and Moot Administrator, and the Moot Administrator's contact information, on the competition website.

#### **4.6 KEY DATES**

The Moot Administrator shall set the key dates for the competition and shall post them on the competition website on or before September 20, 2021. Notwithstanding anything in these Rules, the Moot Administrator may extend any of these dates except the factum due dates and the date for oral argument.

### **5 LANGUAGE**

The language of the competition is English. All correspondence, pleadings and proceedings shall be in English.

### **6 ELIGIBILITY**

#### **6.1 INDIVIDUAL TEAM MEMBERS**

The competition is open to students enrolled in a Juris Doctor or equivalent degree program at any Canadian law faculty. Teams may include students on exchange, provided that they are enrolled in a qualifying program at their home law faculty. Students enrolled in a postgraduate degree program in law (e.g. LL.M., Ph.D.) are ineligible. Individuals who have been admitted to the practice of law in any jurisdiction are ineligible.

#### **6.2 NUMBER, COMPOSITION AND SELECTION OF TEAMS**

Each school may enter no more than two teams. Each team consists of at least two and no more than three students. In the case of a three-person team, the third member may be an oralist or serve in a research and support capacity. The Moot Administrator shall not register a team that has more or fewer than the allowed number of students, or that exceeds the maximum number of teams per school.

The reason for limiting team size to three students is to ensure that at least one member of each team prepares and presents oral argument for both sides in the case. Having to understand and argue both sides of a dispute is excellent preparation for the practice of law, and doing it well is an excellent test of advocacy skill.

Teams may be selected by any method approved by the sending school, including an intramural competition utilizing the current competition case, provided that the selection method complies with Rule 8, Outside Assistance.

### **6.3 COACHES**

Each team may have up to two coaches, but the Referee, Moot Administrator, Co-Chairs, members of the Moot Committee and moot team members may not serve as a coach. No one may coach more than one team. The role of the coach is to provide knowledge, advice, guidance and motivation to the team members, consistent with the Rules including Rule 8, Outside Assistance. The Moot Administrator shall not register a team that has more than the allowed number of coaches.

### **6.4 SUBSTITUTION**

After the deadline for team registration has passed, a team may not add or delete a team member save in exceptional circumstances and with the written consent of the Co-Chairs.

### **6.5 EXHIBITION TEAM**

The Moot Administrator may at any time cause an exhibition team to be entered into the Preliminary Round if necessary to ensure an even number of teams. The Moot Administrator shall select the members and coach(es) of the exhibition team. An exhibition team shall be treated in all respects as if it were a competitive team, with the following exceptions: it shall be exempt from Rule 6, from normal competition deadlines, and from the requirements to pay a registration fee and file a factum; it shall be ignored when determining team rankings after the Preliminary Round; and it shall be ineligible to advance to the Playoff Round. Neither the existence nor the identity of an exhibition team shall be revealed to judges, coaches or competitors before the end of the competition. An exhibition team shall be scored on the same basis as other teams.

## **7 REGISTRATION AND EXPENSES**

### **7.1 REGISTRATION AND FEE**

Each team shall register in the manner prescribed by the Moot Administrator on the competition website and pay the prescribed registration fee no later than the prescribed deadline.

If a team fails to pay the registration fee when it comes due and no arrangements have been made for late payment to the satisfaction of the Referee, the Referee may in his or her discretion disqualify the team from the competition.

## **7.2 WITHDRAWAL**

A team may withdraw from the competition by written notice to the Moot Administrator at any time before the deadline for payment of registration fees. Registration fees that have been paid shall be refunded to withdrawing teams on a diminishing scale determined by the Moot Administrator and posted on the competition website.

## **7.3 OTHER EXPENSES**

All meals will be provided on the day of the oral competition. The competition shall pay the cost of engraving and shipping trophies and/or plaques to winning schools. Teams are responsible for their own costs of travel and accommodation unless otherwise announced by the Moot Administrator. To save costs and promote resource conservation, all competition-related materials, all correspondence with registered teams, and all factums shall be communicated electronically.

## **8 OUTSIDE ASSISTANCE**

### **8.1 GENERAL RULE**

No one other than registered team members may participate in preparing or presenting a team's factums or oral arguments. The factums and the oral arguments must be the work product of registered team members only.

This Rule does not preclude team members from soliciting and receiving feedback and advice on their written or oral arguments from others, including coaches, faculty members, law librarians, peers and practitioners, via practice sessions or other means, provided that such feedback and advice are limited to discussion in general terms of the issues raised in the problem, suggestion of possible research sources, instruction on basic principles of law, and general advice on litigation strategy, advocacy techniques, and the structure, organization and quality of the team's arguments.

Having seen the Bench Memorandum is not, in itself, sufficient reason to disqualify a person from judging an individual practice session.

### **8.2 ASSISTANCE FROM OTHER TEAMS**

Teams are permitted to discuss the competition case, issues, arguments, litigation strategy and other related matters, engage in practice rounds, share notes and draft factums, or share audio or video recordings of practice rounds, with members of other teams in the competition, provided that such activity otherwise complies with Rule 8.1 and the rest of the Rules.

### **8.3 RESTRICTION ON ASSISTANCE AFTER ELIMINATION**

Rules 8.1 and 8.2 are subject to the caveat in Rule 13.12 that a member or coach of a team that has been eliminated from the competition shall not render assistance or advice to any team that is still competing.



## **9 ANONYMITY AND CONFLICT OF INTEREST**

### **9.1 ANONYMITY**

The identity of a team's school shall be kept confidential from the Referee and all factum and oral round judges until the start of the awards banquet after the championship round.

The Moot Administrator shall assign a team number to each team in the competition. Teams shall be identified only by this number in all factums and oral rounds. No other information that might identify a team's school (e.g. the school's city, province, logo, or colours) shall be disclosed by anyone in any factum or oral round.

All competition participants shall exercise due diligence in other formal and informal settings to prevent disclosure of the identity of a team's school to the Referee or judges. They should not, for example, bring any items (such as clothing, pins, hats, binders, bags, or computers) to the competition venue that display any participating school's name, colours, logo, city or province. They should exercise discretion in washrooms, hallways, on social media and in other contexts where communication might be overheard by judges or accessible to the public.

The identity of a team's school may be disclosed to other teams, coaches, competition staff or volunteers, subject to the aforementioned due diligence obligation.

The requirement of anonymity does not apply to individual students' names. The names of the students preparing factums must appear on the factums, and oralists should use their own names in oral proceedings.

### **9.2 CONFLICTS OF INTEREST**

No judge shall judge a factum or oral argument of any student with whom the judge has a substantial personal, family or professional relationship that might reasonably create an apprehension of bias or appearance of impropriety. The mere fact that a judge is a student, alumnus, full-time or adjunct faculty member of the same law school or university as a team, or that the judge is acquainted with a student shall not, on its own, constitute a conflict of interest. Notwithstanding Rule 9.1, Anonymity, the mere fact that a judge knows or discovers the identity of a team before him or her shall not constitute a conflict of interest.

This Rule applies to the Referee, *mutatis mutandis*.

### **9.3 IDENTIFYING AND AVOIDING CONFLICTS OF INTEREST**

If, at any point before or while judging a factum or oral round, a judge discovers that he or she has a conflict of interest, he or she shall recuse himself or herself and take no further part in judging that team.

Each team shall review the oral round schedule for conflicts of interest promptly after it is distributed by the Moot Administrator and report any conflicts of interest relating to the team immediately to the Moot Administrator so that alternative arrangements can be made.

If at the start of an oral round, before oral arguments have commenced, a team member becomes aware of a conflict of interest affecting that round, he or she shall immediately bring it to the attention of the bailiff without disclosing the identity of the affected school, and the bailiff shall summon the Referee who shall take appropriate action consistent with these Rules.

If at any time during an oral round, after oral arguments have commenced, a team member becomes aware of a conflict of interest affecting that round, the team member shall bring it to the attention of the court without disclosing the identity of the affected school, and the court shall take appropriate action consistent with these Rules, in consultation with the Referee.

## **10 THE COMPETITION PROBLEM**

### **10.1 FORMULATION AND PUBLICATION**

The competition problem shall be formulated by the Co-Chairs and approved by the Moot Committee. The Co-Chairs may seek outside assistance in selecting or drafting the problem. The problem shall be posted on the competition website on or before the date set by the Moot Administrator pursuant to Rule 4.6, Key Dates.

### **10.2 CLARIFICATIONS**

Requests for clarification regarding the problem must be submitted to the Moot Administrator in writing, by email, no later than the date set by the Moot Administrator pursuant to Rule 4.6, Key Dates.

Clarifications shall be posted on the competition website along with the corresponding clarification requests, and shall form a part of the competition problem.

## **11 JUDGES**

### **11.1 ELIGIBILITY AND APPOINTMENT**

Judges shall be appointed by the Moot Administrator in his or her sole discretion from among the members of the Canadian bar, bench and academy. There are no specific qualifications for an individual to be appointed to judge factums or oral rounds, subject to Rule 9.2 (Conflicts of Interest) and the following provisos:

- a) Judges are expected to have expertise in litigation, environmental law and/or other areas of law relevant to the competition problem

- b) Individuals enrolled in a Juris Doctor, Bachelor of Laws or equivalent program may not serve as judges, but individuals enrolled in a postgraduate law program (e.g. LL.M., S.J.D., Ph.D.) may serve as judges
- c) Coaches may not serve as judges
- d) Members of the Moot Committee may serve as judges
- e) The Co-Chairs may not serve as judges
- f) The Referee may not serve as a judge.

### **11.2 FACTUM JUDGES**

The Moot Administrator shall appoint two or more individuals as factum judges. A factum judge may also be an Oral Round judge.

### **11.3 ORAL ROUND JUDGES**

The Moot Administrator shall appoint a sufficient number of individuals to judge the Oral Rounds of the competition. An Oral Round judge may judge more than one match, but the same judge may not judge a team that appeared before him or her in an earlier round.

### **11.4 BENCH MEMORANDUM**

The Moot Administrator shall cause a Bench Memorandum to be produced, which summarizes the case and provides guidance for judges. The Bench Memorandum shall be distributed to the Moot Administrator, Referee, Co-Chairs, Moot Committee and judges, all of whom shall keep its contents strictly confidential. No one else shall have or use the Bench Memorandum for any purpose.

If any person who is not authorized to have or use the Bench Memorandum comes into possession of it, he or she shall immediately return it to the Moot Administrator without examining its contents and shall permanently delete any electronic versions of it.

## **12 FACTUMS**

### **12.1 FACTUM REQUIRED**

Each team shall submit a single factum on behalf of either the Appellant or the Respondent, as determined by the Moot Administrator. The Moot Administrator shall inform the teams of their Party assignments for the factums and the number of their opposing team for the purposes of the factum, as soon as practicable after the deadline for team registration.

## 12.2 FORMAT

The factum shall be in Windows-compatible Microsoft Word format and conform to the following requirements, adapted from the Rules of the Supreme Court of Canada:

- a) Page size: 21.5 cm by 28 cm (letter size).
- b) Font face: Times New Roman.
- c) Font size: 12-point, except for citations, which may be 10-point.
- d) Line spacing: At least one and a half lines apart, except for citations and quotations from authorities, which must be indented and single-spaced. Headings that break over two or more lines may be single-spaced.
- e) Margins: Not less than 2.5 cm, excluding page numbers.
- f) Cover: The factum shall have a cover in the form prescribed by the Moot Administrator and posted on the competition website, containing the following information:
  - i. The title “IN THE SUPREME ENVIRONMENTAL MOOT COURT OF CANADA,” in upper-case letters;
  - ii. The name of the court being appealed from, printed in upper-case letters and in parentheses;
  - iii. The Supreme Environmental Moot Court of Canada’s file number, as assigned by the Moot Administrator and posted on the competition website, in the upper right-hand corner
  - iv. The style of cause;
  - v. The title of the document and the name and title of the party filing it, printed in upper-case letters between horizontal lines; and
  - vi. The team number.
- g) Table of Contents: The factum shall have a table of contents immediately after the Cover, including a detailed list, in the order in which they appear, of the contents of each section of the factum, and in a separate column, the page numbers at which they commence.
- h) Paragraph and Page Numbers: Every paragraph in Parts I to V of the factum must be numbered consecutively in the left margin. Pages must be numbered consecutively, and page numbers — in Arabic numerals — must appear at the top centre of each page, including any blank pages, with the exception of
  - i. the cover and any inside cover pages; and
  - ii. the table of contents (which must be numbered independently using lower-case Roman numerals).

- i) The factum does not need to be signed, but counsel may insert digital images of their signatures if they choose.
- j) The factum shall consist of the following Parts:
  - i. Part I, consisting of
    - A. in the appellant's factum, a concise overview of their position and a concise statement of the facts, and
    - B. in the respondent's factum, a concise overview of their position and a concise statement of their position with respect to the appellant's statement of facts, including a concise statement of any other facts that the respondent considers relevant;
  - ii. Part II, consisting of
    - A. in the appellant's factum, a concise statement of the questions in issue in the appeal, and
    - B. in the respondent's factum, a concise statement of its position with respect to the appellant's questions;
  - iii. Part III, consisting of a statement of argument setting out concisely the questions of law or fact to be discussed, with reference to the page of the record and to the page and paragraph number of the authorities being relied on;
  - iv. Part IV, consisting of submissions, if any, not exceeding one page in support of the order sought concerning costs;
  - v. Part V, consisting of a concise statement of the order or orders sought;
  - vi. Part VI, consisting of a table of authorities, arranged alphabetically and setting out the paragraph numbers in Part III where the authorities are cited; and
  - vii. Part VII, consisting of those provisions of any statute, regulation, rule, ordinance or by-law directly at issue.
- k) The factum shall not contain any footnotes, endnotes, text boxes, headers or footers (except for page numbering). Citations shall appear after the paragraph to which they relate.
- l) The file shall be in clean, final form, with all revision history (“tracked changes”), comments, and formatting marks removed.
- m) The file name shall conform to the following naming convention: “Willms & Shier Moot Team [number] [Party] Factum 2022.docx” (e.g. “Willms & Shier Moot Team 1 Appellant Factum 2022.docx”).

Teams shall not file any appeal documents (record, book of authorities, etc.) other than the factum.

For teams' convenience, the Moot Administrator shall make available for download from the competition website a blank factum template that complies with this Rule. Teams are encouraged to use this file as the template for their factums.

### **12.3 CITATION STYLE**

Citation style shall conform to the most current edition of the Canadian Guide to Uniform Legal Citation.

### **12.4 LENGTH**

Parts I through V of the factum shall not exceed 7,500 words, all inclusive. This includes, but is not limited to, headings, text, citations, heading numbers and paragraph numbers. Length shall be determined using the "Word Count" feature in Microsoft Word. Teams are reminded that factums shall not contain any footnotes, endnotes, text boxes, headers or footers (except for page numbers). Teams are encouraged to keep their factums under this word limit and to maximize the conciseness of their written submissions, without sacrificing completeness.

### **12.5 FILING**

The factum shall be filed electronically as an attachment sent to the email address prescribed for this purpose by the Moot Administrator. The factum is filed when it is received in the said email account.

The Appellant's factum shall be filed no later than 4:00 p.m. Eastern Time, on the date set by the Moot Administrator pursuant to Rule 4.6, Key Dates. The Respondent's factum shall be filed no later than 4:00 p.m. Eastern Time, on the date set by the Moot Administrator pursuant to Rule 4.6, Key Dates. Time of filing shall be determined by the time stamp that appears on the message in the Moot Administrator's email inbox. Since it may take some time for a message to reach the receiving server, teams should not wait until the last minute to transmit the factum. An acknowledgement will be sent via reply email as soon as practicable after receipt of the factum.

The Moot Administrator shall post all factums on the competition website as soon as practicable after receipt.

Once a factum is filed, it may not be revised or resubmitted. Teams should therefore double- and triple-check that they are sending the correct version before clicking "send".

Upon filing, the factum and all intellectual property rights associated with it become the property of the Moot Committee.

## **12.6 PLAGIARISM**

Factums shall not contain plagiarism. Plagiarism is the misappropriation of the work of another by representing another person's ideas, writing or other intellectual property as one's own. This includes the presentation of all or part of another person's work as something one has written, paraphrasing another's writing without proper acknowledgement, or representing another's artistic or technical work or creation as one's own. Any use of the work of others, whether published, unpublished or posted electronically, attributed or anonymous, must include proper acknowledgement.

## **12.7 NO SERVICE**

Teams shall not serve factums on opposing Parties. No proof of service shall be required.

## **13 ORAL ARGUMENT**

### **13.1 PROCEDURES FOR ORAL ARGUMENT**

Each oral match involves two teams, one representing each Party, and consists of 60 minutes of oral argument. The Appellant and Respondent are each allotted 30 minutes. Two members of each team must present oral argument in each match.

The order of argument in each match shall be as follows:

- a) First counsel for the Appellant
- b) Second counsel for the Appellant
- c) First counsel for the Respondent
- d) Second counsel for the Respondent
- e) Appellant's reply (at the option of counsel for the Appellant, to be presented either by first counsel for the Appellant or by second counsel for the Appellant)

The Moot Administrator shall supply an official timekeeper and bailiff to administer each match. Before the beginning of each oral match, each team shall indicate to the official timekeeper how it wishes to allocate its 30 minutes among its first counsel, second counsel, and in the Appellant's case, its reply. Each team may allocate up to 17 minutes to any one counsel, and the Appellant may reserve up to three minutes for reply. Extra time remaining at the expiry of one counsel's argument is surrendered and may not be used by co-counsel or in reply.

Notwithstanding anything to the contrary in these Rules, if exceptional circumstances prevent a team from complying with the requirement for two members of each team to present oral argument in each match, the Co-Chairs may, with the team's consent, approve such arrangements as the Co-Chairs, in their discretion, consider appropriate to facilitate the team's participation in the oral competition while preserving the integrity of the competition. Such arrangements may include, but are not limited to, having one team member present the team's entire oral argument or (with the consent of the borrowing

and lending teams) having a member of another team present oral argument for the team. For greater clarity, the Co-Chairs may approve such arrangements without the consent of the opposing team in the match.

## **13.2 PRELIMINARY ROUNDS**

Each team shall contest two preliminary round matches. The Moot Administrator shall make best efforts to ensure that a team does not face the same opposing team more than once in the preliminary round and that a team does not face another team from the same school in the preliminary round. Each team shall represent one Party in its first preliminary round match and the other Party in its second preliminary round match. In one preliminary round, a team shall represent the Party for whom it submitted a factum, against the team that was designated as its opponent for purposes of the factum. In its other preliminary round, the team shall represent the Party for whom it did not submit a factum.

Preliminary round matches shall be judged by panels of three judges. In exceptional circumstances the Moot Administrator may allow a match to be judged by fewer than three judges.

The Moot Administrator shall publish a draft preliminary round schedule as early as practicable to allow for identification and resolution of potential conflicts of interest and scheduling problems.

## **13.3 PLAYOFF ROUND**

The Playoff Round shall consist of two semi-final matches and a championship match.

### ***13.3.1 SEMI-FINALS***

The four highest-ranked teams after the preliminary round, as determined in accordance with Rule 14 (Judging and Scoring), shall contest the semi-final matches. One semi-final match shall be between the first- and fourth-ranked teams. The other shall be between the second- and third-ranked teams. Each semi-final match shall be judged by a panel of three judges.

The Moot Administrator shall provide each team advancing to the Playoff Round a summary of the factum scores and oral match results from each of its preliminary round matches.

In each semi-final match, the team that had the higher ranking after the preliminary round, as determined in accordance with Rule 14 (Judging and Scoring), shall choose which Party it will represent in the match. It must declare its choice to the Moot Administrator within ten minutes after it receives the summary referred to in the preceding paragraph. If it fails to declare its choice within that time, the other team in the match shall have five minutes to choose which Party it will represent in the match. If that team fails to declare its choice within that time, the Moot Administrator shall toss a coin to determine which team shall argue which side. If the result is “heads,” the higher



ranking team from the preliminary round will represent the Appellant. If “tails,” the higher ranking team from the preliminary round will represent the Respondent.

### **13.3.2 CHAMPIONSHIP MATCH**

The championship match shall be contested by the teams that win the two semi-final matches. It shall be judged by a panel of at least three judges.

The championship match team that had the higher ranking after the preliminary round, as determined in accordance with Rule 14 (Judging and Scoring), shall choose which Party it will represent in the championship match. It must declare its choice to the Moot Administrator within ten minutes after it is notified that it has advanced to the championship match. If it fails to declare its choice within that time, the other team in the match shall have five minutes to choose which Party it will represent in the match. If that team fails to declare its choice within that time, the Moot Administrator shall toss a coin to determine which team shall argue which side. If the result is “heads,” the higher ranking team will represent the Appellant. If the result is “tails,” the higher ranking team will represent the Respondent.

### **13.4 SCOPE OF ARGUMENT**

Counsel are permitted, but not required, to refer to their factums in oral argument. The scope of oral argument is not, however, limited by or to the factums, and counsel may depart from their factums in oral argument. Counsel may draw oral arguments from any source they see fit, including other teams’ factums, without attribution.

When a team presents oral argument for the Party for whom it did not submit a factum, there shall be no factum of record for that Party in that match, and that team shall present its argument without reference to a factum.

### **13.5 ATTIRE**

Counsel and Judges shall dress in normal business attire. They shall not robe.

### **13.6 DECORUM**

Counsel shall maintain appropriate courtroom decorum at all times. Judges should be addressed and referred to in gender-neutral terms, such as “Justice (Surname)”, not as My Lady, My Lord or Your Honour.

### **13.7 THIRD COUNSEL**

During each round, one additional team member may sit as co-counsel at counsel table. This third counsel shall not present oral argument.

### **13.8 REPLY**

It is up to the Appellant Team to decide whether and how much time to reserve for reply, up to the maximum time provided by these Rules. It is not necessary to reserve any time for reply.

Only one counsel may deliver the reply.

Reply shall be restricted to counter-arguments against points advanced by the Respondent. Reply shall not be used to reiterate points already made by the Appellant or to advance new points that could have been made in the principal oral argument.

There shall be no Sur-Reply.

### **13.9 EXTENSION OF TIME**

Unless granted an extension of time, counsel shall stop speaking promptly when time is up and return to his or her counsel table. The presiding judge may, in his or her absolute discretion, grant a brief extension of time to allow counsel to answer any outstanding question(s) and conclude as quickly as possible.

No extension of time shall be granted for the reply.

### **13.10 EX PARTE PROCEEDINGS**

If one or fewer members of a team appear for a scheduled oral match, the Referee may, after ten minutes have elapsed from the scheduled start time, allow the oral match to proceed *ex parte*, unless the Co-Chairs have approved alternative arrangements pursuant to rule 13.1. In an *ex parte* match, the other team shall present its oral argument, which the judges shall evaluate to the extent possible as if the absent team had been present and arguing; and the team that fails to appear shall forfeit the match.

If one member of the defaulting team is present and willing to proceed, the Referee may allow that member to present his or her own oral argument, which the judges shall evaluate only for purposes of determining Distinguished Oralists ballots. The match shall still be forfeit.

### **13.11 FEEDBACK**

Oral round judges should provide informal oral feedback to students about their performance at the completion of each oral round, without delaying the competition. Feedback may be generic or individualized but must not reveal the contents of the Bench Memorandum, the students' relative rankings, or the results of the match.

### **13.12 UNSPORTING BEHAVIOUR**

Team members and coaches shall refrain from any behaviour that distracts members of the bench or opposing teams, or that could reasonably be construed as disruptive, disrespectful, disparaging or otherwise unsporting.

Neither a member nor a coach of a team shall attend matches in which the team is not competing, until after that member's or coach's team has been eliminated from the competition and thenceforth only as a spectator. A member or coach of a team that has been eliminated from the competition shall not render assistance or advice to any team that is still competing.

### **13.13 COMMUNICATION**

During an oral match, co-counsel seated at the counsel table may communicate with each other or with counsel at the podium only in writing. Counsel at the podium may communicate with co-counsel seated at the counsel table with the bench's permission (e.g. to retrieve a document, obtain information sought by the bench or consult with co-counsel). All communication among co-counsel shall be done discreetly, sparingly and professionally, without causing a disturbance to judges or opposing counsel.

Counsel shall not communicate with coaches, team members not at the counsel table, spectators or opposing counsel during oral argument.

No documents or other materials may be submitted directly to oral round judges during an oral match.

### **13.14 SPECTATORS**

All oral matches are open to the public, subject to space availability. Coaches and spectators affiliated with a team may attend an oral match in which the team is competing. Teams are responsible for ensuring that affiliated spectators do not engage in disruptive behaviour.

### **13.15 TIME KEEPING**

The Moot Administrator shall supply suitable devices to keep and display time during oral matches. The timekeeper shall keep time during an oral match and shall display the time remaining at suitable intervals. The only official time of the oral match is the time indicated by the timekeeper. No stop-watches or electronic devices except those supplied by the Moot Administrator shall be used to keep track of time during an oral round. No one other than the official timekeeper may display timecards or otherwise signal to counsel how much time is left.

### **13.16 ELECTRONIC DEVICES**

No coach, team member or spectator may operate any electronic devices during an oral match. All computers, mobile phones, handheld digital devices, cameras, headphones and the like shall be turned off and remain out of sight at all times during oral argument.

## 14 JUDGING AND SCORING

### 14.1 GENERAL

Judges shall evaluate factums and oral arguments on the basis of the quality of advocacy, not the merits of the case.

### 14.2 FACTUMS

Each factum shall be judged by at least two factum judges.

Each factum judge shall, in his or her sole discretion, give each factum a raw score out of 100. Each factum judge shall record his or her evaluation of each factum on the official factum score sheet, a blank version of which shall be posted on the competition website well in advance of the factum submission deadline. Completed factum score sheets shall be disclosed to teams to which they relate after the competition is completed, but not before.

When judging the factums, factum judges shall take into account the fact that Respondents have had the opportunity to see and learn from the Appellants' factums.

Factum judges shall not adjudicate or assess any factum penalties.

Each team's factum score shall be determined by subtracting any factum penalty points, as determined pursuant to Rule 15, from each of the raw scores received by the factum, and then averaging the resulting net scores. An example is shown in Table 1.

	Judge 1	Judge 2	Total
Raw score	73	78	
Factum penalty points	-1.5	-1.5	
Net score	71.5	76.5	148
Divide by number of scores received			÷ 2
<b>Factum Score</b> (average net score)			<b>= 74</b>

### 14.3 ORAL MATCHES

#### 14.3.1 GENERAL

At the end of each oral match, each oral match judge shall, in his or her sole discretion, pick the winning and losing team.

Each judge shall apply the same evaluation criteria consistently and fairly to all teams and counsel appearing before him or her. When evaluating counsel's performance in oral matches, judges may take into account the Rules for oral matches (Rule 13) as well as general standards of good courtroom advocacy, including but not limited to professionalism, knowledge, respect, effective oratory, responsiveness to questions, and time management.

Each oral match judge shall record his or her evaluation of each oral match on the official oral match score sheet, a blank version of which shall be posted on the competition website well in advance of the oral argument. Completed oral match score sheets shall be disclosed to the teams to which they relate after the competition is completed, but not before.

The team that wins each match shall be the team for which the largest number of judges of the match record a “Win” decision on their oral match score sheets. If a team forfeits a match, all the judges of the match shall record a “Win” decision for the other team.

In the unlikely event that a match is judged by an even number of judges, the judges shall decide the winning team by a majority or unanimity. The judges shall not render an evenly split decision.

#### *14.3.2 PRELIMINARY ROUND*

To promote comparability and consistency in evaluation, each panel of judges in the preliminary round shall judge two consecutive preliminary round matches. The Moot Administrator may relax this requirement in exceptional circumstances.

Teams shall be ranked after the preliminary round by number of wins, from highest to lowest. If two or more teams have the same number of wins, the team with the higher factum score shall have the higher rank. If this still results in a tie and the outcome of the determination does not affect any tied team’s entry into the Playoff Round or the pairing of any teams in the Playoff Round, the teams shall be ranked equally. If, however, further determination is necessary to determine entry into or pairings in the Playoff Round, the rankings shall be determined as follows:

- a) If the tied teams faced each other in a preliminary round match, the winner of that match shall be ranked higher; or
- b) If the tied teams did not face each other in the preliminary round, the team that received more Distinguished Oralist votes in the preliminary round shall be ranked higher; or
- c) If the tied teams did not face each other in the preliminary round, and each received the same number of Distinguished Oralist votes in the preliminary round, the Moot Administrator shall break the tie by a coin toss.

#### *14.3.3 PLAYOFF ROUND*

The team for which the largest number of judges of a semi-final match record a “Win” decision shall be the winner of that semi-final match and shall advance to the championship match.

The team selected by the judges of the championship match as the winner of the championship match shall be the Champion Team. The other team in the championship match shall be the Second Place Team.

The team with the better win-loss record of the two losing teams in the semi-finals shall be the Third Place Team. The other losing team in the semi-finals shall be the Fourth Place Team. In case of a tie between these two teams, the team with the higher factum score shall be the Third Place Team. If this still results in a tie, both teams shall share Third Place.

## **15 PENALTIES**

### **15.1 GENERAL**

Penalties are discretionary or non-discretionary. In the case of non-discretionary penalties, the person designated in this Rule to decide a violation must assess the specified penalty. In the case of discretionary penalties, the person designated in this Rule to decide a violation shall have the discretion to decide whether to assess a penalty or not, what penalty to assess, or both. Discretionary penalties shall be proportional to the seriousness of the violation and may include disqualification.

Only non-discretionary penalties are within the Moot Administrator's jurisdiction. The Referee's jurisdiction includes discretionary and non-discretionary penalties.

### **15.2 FACTUM PENALTIES**

#### *15.2.1 VIOLATION OF RULE 12.1, REQUIRED FACTUM*

If a team files its required factum after the filing deadline, the Moot Administrator shall assess a non-discretionary penalty of 5 points (out of 100) for every 12 hours or part thereof that has elapsed after the factum filing deadline. If a team has not filed its required factum within 48 hours after the filing deadline, the Referee shall normally disqualify the team from the competition. In exceptional circumstances, the Referee may, in his or her discretion, relieve against this penalty and allow a team to file its required factum more than 48 hours after the filing deadline, subject however to the lateness penalties provided above.

A team against which a penalty is assessed under this Rule 15.2.1 has the right to know the case against it and to make submissions to the Referee before the penalty is assessed, without unduly delaying the competition.

#### *15.2.2 VIOLATION OF RULE 12.2, FORMAT*

The Moot Administrator shall decide violations of Rule 12.2, Format. If, in the opinion of the Moot Administrator, a factum complies substantially with Rule 12.2, the Moot Administrator shall not assess any penalties for violation of this Rule. If, in the opinion of the Moot Administrator, a factum does not comply substantially with the Rule, the Moot Administrator shall assess the following non-discretionary penalties:

<b>Violation</b>	<b>Penalty</b>
Incorrect paper size	0.5 point for each page on which a violation occurs, to a maximum of 5 points
Incorrect, incomplete or missing page numbers	0.5 point for each page on which a violation occurs, to a maximum of 2 points
Incorrect font face or size	1 point for each page on which a violation occurs, to a maximum of 5 points
Incorrect, incomplete or missing paragraph numbers	0.5 point for each page on which a violation occurs, to a maximum of 2 points
Incorrect line spacing	0.5 point for each page on which a violation occurs, to a maximum of 2 points
Incorrect margins	1 point for each page on which a violation occurs, to a maximum of 5 points
Incorrect, incomplete or missing counsel information	2 points
Incorrect, incomplete or missing Cover	2 points
Incorrect, incomplete or missing Table of Contents	2 points
Missing Part or inclusion of unenumerated Part	2 points for each Part
Failure to include required material in a Part or inclusion of inappropriate material in a Part	2 points for each Part
Part IV, Submissions as to Costs, in excess of 1 page, after factum is adjusted to eliminate any other formatting violations	2 points for each page or portion thereof over the limit
Inclusion of footnotes, endnotes, text boxes, headers or footers (except for page numbering)	1 point for each page on which a violation occurs, to a maximum of 5 points
Failure to remove tracked changes, comments or formatting marks	1 point for each page on which a violation occurs, to a maximum of 5 points
Improper file name	1 point

### ***15.2.3 VIOLATION OF RULE 12.3, CITATION STYLE***

The Moot Administrator shall decide violations of Rule 12.3, Citation Style. If, in the opinion of the Moot Administrator, a factum complies substantially with Rule 12.3, the Moot Administrator shall not assess any penalties for violation of this Rule. If, in the opinion of the Moot Administrator, a factum does not comply substantially with the Rule, the Moot Administrator shall assess a non-discretionary penalty of 0.5 point for each incorrect citation, to a maximum of 5 points.

#### *15.2.4 VIOLATION OF RULE 12.4, LENGTH*

The Moot Administrator shall decide violations of Rule 12.4 and shall assess a non-discretionary penalty of 5 points for every 150 words or part thereof over the limit, to a maximum of 15 points.

#### *15.2.5 VIOLATION OF RULE 12.6, PLAGIARISM*

The Referee shall decide violations of Rule 12.6, Plagiarism. Penalties for violation of this Rule shall be in the Referee's discretion. Severe penalties will result from academic dishonesty including plagiarism. A team against which a penalty is assessed under this Rule 15.2.5 has the right to know the case against it and to make submissions to the Referee before the penalty is assessed, without unduly delaying the competition.

#### *15.2.6 ADDITIONAL FACTUM PENALTY FOR VIOLATION OF OTHER RULES*

Factum penalties shall also include any penalties assessed against the factum by the Referee under Rule 15.4.

#### *15.2.7 CALCULATION AND NOTIFICATION OF FACTUM PENALTY*

The Moot Administrator shall calculate the factum penalty for each factum, which shall be the sum of all penalties assessed against the factum under Rules 15.2 and 15.4. The Moot Administrator shall notify each team of its factum penalty, if any, as early as practicable and no later than one week before the oral phase of the competition. No additional penalties shall be assessed against a factum after the Moot Administrator notifies a team of its factum penalty, except as a result of an appeal under Rule 15.2.8.

#### *15.2.8 APPEAL OF FACTUM PENALTY*

A team may appeal a factum penalty assessed by the Moot Administrator to the Referee. The appeal must be brought by all members of the team including coaches, in the form and by the deadline prescribed by the Referee. The appeal shall be limited to the question of whether the violation occurred. The Referee may confirm the penalty, vacate it, or assess any penalty that would have been in the Moot Administrator's power to assess for violation of the same Rule or Rules.

The team appealing a penalty has the right to be heard before the Referee decides the appeal. In the case of an appeal of a penalty imposed as a result of a team complaint, the team that made the complaint also has the right to be heard before the Referee decides the appeal.

There is no appeal from the Moot Administrator's decision that a factum does not comply substantially with Rule 12.2 or 12.3.

There is no appeal from an additional factum penalty assessed by the Referee under Rule 15.4.



## **15.3 ORAL MATCH PENALTIES**

### *15.3.1 GENERAL*

The Referee shall assess oral match penalties and shall consult with oral match judges, the Moot Administrator, bailiff, timekeeper and others as necessary to gather the information needed for such decision.

A team against which an oral match penalty is assessed has the right to know the case against it and to make submissions to the Referee before the penalty is assessed, without unduly delaying the competition.

The existence and quantum of an oral match penalty shall not be disclosed to the judges of the match. Any penalties assessed by the Referee shall be in addition to any sanction applied by the oral match judges in judging the match.

If a violation is particularly serious or affects more than one match, the resulting oral match penalty may be applied to more than one match. Except where specified below, oral match penalties may take any form, including apology or other amends, loss of the affected match, exclusion from subsequent matches, and disqualification from the competition.

Oral match penalties shall be applied equally to all counsel of the penalized team regardless of who committed the violation. Oral match penalties shall be applied to the match results as recorded by the judges and shall change those results accordingly.

### *15.3.2 SPECIFIC PENALTIES*

Penalties for violation of the following Rules shall be in the Referee's discretion:

- a) Rule 13.7, Where third counsel presents oral argument;
- b) Rule 13.8, Where more than one counsel delivers a reply;
- c) Rule 13.12, Unsporting Behaviour;
- d) Rule 13.13, Communication;
- e) Rule 13.14, Spectators;
- f) Rule 13.15, Time Keeping; and
- g) Rule 13.16, Electronic Devices.

### *15.3.3 EXCEPTIONS*

The Referee shall not assess any penalties for violations of the following Rules:

- a) Rule 13.1, Procedures for Oral Argument;
- b) Rule 13.5, Attire;
- c) Rule 13.6, Decorum;

- d) Rule 13.8, Where counsel violates the restrictions on the content of a reply; or
- e) Rule 13.9, Extension of time;

but as provided in Rule 14, the oral round judges may take violations of these and other rules applicable to oral rounds into account when judging oral matches.

#### ***15.3.4 EX PARTE PROCEEDINGS***

No penalty shall be assessed under Rule 13.10 beyond forfeiture of the match.

#### ***15.3.5 NOTIFICATION OF ORAL MATCH PENALTY***

The Referee shall notify each team of its Oral Match Penalty, if any, immediately upon assessing it.

There is no appeal of an oral match penalty.

### **15.4 OTHER PENALTIES**

#### ***15.4.1 VIOLATION OF RULE 6, ELIGIBILITY***

The Referee shall decide violations of Rule 6.1, Eligibility of Individual Team Members. If the Referee determines that a team has an ineligible team member, he or she shall disqualify the team. If, however, the violation comes to the Referee's attention before the Moot Administrator informs teams of their Party assignments for the factums, the Referee may, in his or her discretion, allow the team to continue in the competition upon replacing the ineligible member with an eligible member. In such a case the penalty for violation of Rule 6.1 shall be in the Referee's discretion, the ineligible team member shall thenceforth not be considered a member of the team for purposes of the Rules, and the other Rules including Rule 8, Outside Assistance, shall thenceforth apply to that person.

#### ***15.4.2 VIOLATION OF RULE 8, OUTSIDE ASSISTANCE***

The Referee shall decide violations of Rule 8, Outside Assistance. Penalties for violation of this Rule shall be in the Referee's discretion. If the Referee decides to assess a penalty for violation of this Rule, he or she may assess it against the factum, the oral round, or both, depending on whether the outside assistance affects the factum, the oral round, or both.

#### ***15.4.3 VIOLATION OF RULE 9.1, ANONYMITY***

The Referee shall decide violations of Rule 9.1, Anonymity. Penalties for violation of this Rule shall be in the Referee's discretion. If the Referee decides to assess a penalty for violation of this Rule, he or she may assess it against the factum, the oral round, or both, depending on whether the violation relates to the factum, the oral round, or both.

#### ***15.4.4 VIOLATION OF RULE 11.4, BENCH MEMORANDUM***

The Referee shall decide violations of Rule 11.4, Bench Memorandum. The penalty for violation of Rule 11.4 shall be in the discretion of the Referee. If the Referee decides to assess a penalty for violation of this Rule, he or she may assess it against the factum, the oral round, or both, depending on whether the violation relates to the factum, the oral round, or both.

#### ***15.4.5 VIOLATION OF OTHER RULES***

Penalties for violation of other Rules shall be in the Referee's discretion and may be assessed against the factum, the oral round, or both, depending on whether the violation relates to the factum, the oral round, or both.

#### ***15.4.6 RIGHT TO BE HEARD***

A team against which a penalty is assessed under Rule 15.4 has the right to know the case against it and to make submissions to the Referee before the penalty is assessed, without unduly delaying the competition.

### **15.5 COMPLAINT**

Any team, judge, bailiff, timekeeper or other competition volunteer may complain to the Referee of an alleged violation of the Rules in a form prescribed by the Referee. Team complaints must be brought by all members of a team including coaches. Complaints shall be brought immediately, without delay, and before the next stage of the competition begins. The Referee may refuse a complaint for delay. No complaint shall be heard after the stage of the competition to which it relates has concluded and the next stage has begun.

No complaint shall be brought and no penalty shall be assessed in relation to alleged violations of the Rules enumerated in Rule 15.3.3, Exceptions.

A team against which a complaint is lodged has the right to know the case against it and make submissions to the Referee before a decision is made.

In the event of a complaint, the Referee and the team or teams concerned shall make best efforts to reach a consensual resolution of the dispute. If a consensual resolution is impossible, any applicable penalties shall be assessed in accordance with the Rules. There is no appeal from a refusal to assess a penalty.

If the Referee finds that a team complaint is frivolous or vexatious, he or she shall impose a penalty on the complaining team. The form and quantum of the penalty shall be in the Referee's discretion.

## **16 AWARDS**

### **16.1 FACTUM AWARDS**

The Appellant's factum with the highest factum score shall win the Barry Nelson Spiegel Award for the Best Appellant's Factum, named after the late Barry Nelson Spiegel (1951-2009), former Willms & Shier Environmental Lawyers LLP lawyer. The Respondent's factum with the highest factum score shall win the D. Paul Emond Award for the Best Respondent's Factum, named for Professor Emeritus Paul Emond, a founder of Osgoode Hall Law School's environmental law program.

The identities of the factum award winners shall be kept strictly confidential until they are announced at the awards banquet.

### **16.2 ORALIST AWARDS**

At the end of the championship match, the championship match judges shall choose the top oralists in the championship match, who shall win the award for First Place Oralist.

At the end of the preliminary round, each preliminary round judge shall vote for the Distinguished Oralist. All the oralists in the preliminary round shall be ranked according to total number of votes received. The name of the First Place Oralist shall be removed from this list and oralists comprising approximately the top twenty percent of the remaining oralists shall win a Distinguished Oralist award.

The identities of the winners of Oralist awards shall be kept strictly confidential until they are announced at the awards banquet.

### **16.3 TEAM AWARDS**

The Champion Team shall win the Willms & Shier Environmental Law Moot Champions award.

The Second Place Team shall win the award for Willms & Shier Environmental Law Moot Second Place Team.

### **16.4 OTHER AWARDS**

The Moot Committee may award such other awards as it sees fit.

## **17 PHOTOGRAPHS AND RECORDINGS**

Photographing, audio-recording or video-recording of oral arguments is prohibited except with the authorization of the Moot Administrator. The Moot Committee and Willms & Shier Environmental Lawyers LLP will not be responsible for participants who share unauthorized photographs, audio recordings or video.

Participants and spectators may take photographs or make recordings of competition events other than oral arguments for their personal use. Subject to that exception, the Moot Committee and Willms & Shier Environmental Lawyers LLP have the exclusive

right to create, reproduce, share, broadcast and use still images, moving images, sound recordings or transcripts of oral matches and other competition events. All competitors, judges, participants and spectators shall be deemed to have consented to the use of such images, recordings and transcripts for any purpose connected with the competition, including advertising and promotion, and use on Willms & Shier’s social media platforms.

## **18 SUSTAINABILITY**

The Willms & Shier Environmental Law Moot strives to be an ecologically sustainable event. The Moot Committee and Co-Chairs shall make best efforts to identify and pursue all opportunities to minimize environmental impacts of the competition.

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