

## ALL DRESSED UP WITH NOWHERE TO MOOT

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In the wake of the COVID-19 pandemic, all law students and instructors were forced to rapidly adapt to a new online-learning environment. With varying degrees of turbulence, students and instructors made the necessary changes and finished the year to the best of their collective abilities. However, at the University of Alberta Faculty of Law, there was one unique law school experience that did not survive the transition: the mandatory first-year moot courtroom exercise. (As a point of terminology, when I use the term “moot court” below I am referring only to the oral courtroom presentation and not the associated written factum assignment.)

### **Cancellation of the First-Year Moots at the University of Alberta**

Virtually every Canadian common law program requires its students to make a moot court presentation in their first-year. If you ask any Canadian law graduate about the subject of their first-year moot, you’re likely to receive a detailed account of the specific facts and legal issues (mine had to do with a grandfather clock falling on the plaintiff while they were at an auction house). The unique combination of novelty, difficulty, and stressfulness of the moot creates an indelible experience that makes a lasting impression on developing law students. The University of Alberta first-year moot program also engages a large chunk of the local Edmonton bar, as practicing lawyers fulfill the role of moot court panelists. Over 200 volunteer hours every year are donated by practitioners who take the time out of their busy schedules to get up to speed on legal issues they might not have touched since law school.

At the University of Alberta, the first-year class was scheduled to make their moot presentations over a three-week block in March 2020. The onset of COVID-19-related public health restrictions meant that all mooting was immediately suspended on March 12<sup>th</sup>, after only the fourth day of the first week. As a result, only 50 out of 183 first-year students delivered their oral submissions before the remaining moot rounds were

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suspended and eventually cancelled. Unsurprisingly, the initial decision to suspend the moots generated intense feedback from the students. Much of this feedback related to whether the 50 students who had already completed the moot would be graded asymmetrically from the remainder of the class, with students expressing strong views in both the affirmative and negative. Ultimately, the University of Alberta decided to move the entire semester to a universal credit/no credit grading scheme. This rendered the asymmetrical grading question a moot point (forgive the pun).

Grading concerns aside, many students also expressed a sense of grief over their lost opportunity. For most students, the moot was the first-year assignment that bore the closest resemblance to their pre-law conception of lawyering. One student wrote to me and said, "I lost the chance to partake in the one activity I was looking most forward to." In an attempt to salvage at least some small semblance of the moot court experience, I gave students the opportunity to sign-up for optional, abbreviated one-on-one video sessions with me sitting as a single-judge panel. Approximately 20 students took advantage of this optional exercise and presented from their bedrooms, kitchens, or basements. Although the students who presented virtually were appreciative of this opportunity, from my perspective it still fell short of the sensation of being on your feet, gowned, and performing before a live panel of judges.

### **Upper-Year Moot Cancellations**

Unfortunately, the first-year moots were not the only set of moots cancelled due to the COVID-19 pandemic. Several national mooting competitions were also cancelled on short notice, including two relatively nascent competitions in the Michel Bastarache Language Rights Moot and the Adam F. Fanaki Competition Law Moot. Fortunately for the majority of our upper-year mooting students, the bulk of the national competitions took place in February and early March. Therefore, most of them had been completed by the time a pandemic was declared. Although these cancellations were prudent and responsible, they were also disappointing to the students who were now unable to attend their respective competitions. This disappointment was understandable, since all of the would-be participants had to go through a rigorous qualification process to be selected for their respective teams.

Attendance at an upper-year competitive moot is a wonderful, unique experience. Rarely, if ever, do students have an opportunity to interact with a cross-section of students from different institutions who all share a mutual interest in the same field of law. Moreover, due to their inherently competitive nature these moot competitions attract top students who are especially skilled in oral advocacy. Furthermore, moot organizers go to great lengths to recruit senior practitioners and members of the judiciary to preside over competition rounds. Many competitions feature a Supreme Court of Canada Justice who chairs the final round panel and delivers a keynote address at the end-of-competition reception. In short, the opportunities for student interaction and network-building are unparalleled. These opportunities are now permanently lost to time. Although they may not be much in the overall scale of this global pandemic, they are still significant losses to the affected students.

### **Virtual Mooting and the Road Ahead**

In the following months, legal research and writing instructors across the country will have to determine how to deliver a moot court experience that translates well into a virtual environment. Some of the old wisdom will have to be revised or discarded. For example, a common admonishment in mooting is to maintain eye contact with the panel. Does that sage advice still apply over a webcam? Our virtual solution will have to emphasize fundamental skills that are applicable to both online and offline courtrooms. In some ways, the task of organizing the 1L moots may have become easier. For example, under the old system, scheduling was constrained by physical courtroom availability; no more than one team could present at a time. In a virtual environment, that constraint is removed; in theory, every student could present at exactly the same time.

It is unclear how the moot cancellations will affect our current law students. If it's true that there is pedagogical value in completing the first-year moot exercise, then we should make sure there are enhanced opportunities for last year's 1L students to practice oral advocacy in order to make up for this loss. The National Requirement published by the Federation of Law Societies requires that all students demonstrate proficiency with both "oral and written legal communication" (National Requirement, B1.3).

With respect to the upper-year moot competitions, most organizing committees have begun planning to host their moot competitions online in 2021. Competition organizers do not want to risk cancellation in the event of a second pandemic wave and it is too cumbersome to plan both an in-person and a virtual moot. Some competitions, including the Willms & Shier Environmental Moot and the Davies Corporate/Securities Moot, have already announced that they will be postponing their competitions for the next year. I also note that additional complexities exist for competitions that have non-appellate formats, such as the Sopinka Cup Trial Advocacy Moot.

I hope that we can recreate the sense of triumph and visceral thrill that comes from finishing a moot round after being grilled by questions from a “hot bench” (moot lingo for a judging panel that is particularly active). I have a small set of practical recommendations that I believe will help preserve some of that old moot courtroom feeling:

1. Students should treat the virtual courtroom with the same degree of decorum that they would a physical courtroom. This means observing small formalities, such as bowing to the judge when a courtroom session begins, dressing in a similar manner to that of an actual court appearance, and using correct legal terminology.
2. If possible, students should present by facing the webcam while standing, behind a raised flat surface that can mimic a podium or lectern. If mooting during the daytime, students should not be standing in front of a window. Speaking materials should be printed and physically in front of the student. Students should not attempt to navigate an electronic document using the same laptop that they are presenting on.
3. Students should ensure that their computers are connected to external speakers, or that the volume is sufficiently loud on their computers that they can hear everything said by the judging panel. In a physical courtroom, the sound of a judge clearing their throat may be indicative of their desire to ask a question. The virtual courtroom should ensure that those small audio cues can be heard.
4. Similarly, students should view the judging panel in the highest possible definition. If they are using a laptop to present, this would ideally mean connecting to a larger external monitor.

5. Ideally, public health restrictions would allow law schools to establish one or more physical moot locations for students who may not have access to the correct equipment or a sufficiently large, quiet, personal living space. These on-campus spaces can be available but usage should be optional and not mandated.

6. A normal, pre-pandemic moot would have four student participants: two appellants and two respondents. If this format is retained, then the four students should be given some time together as a group at the end of their moot, in the absence of the instructor and the judging panel, to celebrate its completion.

In many ways, the questions faced by law schools about how to deliver a positive online moot experience mirror the questions that real-world court systems are facing. The COVID-19 crisis has forced reluctant courts to enter the 21<sup>st</sup> century. As we continue to transition to online dispute resolution conferences, hearings, and even trials, our profession may discover additional difficulties that we haven't even contemplated yet. However, the virtual courtroom is not going to disappear as soon as this current health crisis is resolved. A modern court system with an integrated online component has too many practical benefits; the courts can never do a full return to the old ways. It's therefore likely that our moot court exercises will never be the same, either.