

Report of the Clinical/Experiential Education and Mooting/Advocacy Committee

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1. Introduction

The Terms of Reference for the Clinical/Experiential Education and Mooting/Advocacy Committee are as follows (from the Dean's mandate letter of 24 October 2016):

- To serve as an ongoing forum that will gather information, make recommendations and respond effectively to issues that arise in relation to the compulsory and competitive mooting program, as well as the clinical and experiential education program;
- To review and analyze feedback from students, faculty and staff regarding the mooting program and the clinical education program, and to make any recommendations accordingly;
- To explore the development of new competitive mooting opportunities and/or new experiential offerings as these opportunities arise, with a view to making a recommendation regarding participation to the Curriculum Committee; and
- Any new priorities that arise, if applicable, as directed by the Dean.

Our report deals with the following topics:

- proposed new moots;
- committee structure for 2017/18;
- international mooting opportunities.

Proposed New Moots

This Committee is tasked with considering all invitations or suggestions that we participate in mooting opportunities that we received since last year's report. Before we began, we reviewed the existing oral advocacy competitions to which we are already committed:

1. Arnup Cup Trial Advocacy Competition (advanced round for one extra credit: Sopinka Cup),
2. Bowman Tax Moot,
3. Callaghan Moot,
4. Client Counselling (uncredited, possible advanced round in Europe),
5. Corporate Securities Moot,
6. Fox Intellectual Property Moot (best non-graduating oralist and partner attend Oxford Int'l IP Moot),
8. Gale Cup (in alternate years there is an invitation to participate in the Commonwealth Moot),
9. Isaac Diversity Moot (winners are invited to compete in Frederick Douglass competition in US),
10. Jessup Moot (advanced rounds in Washington DC, then Paris),
11. Kawaskimhon Competitive Moot Advanced Aboriginal Studies,
12. Labour Arbitration Competition,
13. Laskin Moot,
14. Walsh Family Law Moot,
15. Walsh Family Law Negotiation Competition,
16. Willms & Shier Environmental Law Moot (alternate years),
17. Wilson Moot,
18. Winkler Class Actions Moot.

The criteria by which we assess new mooting opportunities are student interest and demand; student eligibility; cost; supervisor expertise and availability; pedagogical value; overall diversity of mooting opportunities; faculty's overall curricular priorities; prestige, reputation & profile of the moot; and timing. In recent years the Committee has stressed the pedagogical value factor, and added six upper year subject related moots: Tax Law, Environmental Law, Family Law, Family Law Negotiation, Intellectual Property, and Class Action). With the addition of these six moots, the program has expanded by 50% in the recent years.

This year we considered the following proposals. Some were invitations directly from the competition organizers, some were suggested by students, and some were passed on to us by faculty:

1. Alternative Dispute Resolution Mooting Competition
2. Canadian National Negotiation Competition
3. The Clara Barton IHL Competition Committee
4. Day of Crisis Competition

5. Gujarat National Law University International Moot Court Competition
6. Hicks Morley Labour Law
7. Mandela Human Rights Moot Court Competition
8. Manfred Lachs Space Law Moot Court Competition
9. Nuremburg Moot Court
10. Stetson International Environmental Moot Court Competition

The committee determined that none of these invitations or suggestions warranted further expansion of the upper year program this year. The committee discussed at some length the possibility of participating in the Hicks Morley Moot, a proposed first-year moot. Given its focus on labour law, coupled with organizational issues we have had with this competition in past years, the committee advises against joining this moot.

The committee recognizes that there is a great appetite for additional mooting opportunities in the first year of the J.D. program. Although any new opportunities for mooting in first year would necessarily be extra-curricular, the desirability of participating would depend on a number of factors similar to those applied to proposed new upper-year moots. The committee has no specific recommendations about first-year mooting. However, the co-chair of the committee (Professor Stewart) has agreed to meet with the student Moot Court Committee to discuss this matter.

Clinical Education

This year, what had previously been two separate committees of Faculty Council (the Mooting and Advocacy Committee and the Clinical Education & Experiential Learning Committee) were combined into one. The committee understands that there are connections between all of these topics. The committee also appreciates the desirability of streamlining committee work. Nevertheless, the Committee's experience was that our discussions were dominated by one aspect of our mandate while other aspects were relatively neglected. The committee therefore recommends that, for 2017/18, the Dean return to the practice of establishing separate committees for mooting and advocacy, on the one hand, and clinical education, on the other.

International Mooting Opportunities

a. The Gale Moot and the Commonwealth Moot

The course description for the Gale Moot includes the following note:

Note: The first place team at the Gale Moot competes internationally at the Commonwealth Cup in September. The Commonwealth Cup is held every three years. Students who advance to the Commonwealth will receive one additional credit which will be given in the same form that the first three credits are given.

The Commonwealth Moot is not an additional round of the Gale Moot. The Gale Moot is a Canadian moot; the problem to be mooted at the Commonwealth Moot is different from the Gale Moot problem. But the organizers of the Commonwealth Moot use the Gale Moot as a mechanism for selecting participants from Canada. The website for this year's Commonwealth Moot states (<http://commonwealthlawconference.org/15th-commonwealth-moot/>):

The Commonwealth Moot is an initiative of the Commonwealth Legal Education Association (CLEA) and the Commonwealth Lawyers Association (CLA) with judges drawn from the membership of the Commonwealth Magistrates and Judges Association. It is an 'invitation-only' Moot, being limited to representatives from regions of the Commonwealth. Teams are selected from regional competitions or nominated by regional representatives.

The practice has been for the organizers of the Commonwealth Moot to invite the winning team in the Gale Moot to attend as the representative for the North American region. It can happen that, for one reason or another, the winning team declines the invitation, in which case the organizers may invite another team. So it is possible that, as occurred this year, our Gale Moot team might be invited to the Commonwealth Moot despite not finishing first in the Gale Moot. Moreover (although these are minor points) our understanding that the Commonwealth Moot has recently been held in alternate years (2013, 2015, and 2017); and it is not always in September (this year, it is in March).

To take into account the procedures by which the Commonwealth Moot chooses participants, the committee recommends that the note at the end of the course description for the Gale Moot be amended to read as follows:

Note: The organizers of the Commonwealth Moot invite a team from the Gale Moot, normally the first place team, to participate. The law school will support the participation of Gale Moot team members who are selected to participate in the Commonwealth Moot. The Commonwealth Moot is held every two years. Students who compete in the Commonwealth Moot will receive one additional credit which will be given in the same form that the first three credits are given.

b. Participation in International Moots in General

The committee's discussion of the relationship between the Gale Moot and the Commonwealth Moot led the committee into a general discussion of the law faculty's policies and practices about participation in international moots. Since each moot has its own structure and rules, it is difficult to state a general policy on this issue. The Jessup Moot, for example, is structured so that the international rounds are in effect additional rounds of the domestic moot, as they involve the same problem. The law faculty has always supported the Jessup team when it is invited to participate in international rounds. The route by which the Gale Moot can lead to international participation is discussed above. The Fox Moot is different again. The Fox Moot is a domestic intellectual property moot. The sponsors of this moot offer, as a prize, an opportunity for the top non-graduating oralist and a partner to attend the Oxford Moot. The Oxford Moot is not an

additional round of the Fox Moot but involves a different problem. As the course description explains:

The student who wins Best Non-Graduating Oralist at the Fox Intellectual Property Moot is invited to attend this moot and provided with external funding. The student's partner in the Fox may enrol in this competition as well. If that partner has graduated, or does not wish to participate, the student Moot Court Committee will select a student for the second position on the U of T team.

The Oxford International Intellectual Property Moot is held annually in Oxford over a weekend in March. It is hosted by the Oxford Intellectual Property Research Centre and organized by a committee of DPhil and FHS students with an interest in intellectual property. The competition invites teams from universities around the world to prepare written submissions and present oral argument on each side of a hypothetical intellectual property law problem set by experts in the field.

Moreover, the possibility that the law faculty's participation in a moot will involve further international mooting is one of the factors taken into account when the committee considers proposed new moots. Typically, we would choose to participate in full awareness of this possibility (as with the Jessup, the Gale, and the Fox), or we would not participate at all, so an issue of further international mooting would not arise.

Given the variety of ways in which the faculty is and might be invited to send teams to international moot competitions, it might be said that drafting a distinct policy to deal with participation in international moots would be redundant. Nevertheless, the committee was generally of the view that it would be desirable to clarify that the law faculty does have discretion to participate in mooting opportunities that arise unexpectedly, for example where the faculty is required to respond to an invitation within a time frame that does not permit the committee to consider the desirability of participation in the usual way. The exercise of this discretion would likely include reference to the criteria that are applied to new mooting opportunities (see above). The committee therefore recommends that the office of the associate deans draft a statement to that effect.

c. Alternative funding arrangements

These discussions led to a further discussion about the possibility of students' funding their participation in a moot in some manner other than being directly supported by the law faculty: that is, "self-funding" or otherwise raising funds to participate in moots which the law faculty has chosen not to join. The general prohibition on students' self-funding or privately raising funds for their participation in moots can be justified on the basis of equity between students. But it is also a consequence of the distinction, applicable to all members of the university, between doing something as a member of the university and doing something as an individual. Students are not invited to moots as individuals. The organizers of moot competitions normally invite law schools to participate, and each school has its own procedures for deciding whether to participate, how to choose the participants, how to fund their participation, whether to grant credit, etc.

These procedures could include raising money for the specific purpose of supporting a particular moot, and that would be a decision for the law faculty to make (as when the Callaghan Moot was established in 1995). But they would not include self-funding or *ad hoc* fundraising.

If there was a moot competition which invited a student to participate as an individual (a hypothetical situation we spent some time discussing in the committee), then the law faculty would have nothing to say about that, just as the law faculty has nothing to say if a student chooses to enter a chess tournament or to try out for a spot on an Olympic team. Moreover, the law faculty has nothing to say if a student who is, for example, a friend of a member of a moot team chooses to accompany that moot team to a competition. In none of these cases would the student participate in the event as a member of the university.

Student members of the committee indicated that they would like to be able to read the law school's policy concerning self-funding or fundraising. The committee is not entirely sure whether such a policy already exists in writing and, if so, how it would relate to the university's policies on fundraising.¹ If such a policy does not already exist in writing, the committee recommends that the dean's office draft a document concerning the law school's fundraising practices that would also speak to the issue of self-funding and so could be referred to if necessary.

Respectfully submitted,

Hamish Stewart
Co-Chair

¹ Relevant university policies would include the Provost's Guidelines on Donations (<http://www.provost.utoronto.ca/policy/donations.htm>) and the Governing Council's Guidelines on Fund Raising Strategy (<http://www.governingcouncil.utoronto.ca/Assets/Governing+Council+Digital+Assets/Policies/PDF/ppmar012004.pdf>). The law faculty's website includes the following link concerning fundraising: <http://www.law.utoronto.ca/alumni/giving-law-school> .