

## MOOT CLARIFICATION QUESTIONS & ANSWERS

### **Question #1:**

Victory Motors / Jansen would presumably not be seeking to challenge all aspects of the BCCA decision. This suggests to us that calling Victory Motors / Jansen pure “appellants” may not fit their exact role, in the sense that in a real proceeding they would presumably be cross-appeal respondents to question 1 if Actton appealed those issues further.

This may make drafting the “appellant’s factum” on issue 1 difficult, as the “appellants” would in fact be supporting the result reached by the BCCA rather than wanting it overturned.

Please provide guidance if possible.

### **Answer #1:**

Question 1 of the Moot Problem is to be viewed in the context of the BCCA sending the issue of apportionment of liability back to the trial judge for consideration. Assume that instead of going back to the trial judge, Victory Motors / Jansen appealed the entire matter to the Supreme Environmental Moot Court of Canada, including seeking a decision from the Supreme Environmental Moot Court of Canada about the apportionment of liability.

The Appellants must provide their rationale supporting the BCCA decision regarding Certificates of Compliance in light of the order that the matter is remitted back to the trial judge on the apportionment of liability issue.

### **Question #2:**

Can you confirm that the Respondents in the Moot will be representing Super-Save?

### **Answer #2:**

The Respondents in the Moot represent Actton Super-Save Gas Stations Ltd. Please see Answer #1 for further context.

**Question #3:**

Are we limited to the arguments advanced in the BCCA or BCSC decisions and/or factums from these decisions, or can we advance new arguments and new sources to support those arguments?

a) If so:

- (i) Can the new sources be secondary sources? Or are new sources limited to case law and legislation?
- (ii) Can we use other areas of law to provide an analogy and/or illustrate a written or oral argument?

**Answer #3:**

Mooters are bound by the facts as set out by the lower Courts. As with other appellate courts, mooters cannot introduce new evidence.

Mooters may rely on new arguments and new sources to support arguments on appeal provided that it is not new evidence.

**Question #4:**

Are the appellant and respondent parties correctly identified in the factum templates?

**Answer #4:**

Yes. Please see Answer #1 for additional clarification.

**Question #5:**

It appears to us that there is a cross-appeal situation that is not addressed in the instructions. We understand that there are two issues on appeal. However, only one of the issues is logical for the appellant to appeal (the issue of costs). The appeal judge ruled in Victory Motors'/Jansen's favor on the other issue (the issue of benefit). We are wondering why the moot is not structured as a cross-appeal. As it stands, we are unsure whether we should address both issues or only the one that the appellant should indeed appeal, based on the outcome of *Victory Motors (Abbotsford) Ltd. v. Acton Super-Save Gas Stations Ltd.*, 2021 BCCA 129.

**Answer #5:**

Please see Answer #1.

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