

MOOT CLARIFICATION QUESTIONS

Question 1:

- 1 Based on our reading of the problem, it is unclear whether the distinction between a “regulatory charge” and a “tax” is expected to be addressed when responding to question 2, or is this perhaps something that teams are free to consider as part of their arguments if they so choose?

Answer:

It is for each team to decide whether to argue that the fuel charge under Part 1 of the *Greenhouse Pollution Pricing Act* (the “Act”) is a valid regulatory charge or tax, and to address the distinction.

Question 2:

- 2 Are teams able to freely raise new issues on appeal and/or depart from their clients’ positions in the courts below in either attacking or defending the constitutionality of the Act? Or, must they justify doing so with reference to appellate principles on when a new issue may be raised?

Answer:

Teams are free to raise new issues/arguments on appeal and/or depart from their clients’ previous positions. However, as with other appellate courts, teams may not introduce new evidence when raising new issues/arguments.

Question 3:

- 3 Can we introduce new arguments into our factum that our client(s) did not present at the Supreme Court of Canada in their factums and oral arguments? By “new arguments”, we mean something such as: “the *Greenhouse Gas Pollution Pricing Act* is constitutional under a branch of the “peace, order, and good government” power other than National Concern”.

Answer:

See answer to Question 2.

Question 4:

- 4 Are other Supreme Court of Canada decisions binding on the Supreme Environmental Moot Court of Canada? What is the relationship between the Supreme Environmental Moot Court of Canada and other courts, such as the Supreme Court of Canada and the Ontario Court of Appeal?

Answer:

The Supreme Environmental Moot Court of Canada is the Canadian appellate court of last resort that addresses matters appealed from lower courts – including the Supreme Court of Canada and provincial courts of appeal. The doctrines of precedent and *stare decisis* apply as if it were the Supreme Court of Canada.

Question 5:

- 5 Please confirm whether each team will be able to watch the other teams compete during the Moot or during the various mooting rounds.

Answer:

Teams are not permitted to watch other teams compete during the Moot or during the various mooting rounds until after that team has been eliminated from the competition. See the Supplemental Rules and Best Practices for Virtual Moots, Rule 13.14 (Spectators), which sets out that

The Moot Administrator will arrange to broadcast a livestream of all oral matches for public view. Spectators and coaches are welcome to watch the livestream, subject to Rule 13.12, Unsporting Behaviour. Coaches and spectators shall not join an oral match via Zoom or enter the physical room in which counsel present oral argument during an oral match. Teams are responsible for ensuring that affiliated spectators do not engage in disruptive behaviour and do not reveal the team's identity on social media or otherwise before its identity has been officially revealed at the awards ceremony. Team members shall not share their virtual login information with spectators.

For reference, the Rules, Rule 13.12 (Unsporting Behaviour) provides that

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.

Question 6:

- 6 Please confirm whether rule 8.2 speaks to teams within a specific faculty competing in the Moot only, or is to be understood more generally, e.g. all teams competing in the Moot.

Answer:

The Rules, Rule 8.2 (Assistance from Other Teams) applies to all teams competing in the Moot (i.e. not limited to teams within a specific faculty), and is subject to the Rules, Rule 8.1 (General Rule), and the Supplemental Rules and Best Practices for Virtual Moots, Rule 13.14 (Spectators).

Question 7:

- 7 Please confirm what our team should do if we lose our internet connection during a moot round and/or the other team loses its connection.

Answer:

Please see the Supplemental Rules and Best Practices for Virtual Moots, Rule 13.10 (Ex Parte Proceedings and Technical Failures) which provides that

The Moot Administrator and teams shall make every effort to ensure that any initial connection problems are resolved before the scheduled start time of an oral match. If for any reason only one or no member of a team is present in the virtual courtroom at the scheduled start time of an 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 team that is present 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.

If a judge's or oralist's connection is interrupted during an oral match, the Moot Administrator and the person whose connection is interrupted shall make best efforts to restore the connection. This may include the competitors calling into the match by telephone.

If a judge's connection is interrupted for more than thirty seconds during an oral match, the other judges or the bailiff shall suspend the match and stop the timekeeping clock to allow the connection to be restored. If the connection is not restored after two (2) minutes, then:

- a) If at least one other judge is connected to the match, the remaining judge(s) shall resume the match while efforts to reconnect the affected judge(s) continue; or
- b) If no other judges are connected to the match, the match shall remain suspended until at least one judge is connected and resumes the match or the scheduled match time expires, whichever is earlier. If none of the judges are connected, the Moot Administrator may appoint a single new judge to view the match.

If an oralist's connection is interrupted for more than thirty seconds while they are presenting oral argument or when their time to present oral argument begins, the judges or the bailiff shall suspend the match and stop the timekeeping clock to allow the connection to be restored. If the connection is not restored after two (2) minutes, then the senior judge shall resume the match by calling on the next oralist in line to present oral argument, while efforts to reconnect the affected oralist(s) continue. If an affected oralist is reconnected and time permits, the senior judge shall allow them to resume their oral argument at whatever point in the proceedings and for whatever duration the senior judge deems appropriate in the circumstances.

Notwithstanding rule 13.1, in the event of connection problems affecting a judge, oralist, or both, the senior judge may shorten the time available to one or more oralists for oral argument, change the order of argument, or both, to accommodate any delays occasioned by technological problems. The senior judge shall strive to allocate any such changes equitably between the teams. Judges will evaluate oralists' performance in light of any disruptions and adjustments occasioned by connection problems. For greater clarity, judges should not penalize oralists for connection problems.

If, due to connection problems during a match and notwithstanding any efforts or adjustments made pursuant to the preceding paragraphs, no oral argument is presented for a given team, that team shall forfeit the match. If no oral argument is presented for either team, both teams shall forfeit the match.

All judges who are connected at the end of an oral match shall participate in deciding the match, regardless of whether they were disconnected for a portion of the match. In deciding the match, a judge may rely on their own observations and on information provided by other judges about what they did not observe.

Question 8:

- 8 Please confirm whether any non-substantive questions (i.e. based on the Moot rules) may be asked after December 9, 2021.

Answer:

Questions about the Rules and Supplemental Rules and Best Practices for Virtual Moots may be asked leading up to and during the Moot.

Question 9:

- 9 Please confirm whether communications with other teams (within a given faculty) during the Moot competition itself and with non-competing teams during mooting rounds are prohibited/permitted.

Answer:

Communication with other teams during the Moot competition is subject to the Rules, Rule 8.1 (General Rule) provides that

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.

Rule 8.2 (Assistance from Other Teams) provides that

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.

Rule 8.3 (Restriction on Assistance After Elimination) provides that

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.

Question 10:

- 10 Please confirm whether Rule 13.16 excludes the computer(s) which the team/team members will use to compete in the Moot, and any electronic devices which the team members may use to communicate with one another and the coach during the Moot or mooting rounds.

Answer:

Please refer to the Supplemental Rules and Best Practices for Virtual Moots, Rule 13.16 (Electronic Devices) which provides that

Devices such as desktop computers, laptops, tablets, or smartphones are permitted at the virtual counsel table for the purposes of: (a) logging into and participating in the moot; (b) communicating with co-counsel in accordance with rule 13.13; and (c) 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 the virtual counsel table during the oral argument round to communicate with any individual not otherwise participating in the oral argument round, including coaches or other team members not at the virtual counsel table, or to search for any content or authorities not prepared or compiled in advance of the oral argument round.

Question 11:

- 11 Is counsel for the Appellant limited to only the shared arguments of the provinces or are they permitted to utilize any portion of any province’s arguments to craft the Appellant’s argument?

Answer:

See answer to Question 2.

Teams are permitted to utilize any portion of any province’s arguments and/or to raise new issues/arguments on appeal. However, teams may not introduce new evidence.

Question 12:

- 12 With respect to the second question on appeal: “is the fuel charge under Part 1 of the Act *intra vires* Parliament as a valid regulatory charge or tax?” [emphasis added], are counsel required to make submissions respecting Part 1 of the Act as both a tax and a regulatory charge? Or may counsel make submissions that Part 1 of the Act is either a tax or a regulatory charge, without necessarily addressing it as both?

Answer:

See answer to Question 1.

It is for each team to decide whether to make submissions that Part 1 of the Act is a valid regulatory charge or tax in the context of addressing “both a tax and a regulatory charge” or “either a tax or a regulatory charge”.

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