

Melbourne Sweeps Charter of Rights Moot Competition

Two Melbourne University Teams Face Off in Annual Moot Final

By Erica Conti

The court room fell silent, and the tension was palpable, as the three judges took their seats before two nervous University of Melbourne teams. Senior counsel for the Appellant had barely introduced himself before Justice Chris Maxwell, President of the Victorian Court of Appeal, interrupted with the first probing question from the bench. From the tone and complex nature of the questions asked, it was clear that these students were going to be treated the same as any barrister appearing before the Court of Appeal. And so the scene was set for the final of the 2nd annual Castan Centre Charter of Rights Mooting Competition.

This year's competition saw teams from Monash University, the University of Melbourne, La Trobe University and Victoria University arguing a number of human rights issues arising under the *Victorian Charter of Human Rights and Responsibilities Act 2006*, which came fully into force on 1 January this year. Students had only a couple of days in which to research this complex legislation and prepare arguments. This task proved a challenging one given the fledgling nature of the Charter – only a few cases have thus far been decided involving the Charter – forcing teams to undertake research into comparable international jurisprudence.

All teams participated in the two preliminary rounds of the moot, which were judged by solicitors from Clayton Utz, the generous sponsor of this mooting competition.

This year's semi-finals were judged by barristers Simon McGregor, Richard Wilson, Gabi Crafti and Alistair Pound and Clayton Utz partners Fred Hawke and Andrew Stephenson. The judges heard impassioned arguments relating to police conduct during an outbreak of an unknown deadly virus in a remote community in Victoria. At the end of the semi-final both University of Melbourne teams were victorious, leading to a Melbourne University showdown in the final.

Colleagues, friends, family, and other spectators filled the Court of Appeal to capacity, and no one was disappointed with the quality of mooting exhibited. The final was once again presided over by Justice Maxwell, Judge Anthony Howard of the County Court, and Dr Helen Szoke, CEO of the Victoria Equal Opportunity and Human Rights Commission. At issue was a police raid of a polygamous community to remove all children, and the subsequent detention without a bail hearing of a 15-year-old girl who resisted police attempts to separate her from her family.

Devon Whittle, Rebecca Hughes and Dimitri Ternovski for the Appellant, passionately advocated a violation of their client's right to family life and privacy, to liberty and security, and to be treated humanely while detained. The judges took issue with the fact that the Appellant's actions were not all innocent, as she had attacked an officer, and this may have warranted a limitation of her rights. Christopher Hibbard, Michael Power, and Laura Bellamy represented the Respondents (the Victoria police and prison authorities). They were asked to justify why polygamous families should be afforded less rights than monogamous families.

The controversial nature of the issues at hand led to some very tense moments and some rather surprising questions from the bench as the judges challenged competitors' evasive responses. The mooters, however, handled themselves with utmost professionalism and further demonstrated their impressive grasp of the subject matter with their intelligent and timely responses to the barrage of questions they received.

In a tightly fought battle, the team for the Respondent narrowly won, taking home the \$3,000 prize, courtesy of Clayton Utz. The runners up received a prize of \$1,000. We are delighted to announce that the moot is assured of a future in Victoria thanks to Clayton Utz's undertaking to continue sponsoring the competition for the next two years. As Clayton Utz Melbourne managing partner Brad Vann said, the firm was pleased to support the Castan Centre with such an



The Moot Final bench of Judge Tony Howard, Dr Helen Szoke and Justice Chris Maxwell in chambers prior to the moot. (Photo reprinted courtesy of Thomas Kane)



Rebecca Hughes addressed the bench while solicitor for the opposing team, Laura Bellamy, looks on. (Photo reprinted courtesy of Thomas Kane)



All six moot finalists. (L-R) Devon Whittle, Laura Bellamy, Rebecca Hughes, Dimitri Ternovski, Michael Power and Chris Hibbard

initiative. "We look forward to continuing our association with the Castan Centre and its important work in the area of the research and teaching of human rights law", he said.

The level of competition through all rounds of the moot was outstanding and mooters demonstrated an excellent understanding of the Charter and its application in judicial proceedings. Monash University mooter Divina Naidu reflected on the experience, "Mooting was always something I wanted to do but was never brave enough to actually take the plunge! After being in the human rights moot, I value it as one of my most memorable experiences at law school. The thrill and exhilaration I got from arguing my case and questions from the bench was immeasurable. It really opened my eyes to the reality of the legal arena, and the fact that it was human rights based was a bonus"

Dr Paula Gerber, the Castan Centre Deputy Director responsible for organising the moot, commented that "the competition is achieving its aim of ensuring that future generations of lawyers are fully conversant with the Charter, a piece of legislation they will undoubtedly have to deal with once they enter the legal profession."



Michael Power preparing to speak to the court. (Photo reprinted courtesy of Thomas Kane)

The Hypothetical Scenarios

In each round, competitors were required to conduct a mock appellate-court trial about a hypothetical situation. The situations were designed to elicit arguments on a number of rights protected under the Victorian *Charter of Human Rights and Responsibilities Act 2006*.

Competitors were given the problems 48 hours before each round (4 days before the semi-final) and were required to submit a written memorandum listing all cases they would be relying on, and outlining their arguments, by midday on the day of the moot. Teams were made up of three people: two "barristers" would each speak for 20 minutes and a "solicitor" would assist in research and writing and be available to provide assistance to the barristers during the moot.

First and Second Rounds

Two Finnish students were reprimanded by the school principal for speaking to each other in their native tongue. They formed a group to protest about archaic teaching standards and adopted a logo with the motto "Rise Up Against Teacher Oppression" written in Finnish. When they staged a sit-in after class, they were expelled and the principal forcibly removed the patches from their clothes and bags. The logos and the group were subsequently banned from the school. The Finnish students allege that their rights relating to cultural rights, freedom of speech, and freedom of association and assembly were violated.

Semi Finals

Victoria police quarantined a small remote town when there was an outbreak of an unknown virus believed to be derived from the town cattle. The under-staffed police force ordered town members to assist in rounding up and slaughtering the allegedly contaminated cows to help prevent the spread of the disease. The appellant, a devout Hindu, argues that Victoria police violated his freedom of religion and movement, freedom from forced labour and right to property, by requiring him to take part in the slaughter, and by not allowing him to leave the town borders to bring his son the medication he needed.

Final

A polygamous community was raided by the authorities and all children in it removed. The appellant, a 15-year-old girl, was one of the children in question. She was detained without a bail hearing and argued that her rights to family life, privacy, liberty and security, and to be treated humanely while detained, were violated. Her own actions, however, were not all innocent as she attacked an officer, which may have warranted a limitation of her rights. In this case, Victoria Police and prison authorities are asked to justify why polygamous families should be afforded less rights than monogamous families.

All moot problems are on the website. Judge's guides for each problem are available to educators on request.