

2008 Moot Final Problem

15-year-old Apryl Irving is Mormon girl living in a very remote part of Victoria. Apryl's parents and family practise a traditionalist form of the Mormon religion adopted from the United States and live in a polygamous community (an aspect of the religion which is unique to the more traditionalist form of the religion Apryl practices). Apryl was born and raised as a Mormon in this community and was actively involved in church activities. She even taught religious classes to younger children in the community. Polygamy is a core part of the community's religious beliefs and Apryl wrote a paper on its inherent importance within the faith, for her Civics class in school.

The small community is self sufficient in that it provides education facilities for all children within it. Apryl was educated in accordance with the Victorian State educational curriculum. Apryl is extremely close to her immediate family having never been away from them for an extended period of time. Apryl also looks after her two younger brothers and sister when her parents are attending to issues within the community.

The existence of the community and its polygamous practices came to the attention of the Victoria Police which decided to execute a warrant for the arrest of the polygamous members of the community and a custody order to remove the children from the community because it felt that the wellbeing of the children was in jeopardy on account of living within such a community. The arrest and custody order were both properly proscribed by law and carried out on a Saturday. After police arrived at the community they informed the adults that their children would be taken to a Child and Family Services centre to be placed with out of home carers until their cases for breaches of the common law prohibition on polygamy were heard before a judge. The parents did not want their children to be separated from them and protested the police officers' actions. The police then started to forcibly separate all children from their parents. Apryl and her three siblings were forced to move to a different area of the community with the rest of the children.

The police then further separated the children into boys and girls so the children could be sent to appropriate out of home carers. At this point, being faced with separation from her brothers, Apryl picked up a rock and threw it at the police officer closest to her. It hit the officer in the eye, causing serious injury. At this point, the other children started to retaliate against the police, kicking and scratching and throwing anything they could find at the police officers. The police finally got the situation under control and put the children onto a number of buses and transported them to the Child and Family Services Centre. On account of her actions, Apryl and a number of other children were taken to the local government run prison which is designed to hold adult prisoners (there is no youth detention facility within 300km of the community) to await a hearing on charges for violations of the *Crimes Act 1958* (VIC) on account of assaulting a member of the police force in the due execution of duty.

At the prison, Apryl was put into a cell with the other girls from the community that had also attempted to fight off the police. In their haste, however, the police had put all young looking people into the same cell and on account of this, Apryl was imprisoned with four other members of the community, all of whom were just over 18

years old. One of the girls, Karin, had been arrested previously for attacking another girl in the community. Apryl was concerned about being in the same cell with her and told the guard of her concerns. The guard informed Apryl that there was limited room in the prison (there was only one other cell and it was occupied by male occupants) and it would be impossible for them to move her to a different cell. Since it was the Queen's birthday long weekend, and due to the remoteness of the community, the guard informed Apryl that she would be brought before a judge on Tuesday morning and would then be removed from the cell. After waiting in the cell for two and a half days, the group started to become restless. Karin started fighting with one of the other girls in the cell. Apryl called out to the guards for help but was knocked unconscious by another girl before the guards were able to stop the fight. Apryl suffered serious trauma to her head on account of the punch she received.

Apryl sued the Prison and the Victoria Police for negligence and also for a violation of her rights under the *Victorian Charter of Human Rights and Responsibilities Act 2006*. She claims that the forced removal from her parents and siblings and the raid breached her right to protection of families and children as well as their privacy. Furthermore she argues that her rights under the Charter were further breached including the right to liberty and security of person, and her right to humane treatment when deprived of liberty on account of the delay in bringing her before a judge and for the prison's failure to protect her from harm while imprisoned, as well as her rights as a child in the criminal justice system.

The court at first instance found that the Charter had been appropriately raised in relation to the cause of action (and thus mooters do not need to address this issue in the moot), however it found no breaches of the Charter and she is appealing that decision. Additionally, mooters are to assume that the arrest warrant and custody order to remove the children were properly proscribed by law. Students are reminded that this is a human rights moot competition and therefore should focus their arguments **on the substantive human rights violations** and not the legality of the actions taken by police and prison guards (other than their impact on human rights).