

2009 Castan Centre Human Rights Moot Final Problem

Stephanie Munroe has finished her supervised workplace training (formerly an articulated clerkship) and has applied for admission to practice as a lawyer in Victoria. In high school, Stephanie had always been a shy student and at one point, one of her high school teachers suspected that she may have a mild anxiety disorder. Stephanie's parents, however, did not want to believe that their daughter was anything but perfect, so she never sought any help for this perceived problem.

At the start of her law degree, Stephanie thought it would be a good idea to participate in her school's first year moot competition so she could gain some practical experience in being a lawyer. Unfortunately, she had a panic attack while she was mooting and had to withdraw from the competition before she was able to complete her submission before the judges. She was very embarrassed about the incident, and the team she had mooted against made fun of her for the rest of her first year.

During her second year of law school, things did not get any better. The pressure of law school started to take its toll on Stephanie and she started to suffer from depression. Her depression was clinically diagnosed by her GP, and she started to take a mild anti-depressant medication. While her depression never prevented her from carrying out her law studies, she did see a therapist weekly for a year, and as a result of the counselling was able to go off the medication. Stephanie did not tell her parents or any of her friends that she was seeing a therapist, or on medication, because she was embarrassed about her illness and did not want to have to face the negative social stigma that is sometimes associated with seeing a therapist and having a mental illness. She also did not want to have to face being made fun of again for her health problems.

The sessions she had with her therapist helped her immensely, and while the therapist did warn her that depression could always come back, she was feeling very confident about herself, and her future. From her third year on, she started to excel in her studies and did not suffer from any further bouts of depression. Her academic success culminated in her achieving a graduate traineeship position with a leading Melbourne law firm.

Stephanie has finally completed her traineeship and sought to be admitted as a legal practitioner. As she read through the *Legal Practice (Admission) Rules 2008* (Vic), she came across Rule 5.02(1)(b) which states that she has to make a written statement disclosing information about any of the suitability matters set out in the *Legal Profession Act 2004* (Vic) that may be relevant to her application for admission. The *Legal Profession Act 2004* states that whether the person currently has a material mental impairment is a suitability matter. She then went on to read the Board of Examiners' (BoE) Practice Direction regarding the requirement to make disclosures for applications for admission to practice, which states that "an applicant who has suffered from a mental impairment, including alcoholism or drug dependence, should disclose this".

From her reading of the legislation and the Practice Direction, she believes that she is required to disclose her past problems with depression, her panic attack, and possibly the anxiety disorder her high school teacher perceived, even though none of these illnesses are

currently affecting her, and have not for several years. Stephanie does not think it is fair that she should have to disclose this information to the BoE as it is private and does not relate to her current ability to practise law, even though she knows the depression can always come back. She also does not want the stigma of mental health to undermine her career and hurt her ability to get clients. Moreover, Stephanie believes this matter is none of the BoE's business. Furthermore, she is afraid that the information she discloses will be on the public record, and therefore accessible through a freedom of information request, should one be made.

Stephanie did not want to lie to the board, so when she submitted the documents in support of her admission to the BoE, she noted in her disclosure statement that there was some matter that constituted a suitability matter which she was unwilling to disclose to the BoE for personal reasons. The BoE inquired further into her fitness to be admitted and Stephanie refused to disclose the possibly relevant information on account that it breached her right to privacy. She did, however, inform the board that her matter concerned section 1.2.6(1)(m) of the *Legal Practitioner Act 2004*. On this basis, the board decided not to recommend to the Supreme Court that Stephanie was a fit and proper person to be admitted.

Stephanie was unhappy with this outcome and decided to appeal the BoE's decision to the Supreme Court pursuant to section 2.3.11 of the *Legal Profession Act 2004*. In her appeal, Stephanie argued that forcing her to reveal her past mental illness to the BoE was unjustified and would breach her human rights as protected by the *Victorian Charter of Human Rights and Responsibilities Act 2006*, particularly her rights to privacy and reputation. Furthermore, this requirement also breached her ability to take part in public life by not allowing her to join the Victorian public service as an officer of the court on account of her being refused admittance or could negatively impact upon this right in the future due to her past conditions potentially hurting her chances of successfully running for public office.

At the commencement of the Supreme Court hearing, Stephanie made an application to refer whether the legislative scheme is incompatible with human rights or whether the BoE has acted unlawfully, to the Court of Appeal, pursuant to s 33 of the *Charter*. The Supreme Court felt that the matter was appropriate to be determined by the Court of Appeal and has referred the matter to the Court of Appeal for a decision.

Stephanie will appear before the Court of Appeal as the Applicant, arguing that the legislation breaches her rights and the Board of Examiners will be arguing the case as the Respondent.