

# **CASTAN CENTRE CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES ACT MOOT**

## **– Guidelines for Participants –**

### **INTRODUCTION**

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Welcome to the 3<sup>rd</sup> annual **Castan Centre Charter of Human Rights and Responsibilities Act Moot**. The moot will involve teams from Deakin, La Trobe, Melbourne, Monash and Victoria Universities.

The *Charter of Human Rights and Responsibilities Act 2006* (Vic) (“the Charter”) provides a legislative framework for the protection and promotion of human rights within Victoria. The Charter protects civil and political rights, primarily drawn from the *International Covenant on Civil and Political Rights 1966*. It does this by obliging Parliament to consider human rights in developing new legislation, by requiring public authorities to act in ways that are compatible with the human rights in the Charter, and by requiring courts and tribunals to interpret Victorian law consistently with human rights as far as possible. In a country that does not yet have a national Bill of Rights or Human Rights Act, the Charter represents a significant step in the advancement of human rights. It is therefore an important piece of legislation for Victorian lawyers.

The Moot gives students the opportunity to learn more about the nature of the rights covered in the Charter, the protection offered by the Charter, and the role the Charter can play in litigation. The Castan Centre hopes to raise the profile of the Charter among law students, who in the future will have the capacity to incorporate the Charter into their legal practice.

The Castan Centre for Human Rights Law, located at Monash University, uses research and public education to promote and protect human rights. The Centre aims to foster the understanding and implementation of domestic and international human rights law. The Castan Centre would like to thank Clayton Utz for its generous sponsorship and support of the Moot. We also wish to thank our counterparts at the four partner universities who have contributed to making this annual mooting competition such a success.

These Guidelines for Participants provide all the details that mooters should require, as well as some general pointers and background information on mooting.

## **MOOTING – THE BASICS**

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### **Physical Layout of the Court**

The moot rooms will replicate the layout of a Court. The judges will sit behind tables at the front of each room. Counsel sit facing the judges, with Senior Counsel sitting closest to the middle of the room. Instructing solicitors sit facing Counsel with his or her back to the Bench. Counsel for the Appellant sits to the judges' right, and Counsel for the Respondent sits to the judges' left.

### **Dress Code**

All competitors should wear appropriate business attire.

### **Breakdown of a Moot**

1. *Appearances*: Senior Counsel for the Appellant and then Senior Counsel for the Respondent will introduce their teams to the bench – i.e. “If it pleases the Court, my name is ..... and I appear as Senior Counsel for the Appellant/Respondent, with my Junior Counsel .....”.
2. *Appellant’s submissions*:
  - Senior Counsel will address the Court (≈ 20 mins)
  - Junior Counsel will address the Court (≈ 20 mins)
3. *Respondent’s submissions*:
  - Senior Counsel will address the Court (≈ 20 mins)
  - Junior Counsel will address the Court (≈ 20 mins)
4. *Right of reply*: either party may request a right of reply from the presiding judges. The judges will have full discretion to decide whether or not to grant a right of reply.
5. *Judges’ deliberation*: competitors leave the room to allow the judges time to score the moot.
6. *Judges’ decision*: the judges will declare which team has won. They may also give general comments on the teams’ performances

NB: At the beginning of his/her submission, the Senior Counsel should briefly outline the points to be covered by the Senior and Junior Counsel respectively. This can be done by simply highlighting the main submissions in the written Memorandum of Argument. At the conclusion of his/her submissions, the Junior Counsel should summarise the Appellant/Respondent’s overall case.

### **Formalities**

Moots are conducted in an atmosphere of formality to reflect that of a real court. Here are some court formalities to keep in mind:

- “*My learned friend, Mr/Ms \_\_\_\_\_*” = the opposition.
- “*My learned leader*” = Junior Counsel referring to Senior Counsel.
- “*If your Honour pleases*” = OK / thank you, or acknowledging a rebuke or decision from the Bench.
- “*The learned Justice \_\_\_\_\_*” = Justice \_\_\_\_\_.
- “*With respect your Honour*” or “*With great respect your Honour*” = when disagreeing with the judge (use with caution!).

## Judges' Titles in the Court of Appeal of the Supreme Court

The court, for the purposes of this moot, is acting as the Court of Appeal of the Supreme Court of Victoria. Accordingly, you should use the following formalities:

- Address an individual judge as “Your Honour”.
- When you wish to address all judges, you say “Your Honours”.
- When mentioning a decision, refer to a single judge by name as “Justice\_\_\_\_\_”, and subsequently as “His/Her Honour”.
- Refer to several judges by name as “Justices\_\_\_\_\_ and \_\_\_\_\_.”
- Use “Justice\_\_\_\_\_, as he then was” to refer to a judge who was later promoted (not to refer to a judge who retired from that office).

## Citations

Correctly citing cases is vital in a moot and will earn you marks. Citing incorrectly is glaringly obvious.

**WRITTEN:** Please follow the citation format set out in the *Australian Guide to Legal Citation* (2<sup>nd</sup> ed, 2002). Italicise the names of the parties. The year of the decision appears in round brackets “( )”. Use the square brackets “[ ]” if the report is not identified by volume number. Always use authorised reports such as CLR, AC or VR where possible. Only use ALR or ALJR if the case is not reported in the authorised reports. For cases from jurisdictions outside Australia, please follow the format set out in the *Australian Guide to Legal Citation* as closely as possible.

**ORAL:** The way citations are read is quite different to the way they are written. Senior Counsel should seek leave of the Court to dispense with formal citations. He/she should do this immediately after having fully cited the first case referred to in his/her oral submission. If permission is granted to dispense with full citations, counsel should cite only the names of the parties (eg *New South Wales v Fahy*). When giving a full citation:

- Always say the names of the parties in full.
- “R” is read as “*The Crown*”
- The “v” is read:
  - “and”: civil cases
  - “against”: criminal cases
  - **Never** use “versus”
- Round Brackets: (1987) 162 CLR 431 is read: “*Decided in 1987 and reported in Volume 162 of the Commonwealth Law Reports at page 431*”.
- Square Brackets: [1950] 2 All ER 1099 is read: “*Reported in 1950 in Volume 2 of the All England Reports at page 1099*”.

## TEAMS

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1. Each university must enter two teams.
2. Each university’s nominated coordinator will be responsible for choosing or accrediting the teams which will represent the university.
3. Each team must consist of three members (where practicable), being two barristers and an instructing solicitor. Team members may rotate between Senior Counsel, Junior Counsel and Solicitor as they see fit.

4. Competitors must be in the equivalent of at least third year of a combined law degree or in any stage of a JD degree. It is preferable that competitors have completed some studies in human rights law.
5. No team member may have completed a law degree in any jurisdiction.
6. Teams must be registered with the Castan Centre Project Officer by no later than **Friday, 14 August 2009**.

## **COMPETITION STRUCTURE**

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1. The Competition will run over two weeks during which there will be two Preliminary Rounds, one Semi Final and the Grand Final as follows:
  - Round 1: Monday 31 August 2009
  - Round 2: Thursday 3 September 2009
  - Semi Final: Monday 7 September 2009
  - Grand Final: Thursday 10 September 2009
2. All moots will be held in the evenings at Clayton Utz, Level 18, 333 Collins Street, Melbourne, except for the Grand Final, which will be held at the Victoria Court of Appeal, in the Red Court.

## **DRAW AND RELEASE OF QUESTIONS**

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1. All moot problems will be based on questions of law arising from the *Charter of Human Rights and Responsibilities Act 2006* (Vic).
2. The same problem will be mooted in both Preliminary rounds. This problem will be released at 5:00pm on Friday 28 August 2009 on the Castan Centre website (<http://www.law.monash.edu.au/castancentre/>). The draw will also be displayed on the Castan Centre website at this time. As far as possible, the draw will be constructed so that two teams from the same university do not moot against each other.
3. In Round 1, teams 1 to 5 will represent the Appellant and teams 6 – 10 will represent the Respondent.
4. In Round 2, roles will swap, so that teams 1 to 5 will represent the Respondent and teams 6 – 10 will represent the Appellant.
5. Immediately following the conclusion of Round 2, the top four teams and the draw for the Semi Final will be announced. The new problem for the Semi Final will also be released at this time. The Semi Final draw will be constructed randomly, but where possible efforts will be made to ensure that two teams from the same university do not moot against each other.
6. Calculation of the top four teams will be based primarily on each team's win/loss ratio.

- If two teams have the same win/loss ratio and have faced off against each other in either preliminary round, the winner of that moot will be ranked higher.
  - If two teams have the same win/loss ratio and did not face off against each other in either preliminary round, their rankings will be determined based on which team has a higher win/loss percentage in terms of points received over both preliminary rounds (similar to the AFL Percentage system). If however, a team has won by virtue of a forfeit, the team to go through to the next round will be the team who had the greater percentage margin in the round in which there was no forfeit.
  - The Semi Finalists will be allocated to Appellant or Respondent by random draw.
7. The winning team from each Semi Final proceeds to the Grand Final. The two Grand Finalists teams will be announced at the conclusion of the Semi Final. The Grand Final problem will also be released at this time. The Grand Finalists will be allocated to Appellant or Respondent by random draw.
  8. The winners of the Grand Final will be announced during the awards ceremony at the Essoign Club immediately following the Grand Final moot..

## **PREPARATION AND RESEARCH**

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1. Research and preparation for the moots must be conducted solely by the team members. Outside assistance, whether from academics or practitioners, is prohibited and may result in penalties or disqualification from the moot. The role of each university's co-ordinator is to assist teams in clarifying the rules of the moot, but not to offer assistance with respect to substantive content.
2. Unless otherwise stated, all moots will be heard as if before the Court of Appeal of the Supreme Court of Victoria.
3. Base your arguments **solely** on legal issues arising under the Charter. You do not need to argue other points of law (i.e. criminal law, tort law, contract law) unless otherwise stated.
4. Since the Charter is a relatively new and unique piece of legislation for Victoria, you should not limit your research to jurisprudence within Victoria alone, but rather, should expand your research to include jurisprudence on similar Charters/Bills of Rights, both within and outside of Australia; these may provide relevant guidance on the legal issues.
5. Procedural submissions may not be made during the moot.

## **WRITTEN SUBMISSIONS**

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1. For each round, each team shall submit a written Memorandum of Argument.

2. The Memorandum is due by 12:00pm on the day of the moot. Penalties apply for late submission.
3. Memoranda must be submitted as an attachment to an email to [castan.centre@law.monash.edu.au](mailto:castan.centre@law.monash.edu.au). The filename for the submission should include your team name (i.e. La Trobe 1).
4. The Memoranda will be emailed by the Castan Centre to opposing counsel by 3pm on the day of the moot.
5. The Memorandum must be 1.5 spaced and set out in 12 point Times New Roman font with 2.5 cm margins on the right and left, and 2.5 cm margins on the top and bottom. It must be **no longer** than three pages in length and contain:
  - the names of the team members and their roles;
  - allocation of speaking time;
  - an outline of the team's arguments (Note: the outline should only highlight the issues the team will focus on. It should NOT be a summary of the oral arguments and is designed merely to avoid any surprises regarding your arguments); and
  - a list of all cases, treaties, and other authorities/jurisprudence on which the team will rely.

## **THE MOOTS – ON THE NIGHT**

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1. The timing for each round of the competition is as follows:
  - First Preliminary Round: there will be a brief welcome at 5.15pm and the moots themselves will commence at 5.30pm. Contestants should arrive by 5.00pm. Drinks will follow at 7:00pm.
  - Second Preliminary Round: the moots will commence at 5.30pm. Drinks will follow at 7.00pm and the announcement of the teams progressing to the Semi Final will be made at 7.30pm. Contestants should arrive by 5.15pm.
  - Semi Finals: the moots will commence at 5.30pm. Drinks will follow at 7.00pm and the announcement of the teams progressing to the Grand Final will be made at 7.30pm. Contestants should arrive by 5.15pm.
  - Grand Final: the moot will commence at 5:30pm in the Red Court of the Victoria Court of Appeal, with drinks afterwards, at the Essoign Club, where the winning team will be announced. Contestants should arrive at the court by no later than 5.15pm.
2. Each team will be allocated 40 minutes of speaking time, to be divided between Senior and Junior Counsel as they see fit. Note that this division should be stated in the team's Memorandum of Argument.
3. Judges may grant extra time for a speaker if they feel this is appropriate or necessary. This is at the sole discretion of the judges. Penalties will apply for exceeding the allocated length of time without the permission of the judges.
4. There is no right of reply, and any reply is within the discretion of the judges.

## **JUDGING**

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1. Judges in the Preliminary Rounds will be predominantly solicitors from Clayton Utz. There will be at least two judges presiding over each of these moots.
2. Judges in the Semi Finals will be Clayton Utz lawyers or other members of the profession. There will be at least two judges for each of the Semi Final moots.
3. There will be three judges presiding over the Grand Final. It will be presided over by his honour, Justice Maxwell, President of the Court of Appeal, Judge Tony Howard of the County Court and Ms Helen Szoke, CEO of the Victorian Equal Opportunity and Human Rights Commission.
4. Judges will be provided with a marking schedule (set out below) which they will complete for each advocate in the moot. Teams are strongly advised to read this marking schedule and to keep the marking criteria in mind when preparing for each moot.

5. Each judge will award each advocate a mark out of 100. These marks will be allocated as follows:

Organisation of the presentation	20 Marks
Development of arguments	25 Marks
Answering Questions from the bench	25 Marks
Speaking ability and delivery	25 Marks
Written submissions	5 Marks
<b>Total</b>	<b>100 Marks</b>

The scores out of 100 for the Senior and Junior Counsel will be added together to calculate a final score out of 200 for the team.

6. Judges will submit their completed scoring sheets to the Competition Convenor or a person nominated by her at the conclusion of each moot.
7. Judges may give verbal feedback to participants at the conclusion of each moot.
8. Scores from both Preliminary Rounds will be released to teams following the second Preliminary Round. Scores from the Semi Final will be released at the conclusion of the Semi Final, and once the Grand Finalists have been announced.

## **PENALTIES**

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1. The following penalties apply:
- *Late submission of Memorandum of Argument*: loss of two marks per 15 minute period after noon on the day of the moot during which the Memorandum of Argument is late.
  - *Incomplete Memorandum of Argument*: loss of two marks for not including in the team's Memorandum of Argument the name of a case, statute or other authority cited by the team in their oral submissions.
  - *Continuation of oral submissions beyond the time limit without the express permission of the bench*: loss of two marks for every minute or part thereof.
2. Judges do not have the discretion to dispense with these penalties.
3. Where a penalty is levied against a team, the penalty will be divided equally amongst counsel for that team.
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## **FORFEITURE**

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1. Any team that forfeits a moot will be deemed to have lost that moot. Counsel for the forfeiting team will be deemed to have a mark of zero for that moot.
2. Any team whose opponent forfeits a moot will be asked to make an ex parte submission which will be scored. This team will be deemed to have won that moot.
3. Any team which forfeits a moot is excluded from competing in the Semi Final or Grand Final.

## **PRIZES**

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The prizes for Moot are:

- Winning team – \$3,000
- Runner Up team – \$1,000

**GOOD LUCK!**

**Dr Paula Gerber  
Deputy Director  
Castan Centre for Human Rights Law**