

CASTAN CENTRE HUMAN RIGHTS MOOT

– 2018 Guidelines for Participants –

INTRODUCTION

Welcome to the 12th annual **Castan Centre Human Rights Moot**.

In Victoria, three pieces of legislation deal with protecting human rights. The primary document is the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (“the Charter”) which provides a legislative framework for the protection and promotion of civil and political rights within Victoria. The Charter protects rights, primarily drawn from the *International Covenant on Civil and Political Rights*. 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 *Equal Opportunity Act 2010* (Vic) (“EOA”) makes it unlawful to discriminate in various areas of public life on specific grounds including age, sex, disability, race, and marital status. The EOA also outlaws sexual harassment and makes it unlawful to victimise someone for making a complaint about discrimination, sexual harassment, or racial and religious vilification.

The third piece of legislation that protects human rights in Victoria is the *Racial and Religious Tolerance Act 2001* (Vic) (“RRTA”). This act makes racial and religious vilification unlawful as well as victimising people for complaining about such vilification. Complaints under the RRTA are brought before the Victorian Equal Opportunity and Human Rights Commission.

The Moot gives students the opportunity to learn more about the nature of the rights covered in the Charter and other human rights legislation in Victoria, the protection offered by these laws, and the role they can play in litigation. The Castan Centre hopes to raise the profile of these human rights instruments among law students to enable them to develop their skills in analysing and applying these laws so that in the future they will have the capacity to incorporate human rights 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 thanks our counterparts at our partner universities who have contributed to making this annual moot 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

Physical Layout of the Court

The moot rooms replicate the layout of a court. The judges 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. 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 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 give general comments on the teams' performances, but will not announce the winners.

NB: At the beginning of their 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 their 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, Ms/Mr/Mx _____*” = 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 she 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* (3rd ed, 2010). 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 a 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/they should do this immediately after having fully cited the first case referred to in his/her/their oral submission. If permission is granted to dispense with full citations, counsel should cite only the names of the parties (e.g. *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

1. Each Victorian Law School is permitted to enter up to two teams, other Australian Law Schools can enter one team. Additional teams may be entered only with the prior permission of the Castan Centre.
2. The competition has a maximum capacity of 16 teams via first in best dressed. Once 16 teams are registered there is a waiting list available.
3. Each university may have a nominated delegate who is responsible for choosing and accrediting the teams which will represent the university. This may either be a faculty member or a representative of a law student body. If there is a delegate all entries for that university must be approved by the delegate.
4. If a university does not have a delegate students may enter a team directly by contacting the Castan Centre. If more than one team from a single university wishes to enter in this manner, the first team (or teams for Victorian universities) to enter will take that universities allocated place/s.
5. Each team must consist of either two or (ideally) three members, being two barristers and an optional instructing solicitor. Team members may rotate between senior counsel, junior counsel and solicitor as they see fit.
6. Each team will be allocated a number and will be known throughout the competition by that number.
7. It is preferable, though not compulsory, that competitors be in the equivalent of at least third year of a combined law degree or in any stage of a JD degree, and have completed some studies in human rights law.
8. A person is ineligible to be part of a team if they have completed all the coursework components of a law degree in any jurisdiction, even if they have not yet graduated.
9. Teams must register with Castan Centre Project Officer, Alice Dowling by submitting a completed team details form to alice.dowling@monash.edu
10. Once registered there is an entry fee of \$500 (plus GST) which must be paid by the closing date. Payment can be made through [the Castan Centre Human Rights Moot homepage](#) or by contacting contact Castan Centre Administrator Janice Hugo on 03 9905 3327.
11. Please wait until your payment is confirmed by the Castan Centre before booking any flights / accommodation.
12. Teams who withdraw forfeit their entry fee unless the space they vacate can be filled by another paying team.

COMPETITION STRUCTURE

1. The Competition is run over 3 days during which there are two Preliminary Rounds, one Quarter Final (TBC), one Semi Final and the Grand Final as follows:

Round 1: Tuesday 25 September 2018, 12:00 PM
(Monash Law Chambers, 555 Lonsdale Street Melbourne VIC 3000)

Round 2: Tuesday 25 September 2018, 5:00 PM
(Monash Law Chambers, 555 Lonsdale Street Melbourne VIC 3000)

Quarter Final: Wednesday 26 September 2018, 12:00 PM (TBC)
(Monash Law Chambers, 555 Lonsdale Street Melbourne VIC 3000)

Semi Final: Wednesday 26 September 2018, 5:00 PM (TBC)
(Monash Law Chambers, 555 Lonsdale Street Melbourne VIC 3000)

Grand Final: Thursday 27 September 2018 5:30 PM
(Court of Appeal, 459 Lonsdale Street, Melbourne VIC 3000)

2. All moots will be held in at Monash University Law Chambers except for the Grand Final, which will be held at the Victorian Court of Appeal.
3. A Quarter Final will only be held if 11 or more teams are entered into the competition.

DRAW AND RELEASE OF QUESTIONS

1. All moot problems will be based on questions of law arising from Victorian human rights legislation including the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*, *Equal Opportunity Act 2010 (Vic)*, and *Racial and Religious Tolerance Act 2001 (Vic)*. Students will be notified at the release of the problem if the moot problem is based solely on the Charter or whether the other Acts referred to above are to be relied upon as well.
2. The same problem will be mooted in all rounds of the competition. The problem will be released on the date specified on the Castan Centre [website](#) and also emailed to each team's designated contact.
3. The draw will be displayed on the Castan Centre website and also emailed to each team's designated contact.
4. If there is a forfeit or withdrawal from the competition the draw may be altered to avoid a bye. The draw may be varied up until 12 hours before the moot. Therefore all teams should be prepared to moot either side, with both written and oral submissions prepared.
5. If a forfeit or withdrawal results in an uneven number of teams one team will have a bye for that round. This team is taken to have won that moot but will be required to make an ex parte submission to be scored. For the purpose of

overall ranking their opponent's score will be deemed to be the average of all other teams scores in that round.

6. Any team which forfeits a moot is ineligible to compete in any final.
7. In Round 1, half of the teams will represent the Appellant and the other half will represent the Respondent.
8. In Round 2, the roles will swap. The teams that represented the Appellant in round 1 will represent the Respondent in round 2 and vice versa, but against different opponents.
9. Following the conclusion of Preliminary Round 2, we will either
 - announce the top eight teams and the draw for the Quarter Final, or
 - announce the top four teams and the draw for the Semi Final, if there are to be no Quarter Finals.
10. Calculation of the team ranking following the preliminary rounds will be by the following method:
 - Teams will be ranked by number of wins.
 - Where two teams on the same number of wins have competed against one another in a preliminary round, the winner of that moot will be ranked higher.
 - Subject to (b), teams with the same number of wins will be ranked by percentage (total points for divided by total points against).
11. Teams will compete in the Quarter finals (TBC) as follows (numbers representing the order in which they were ranked after the preliminary rounds): 1 v 8, 2 v 7, 3 v 6, 4 v 5
12. Teams will compete in the Semi finals as follows (numbers representing the order in which they were ranked after the quarter finals): 1 v 4, 2 v 3
13. In all Finals rounds, if the competing teams have already faced each other in an earlier round, they will take the opposite side (Appellant / Respondent) than the side they represented in the previous moot. If the competing teams have not already faced each other, the sides will be determined by a coin toss.
14. The two Grand Final teams will be announced at the conclusion of the Semi Finals.
15. The winners of the Grand Final will be announced immediately following the Grand Final moot.

PREPARATION AND RESEARCH

1. Research and the substantive content of the moot submissions must be solely the product of the team members. Any outside assistance beyond the coaching permitted by these rules, whether from academics or practitioners, is prohibited and may result in penalties or disqualification from the moot.

2. Each team may have one coach. Teams from the same university may share the same coach or may have different coaches, or no coach.
3. The coach's role is limited to general guidance and preparation, such as presiding over practice moots and instructing teams on advocacy techniques, and broad advice as to the merit or lack of merit of various arguments proposed by the team. All research and the content of the arguments presented in the moot must be strictly the students' own work.
4. Unless otherwise stated, all moots will be heard as if before the Court of Appeal of the Supreme Court of Victoria.
5. You should base your arguments on legal issues arising under the Victorian human rights legislation. You do not need to argue other points of law (i.e. criminal law, tort law, contract law) unless otherwise stated.
6. 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.
7. Procedural submissions may not be made during the moot.

WRITTEN SUBMISSIONS

1. For each round, each team shall submit a written Memorandum of Argument.
2. Memoranda must be submitted as a pdf attachment to an email to Castan Centre Project Officer Alice Dowling (alice.dowling@monash.edu). The filename for the submission should be formatted as follows (i.e. Team 1 – Respondent – Round 2)
3. If there is NO quarter final
 - Memorandum for each moot are due by:
 - 3:30pm **the day before** for round 1 and 2
 - Midnight the day before for the Semi Final
 - Midnight the day before for the Grand Final
 - Memorandum for each moot will be emailed to opposing teams by:
 - 6:30pm **the day before** round 1 and 2
 - 9:00am the day of the Semi Final
 - 9:00am the day of the Grand Final
4. If there IS a quarter final
 - Memorandum for each moot are due by:
 - 3:30pm **the day before** for round 1 and 2
 - Midnight the day before for the Quarter Final
 - 3:30pm the day of the Semi Final
 - Midnight the day before for the Grand Final
 - Memorandum for each moot will be emailed to opposing teams by:
 - 6:30pm **the day before** for round 1 and 2
 - 9:00am the day of the Quarter Final

- 4:30pm the day of the Semi Final
 - 9:00am the day of the Grand Final
5. The Memorandum must be 1.5 spaced and set out in 12 point Times New Roman font with 2 cm margins on the right and left, and 2 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, legislation and other authorities/jurisprudence on which the team will rely.
 6. You need to include all authorities you are intending to use in your oral argument in the written submission. But this will not exclude you from using an additional authority in response to a question from the Bench or in response to a specific argument that has been made by the opposing side.

ORAL SUBMISSIONS

1. Each team is allocated 40 minutes total speaking time. It is recommended that this is to be divided between senior and junior counsel evenly, but it is up to the teams to divide as they wish.
2. Teams should be prepared to answer questions from the bench during their speaking time, and be prepared to adjust their presentation timing as a result.
3. Either team may request an extension of time from the presiding judges. The judges will have full discretion to decide whether or not to grant an extension of time.
4. Continuation of oral submissions beyond the time limit without the express permission of the bench will result in a loss of two marks for every minute or part of.
7. 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. No electronic devices are permitted to be used by any member of a team during oral submissions.

THE MOOTS – ON THE NIGHT

1. The timing for each round of the competition is as follows:
 - First Preliminary Round: there will be a briefing at 12.15pm and the moots will commence at 12.30pm sharp. Contestants should arrive by no later than 12.00pm.

- Second Preliminary Round: the moots will commence at 5.30pm and the announcement of the teams progressing to the Semi Final will be made at approximately 7.30pm. Contestants should arrive by 5.15pm.
 - Quarter Final (TBC): the moots will commence at 12.30pm and the announcement of the teams progressing to the Semi Final will be made at approximately 2.30pm. Contestants should arrive by 12.15pm.
 - Semi Finals: the moots will commence at 5.30pm 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 with the winning team announced following the moot. There will be drinks to follow the moot. Contestants should arrive at the court by no later than 5.15pm.
2. Spectators are welcome but no team member, or representative of any team, may attend the moot of a team that they may compete against in a future moot.

JUDGING

1. Judges in the Preliminary Rounds and any Quarter Final will be predominantly lawyers and academics. There will be at least two judges presiding over each of these moots.
2. Judges in the Semi Finals will be predominately senior lawyers or members of the Victorian Bar. 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.
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
Total	100 Marks

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 Castan Centre staff 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, once the Quarter or Semi Finalists have been announced.
9. Scores from any Quarter Final will be released at the conclusion of the Quarter Finals, once the Semi Finalists have been announced.
10. Scores from the Semi Final will be released at the conclusion of the Semi Final, once the Grand Finalists have been announced.

PENALTIES

1. The following penalties apply:
 - *Late submission of Memorandum of Argument*: loss of two marks per 15 minute period after the allocated time for submitting the Memorandum of Argument.
 - i. NB: If a team's memorandum is received late, the competition organisers must notify the team and the judges prior to the commencement of the moot. If this is not done, the penalty will not be levied.
 - *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.

GOOD LUCK!