

Mooting Competition looks at mandatory minimum sentences

By Erica Contini



Timothy Lau of Team 4 argues the respondent's case



Catherine Eglezos of Team 9 gets a question from the bench

After reading the story of an 18 year old learner driver being caught drunk driving at twice the speed limit just days before the release of the 2010 Charter of Rights Moot Problem, we were assured our moot problem wasn't a far-fetched scenario. In the problem, a 17 year old girl gets caught driving while disqualified a second time and is automatically sentenced to one month's detention in a youth justice centre. The reason for her driving a second time unlicensed? An attempt to save her dying grandmother who had suffered a severe stroke. One might ask how a juvenile offender could be subjected to a mandatory sentence of imprisonment without taking into account the circumstances surrounding the offence, given the existence of the *Victorian Charter of Human Rights and Responsibilities Act 2006*. The answer to this lies in section 30 of the *Road Safety Act 1986* which specifies a mandatory minimum sentence of imprisonment for a second offence of driving while disqualified. The moot problem asked whether this section is compatible with the Victorian Charter.

Ten teams from Victorian law schools competed in the 4th annual Charter of Human Rights and Responsibilities Moot Competition, which has been generously sponsored by Clayton Utz. During the preliminary rounds each team had the opportunity to represent the appellant and the respondent before Clayton Utz solicitors who served as the judges. Tough questioning ensued from the group of seasoned solicitors. After one of the closest preliminary rounds in the history of the competition, the semi finalists were two teams from La Trobe University, and one each from Monash University and Melbourne University.

The semi final saw mooters addressing some of the more technical aspects of the Charter as they refined their arguments.

Students grappled with the recent Court of Appeal decision in the Momcilovic case (see story on page 16) with some questioning the soundness of that decision. The students were challenged by questions from the bench consisting of Melbourne barristers Simon McGregor, Chris Young, Anna Forsyth and Richard Wilson, all of whom are well versed in the Charter. Three of the four barristers had judged moots in previous years of the competition and commented on how students' grasp of the Charter had improved. In the end, Team 9 won the all-La Trobe semi final, and Melbourne University beat Monash in the other match-up.

During the Grand Final, Isobelle Jones, Catherine Eglezos and Leigh Howard from La Trobe University represented the appellant while Brendan Fitzgerald, David Foster and Timothy Lau from Melbourne University represented the Respondent. Held again at the Court of Appeal, the moot was presided over by his honour, Justice Maxwell, President of the Court of Appeal, the Honourable Judge Felicity Hampel of the County Court and Professor Spencer Zifcak, Allan Myers Chair of Law at the Australian Catholic University. Newcomers to the competition, Judge Hampel and Professor Zifcak hesitated for barely seconds before interjecting with questions for the mooters. With what at times felt like non-stop questioning from the bench, the Grand Final was a sight to see. In the end, the judges declared Melbourne University victorious and they took home the grand prize of \$3000 while the La Trobe team received \$1000 for finishing second. Brendan Fitzgerald, from Melbourne University, was awarded best speaker. The moot competition could not be such a success without the help of the coordinators from each university, and the support of Clayton Utz staff and the Court of Appeal.