

Same-sex adoption the focus for Mooting Competition



(l-r) Dr. Paula Gerber, the Honourable Judge Felicity Hampel, her Honour Justice Marcia Neave and Professor Spencer Zifcak.

The 2011 Charter of Rights Moot once again gave students the opportunity to test their advocacy and legal analysis on a scenario drawn from the *Victoria Charter of Human Rights and Responsibilities Act 2006*. This year's problem focused on a same-sex couple who want to adopt the foster child in their care. Despite meeting all the normal requirements for adoption, their application is denied in the County Court. The judge cites sections 10A and 11 of the Adoption Act, which limit adoption to individuals and heterosexual couples. The same-sex couple refuse to adopt individually and instead make a claim to the Court of Appeal. The moot problem asks whether preventing a same-sex couple from adopting a child breaches their human rights.

Ten teams from Victorian law schools competed in the 5th annual Charter of Human Rights and Responsibilities Moot Competition, which has been generously sponsored by Clayton Utz. During two preliminary rounds, teams from Monash, Melbourne, Deakin, La Trobe and Victoria Universities had the opportunity to represent the appellant and respondent before Clayton Utz solicitors who served as the judges. This year the preliminary rounds were incredibly close, with only a handful of points separating the top four teams (two each from Melbourne University and Monash University) who eventually progressed to the semi-finals.

In both semi-finals Monash University and Melbourne University battled it out for a place in the Grand Final. Their submissions faced even more scrutiny under the questioning of the bench which consisted of Melbourne barristers Simon McGregor, Richard Wilson and Alistair Pound, and Sally Sheppard from Clayton Utz. After a round in which the more technical aspects of the Charter came to the fore, both Melbourne University teams emerged victorious, ensuring an all-Melbourne Grand Final.

Nerves were running high by the time the Grand Finalists got up to present their cases in the Court of Appeal before a very

distinguished bench. Presiding over the moot was her honour, Justice Marcia Neave 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. Representing the same-sex couple appellants were Thomas Bland, Glyn Ayres and Julia Freidgeim. Emma Poole, Nahal Zebarjadi and Jennika Anthony-Shaw represented the State of Victoria. The appellants submitted that the Court of Appeal's decision in *Momcilovic* was wrong – a brave move considering Justice Neave had been involved in that decision. The respondents on the other hand, submitted that the County Court interpreted the relevant provisions of the Adoption Act compatibly with the Charter in not making the adoption order. Unsurprisingly, questions from the bench came thick and fast, and it was a real pleasure to see the students respond so well under pressure.

In the end, the judges declared the appellant team the winners, the second year running a Melbourne University team has won the competition. They took home \$3,000 while the runners-up received \$1,000. Once again the moot competition was a great success thanks to the help of the coordinators from each university, and the support of Clayton Utz staff and the Court of Appeal.

The 2011 competition was again generously supported by Clayton Utz.



Glyn Ayres from Team 3 argues the appellant's case.