

DE MINIMIS

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The Charter's Here to Stay... For Now

The Baillieu's government's decision to retain the Victorian Charter of Human Rights and Responsibilities has been welcomed by the legal community.

Recommendations of a Liberal/National dominated review body, the Scrutiny of Acts and Regulations Committee (SARC), have been rejected.

However, the government has deferred a decision on the operation of the Charter in the courts until it receives legal advice

Attorney-General Robert Clark said in light of recent High Court and Court of Appeal cases the government

requires further advice.

Mr Clark said the government would also consider possible inclusion in the Charter of additional rights from the International Covenant on Civil and Political Rights.

The Law Institute of Victoria supports the Government's decision to retain the Charter and said it appeared that the Government had listened to the overwhelming evidence provided to support the benefits of the Charter for all Victorians.

LIV President Michael Holcroft said many lawyers breached a "collective sigh of relief" following the announcement last week.

Mr Holbrook highlighted that 95 per cent of submissions received by the SARC supported retention of the charter.

Public Interest Law Clearing House executive director Fiona McLeay agreed that the Government had made the right decision and had taken community feedback on board.

"As a service that provides free legal services to some of the state's most disadvantaged people, we have seen first-hand that the Charter has led to better quality public services and fairer outcomes for our clients," Ms McLeay said.

-Emma Hendersen

ICC's First Conviction

This week the International Criminal Court (ICC) marked a milestone with the delivery of its first guilty verdict.

The court found Thomas Lubanga guilty of the war crime of 'conscripting and enlisting children under the age of fifteen years and using them to participate actively in hostilities' in his native Congo.

The conviction comes more than six years after Lubanga became the first person ever arrested under an ICC arrest warrant. In 2006, Congolese authorities arrested Lubanga and transferred him into ICC custody.

Unlike the International Court of Justice (ICJ), the ICC prosecutes individuals. Proceedings before the ICC may be initiated by a State Party, the Prosecutor or the United Nations Security Council (even though the ICC is not part of the United Nations system). The ICC was set up in 2002 as a permanent tribunal to prosecute individuals for crimes against humanity.

Former United States President Bill Clinton signed the Rome Statute which established the ICC, however the treaty has not been ratified in the US, which has argued that the court could be used to pursue politically motivated prosecutions. Former President George Bush "unsigned" the treaty. Other major powers including Russia, China and

India have declined to sign and/or ratify the treaty.

Human Rights Watch has hailed Lubanga's conviction as 'a warning to rights abusers.' The Lubanga trial has contributed to raising awareness about the plight of children forced to go to war. Children were so prevalent in Lubanga's Union of Congolese Patriots that the force was known as "an army of children." All parties to DRC's war in Ituri used children as soldiers. Children are still in the ranks of armed groups and the Congolese army, and in some areas of Congo children are being actively recruited, including by force'.

The Lubanga verdict comes immediately in the wake of the 'Kony 2012' video, which captured the world's attention.

The concept of war crimes first arose in the twentieth century, with the first war crimes trials being held in Nuremberg (1945-6) and Tokyo (1948).

The Optional Protocol on the Involvement of Children in Armed Conflict, an amendment to the Convention on the Rights of the Child, was introduced in 2002 and later signed by more than 120 nations.

-Bronwen Ewens

JUDGMENT WATCH

Katter, ballots and bigotry — *McLindon and Katter's Australian Party (Qld Division) v The Electoral Commission of Queensland* [2012] QSC 44

Everyone's favourite banana-blocking, ultra-conservative climate change denier Bob Katter and his colleague Aidan McLindon quietly sought an injunction to stop the Electoral Commission of Queensland printing ballot papers they claimed are invalid. The ballots list 'The Australian Party' rather than 'Katter's Australian Party' and the claimants alleged this is an unauthorised abbreviation pertaining to the State and Federal Electoral Acts.

In the Supreme Court of Queensland, Atkinson J found that the claims were largely unsubstantiated and that the election would go ahead; despite the requests of Katter's party that it be deferred to allow the ballot papers to be amended.

Atkinson J deftly stated that 'it is in the public interest in a parliamentary democracy for democracy for elections to take place' and refused the

injunction. The case will continue to the High Court as the claimants are also alleging that s 102(2)(g) of the Queensland Electoral Act, which allows for the use of abbreviations, is void for inconsistency with the equivalent Federal legislation, and that it also presents an impermissible burden on freedom of political communication.

Atkinson J, who is swiftly finding a place in my top ten serving judges, repeatedly stated that although he should refrain from expressing so he thought the arguments were null.

It's been a big couple of weeks for Katter — his rampantly homophobic ad campaigns, mining tax disputes and now a High Court challenge must be getting him all sweaty under his novelty-sized cowboy hat.

It would be comical if his insufferable form of prejudice wasn't so popular.

Gender bias and will-making — *Omari v Omari* [2012] ACTSC 33

The daughter of a Canberran woman has challenged her mother's will that saw her bequeathed only half of what her brothers were granted. The defendants alleged that Muslim tradition requires sons get twice the shares of daughters, and that the deceased was deeply religious.

The two sons stated they'd explained the will to their ailing mother who couldn't read English before she signed it with her thumbprint. The court found that the deceased wanted the will made in accordance with her faith, but concluded that due to her lack of testamentary capacity caused by a dementing illness the will was invalid.

The estate was granted to the Public Trustee to sort between the feuding siblings.

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THIS WEEK IN LEGAL HISTORY

March 19, 1474 - Venice Passes First Ever (Written) Patent Law

On this day in 1474, this Italian island city cemented its status at the forefront of Italian commerce when the Venetian senate enacted the world's first written patent law. The *Venetian Statute of 1474* was issued by the Republic of Venice in a bid to encourage foreign innovators in craftwork, while offering protection for Venice's local (and lucrative) glass-blowing trade.

and ingenious contrivance' must be reported to the Provveditori di Comun (State Judicial Office) as soon the invention could be used, exercised or put into practice. This conferred legal protection against potential infringement for a period of 10 years. The Republic also had discretion to extend the protection period to 25 years for special inventions.

Violation of infringement could result in a fine of up to 100 ducats (fetching probably ~8,000 USD today).

coveted glass-making skills elsewhere, the need for similar patent protection arose across Europe. It would be another 149 years before the enactment of the English *Statute of Monopolies of 1623*, upon which Australia bases its system of patent law.

For more patently interesting technology trivia, visit

www.wired.com/science/discoveries/news/2008/03/dayintech_0319

-Annie Zheng

The law decreed that 'any new

As Venetians began taking their



L IS FOR...

Lecturer-bashers.

No, I have not misspelt the title.

Every semester, week 3 rolls around and everyone is raging over who they *didn't* get as their lecturer. Facebook has been rife this last week with people questioning the quality of their lecturers; what subject does this Kony dude teach anyway?

As far as Facebook goes, it seems the pithier you can make your lecturer-insults the cooler you are. Firstly, I feel it redundant to highlight the lameness inherent in that practice. Secondly, I also feel it redundant to highlight the paradox inherent in highlighting something that doesn't need highlighting. And finally, arguments are always more convincing if you say three things.

The main problem is that once a lecturer accrues a reputation, the student hate festers until week 9 arrives and Quality of Teaching forms are released. I feel a sincere sympathy for lecturers who suffer student unpopularity because as the faculty regularly remind us, they take the polls very seriously (cue impassioned and disingenuous spiel on faceless men).

To all this you respond: haters gawn hate. But why? Why are the haters going to hate?

As far as I can tell, lecturer-bashing is premised on a sense of entitlement. Every JD feels they deserve the best; it's like Christmas dinner with Gina Rinehart's family.

"I pay high fees so I deserve a high quality of teaching" I was told when I asked an imaginary JD what shim thought. To that I say: "Well have you done adequate preparation before you suffer this allegedly poor

teaching?" to which shim replied "no", because it was in line with the angle of this article.

In an age where people would sooner sling mud than offer praise, I quote a personal hero of mine, a lyrical genius, a modern Shakespeare: "people got me, got me questionin', where is the love? Love? Where is? The love? Where is? The love? Where is? The love? The love? The love?"

On that note, I have decided to end this piece with an open letter to all Melbourne Law School lecturers:

Hey there friend. I love and respect what you do. You have cool taste in music and I love when you do that thing you do...

... please give me an H1.

Charles Hopkins will appear on the Today show this week, if he can get close enough to the back window with a dumb sign.

ASK AGONY AUNT

Dear Agony Aunts,

In order to cope with the workload while juggling work and internship applications, I have become a caffeine addict. All the coffee is making it hard for me to fall asleep. How do I stop?

Caffeine Addict

Dear Caffeine Addict,

Coffee, as everyone in the building knows, is one of the essential ingredients to surviving law school. Which is why the coffee prices at the

nearby cafes could give airport coffee a run for its money. It is, however, a delicate balancing act. You need to keep in mind that after reaching the ideal level of alertness, the excess won't make you any brighter-eyed or bushier-tailed.

Auntie Ethel understands that there are now some new-fangled things called 'Apps' that will keep tract of your optimal caffeine consumption. But if you are not a fan of gizmos, try swapping out coffee for tea in the afternoons, and getting some exercise so you can be tired enough to fall asleep. A nice cup of herbal tea before bed works nicely for Auntie Ethel,

especially while reading a particularly dry judgment for your class, where the author seems to have taken great liberty with the punctuation (or rather the lack there of), and ignored minor issues such as using words that don't actually exist in the English language.

If you get really desperate, go cold turkey for 24 hours, after which a smaller coffee will be just as effective as the vat of coffee you are probably swilling down now. Just ensure you only do this on a day where you can avoid all human contact, for the safety of both yourself, and the public.

-Aunt Ethel

Getting to know Paula O'Brien

In the 20 years since she began her law degree, Paula O'Brien has been an editor of MULR (at the same time as Andrew Mitchell and Catherine Button), worked for one of Australia's largest firms (Minter Ellison) progressed to PILCH (Public Interest Law Clearing House), became a senior lecturer at MLS, and completed a Masters degree at Cambridge.

Law as a Lifelong Career and the Ability to Remain Driven

Paula is adamant that law is a lifelong career. What does this mean? That the first job you get out of law school will almost certainly not be your last, and the area of law you start in is probably not the only one you're going to engage in professionally.

But how does one get a sense of direction with so many options out there? Paula uses a number of techniques that encourage success.

Most importantly, "do what you're passionate about."

How does one identify their passions? The most significant tool is self-reflection. "Set time aside to think about yourself. These are deep personal questions, they are not going to be answered in one go. Write down your thoughts so you can reflect back on them. Talk to people you know and who know you, and even people who don't know you about career options." There's no magic answer, and it won't happen quickly. You need to be active in identifying your passions and following them.

Secondly, set goals and make resolutions. Paula uses short term and long term goals to identify what she wants to achieve. "But don't just write them down and forget about.

them. Go back to them every few months." Check to see if you're sticking to the goals, or if they need to be adjusted.

Interdisciplinary Work

One of the things Paula highlighted that can be challenging about working with lawyers is that "lawyers often think they bring the most to the table, which can block out other valuable perspectives". In her time at PILCH, Paula saw this in action.

Paula is now working on two research projects. The first is her PhD, looking at the legal regulation of alcohol in Australia and its link as a risk factor for health. Her second project highlights her respect for interdisciplinary learning. This research is being done in conjunction with a number of faculties, including Political Science, Development, and Health, which focuses on issues associated with temporary migrant workers.

Did you know?

Paula was taught by some of the instructors that you may have had... Namely, Maureen Teehan and Lisa Sarmas.

Other worldly advice

Stress handling techniques: "Physical activity. I ride my bike to work. I also play netball and do pilates."

Best advice ever received: "The need to have confidence in yourself. Believe that you can fulfill your goals, and avoid self-doubt. If you notice that you're slipping into the mentality of self-doubt, actively engage in self-affirming conduct."

-Emma Shortt

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(Judgment Watch continued from page 2)

A Monaro, recklessness and marriage.

A Geelong man was caught travelling 130km/h in an 80km/h zone by an unmarked police car and charged with exceeding the limit and reckless conduct endangering life.

He told the court that he'd had an argument with his wife on the phone and that she'd given him an ultimatum: to be home immediately or face divorce.

Romance, it seems, has no limits: speed or otherwise.

-Claire Marshall