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Ever wondered, as you consume your nightly diet of television soap drama from State or Federal Parliament, what would happen if **you** said the same scurrilous things about public figures, but **outside** Parliament, where there is no suspension of the laws relating to defamation, and where you might invoke prosecution for fomenting public disorder? Are there any **limits at all** to what one can say in the interests of political free speech, or do the sensitive egos of politicians and public officials ensure that we are constrained in what we can say about **them?**

This was the issue confronting over 130 school mooting teams from around Australia which entered the Bond University High Schools Mooting Competition for 2005. As usual, the theme, and the "leading case" on which the moot problem was based, were the same for both the preliminary rounds and the Finals, and they raised fairly and squarely for debate the extent of our so-called 'constitutional freedom of speech' on political issues. More specifically, when does legitimate freedom of speech end, and the risk of public disorder begin? Assuming that there has to be some limit on the latter in the interests of the former, have we set the bar too high?

This question was confronted by the Justices of the High Court in *Coleman v Power* [2004] HCA 39, the case which inspired both moot scenarios. In a nutshell, the Appellant Coleman had been staging a public protest in the streets of Townsville, and was distributing pamphlets alleging corruption on the part of several local police officers, of whom the complainant Power was one. Power walked up to Coleman and asked to see a pamphlet, whereupon Coleman pushed him away, and shouted loudly "This is Constable Brendan Power, a corrupt police officer".

Coleman was charged with, among other things, using "insulting" words, contrary to s.7(1)(d) of the *Vagrants, Gaming and Other Offences Act 1931* (Qld), and convicted by the magistrate, on the basis that he was not protesting against any laws or government policies, but simply conducting a "personal campaign" directed at selected local police officers.

His appeal to the District Court against his conviction was dismissed, and he obtained special leave to appeal to the High Court on a constitutional issue. This issue was one of how far a statute may go in preserving public order, if in doing so, it at the same time unreasonably restricts "freedom of communication about government or political matters, expressly or by effect". The same question had been considered by the High Court a few years earlier in the case of *Lange v Australian Broadcasting Corporation (1997)* 189 CLR 520, and the decision had been reached that it was all a balancing act, in the sense that while the Constitution (in Ss.7, 24, 64 and 128) guarantees freedom of communication in "political" matters, it is still legitimate for State governments (as the Queensland Parliament had done in this case) to enact legislation which is consistent with 'good law and order', and is designed to promote and safeguard legitimate expression of political opinion. In the end, the High Court dismissed Coleman's appeal on the constitutional issue, because he had overstepped the mark. In the words of Callinan J (at para.299)

> *". . . . it is not at all necessary for the effective operation of the system of representative and responsible government in accordance with the constitution that people go about insulting or abusing one another in or about public places in Queensland"*

So what happens if you criticise the State Premier in public?

But what if that "public place" is the State Parliament Chamber itself, and the issue which is raised from the public gallery by a concerned constituent is one regarding the proper operation of the criminal law? Do these additional considerations tilt the scales in favour of freedom of speech? In the preliminary round scenario (the hypothetical *Baxter v Page*), the Appellant (Baxter) had been charged under a make-believe statute which made it a criminal offence to disrupt the "lawful business" of the Parliament without lawful justification. She had done so by shouting from the public gallery in protest against the State Government's apparent inaction in dealing with allegations of child abuse in various State institutions in the 1970s. In the process, she had referred to the State Premier as "a liar, a hypocrite and a protector of child molesters".

This created a new dimension to the points raised in *Coleman v Power*. What could be more in accordance with "freedom of political speech" than a member of the electorate voicing her concerns regarding the failure of law-enforcement agencies to do their job properly? Or did the fact that she was thereby disrupting the debate then taking place in the Chamber (which coincidentally was on the same topic) disentitle her from the right to speak? Did it make any difference that in the process, she was verbally abusive and insulting to the Premier? If so, where, in reality, is our much-vaunted "freedom of speech" on matters of constitutional government?

Hardly surprisingly, these questions sparked warm debate between those mooting on behalf of both sides of the argument in all those parts of the nation visited by those members of Bond Law staff who acted as judges during the preliminary rounds held in May. After several weeks of close contest, the 14 regional finalists chosen to contest the Finals, held in the Cerum Theatre at Bond University on 23 July, were

- **St. Ignatius College, Riverview**
- **St. Josephs College, Toowoomba**
- **Shelford Girls Grammar School, Melbourne**
- **Palm Beach/Currumbin SHS, Gold Coast**
- **Knox Grammar School, Sydney**
- **Caufield Grammar School, Wheelers Hill**
- **Ipswich Grammar School**
- **Marist College, Canberra**
- **Urangan SHS**
- **St. Josephs College, Brisbane**
- **Brisbane Grammar School**
- **St. Philips College, Adelaide**

The finals

For the Finals, an even more 'close to the wire' scenario had been devised. After all, what could be more in keeping with one's constitutional right to free speech on matters of political importance than to be allowed to comment on the merits of a candidate for election to a local council? And should one lose that freedom, and be prosecuted under a statute which proscribes "provocation of public disorder at political meetings", simply because one raises issues from the past history of one of the candidates which provokes his wife into physically assaulting the Chairperson at the nomination meeting?

As might be conjectured from the above outline of the scenario, the hypothetical Finals case of *Mander v Frost* was not without its lighter moments, which were appreciated as much by those taking part in the Moot Final as the many parents, school staff and friends who attended this very public event. Once again, Bond Law staff members acted as judges for the Preliminary Finals rounds, which ran from 9 am to 4.30 pm, before they then adjourned to the University Club to select the Grand Finalists, who were to debate the same case again in a "sudden death playoff".

The quality of the preliminary round debates had been such that this proved to be no easy task, but eventually the teams from Knox Grammar, Sydney, and Marist College, Canberra, were selected to go back into battle one more time, before a new panel of judges, consisting of

- Assistant Professor Maureen Grant-Thompson∏ Bond Law Faculty, the tutor of Bond University's International Law Mooting team, which recently competed with great success in Geneva, Switzerland
- Associate Professor Bernard McCabe, Bond Law Faculty, who is also currently Senior Member of the Commonwealth Administrative Review Tribunal
- Her Honour Justice Roslyn Atkinson, Queensland Supreme Court

Not only were the judges fresh to the problem, but the quality of the Grand Final mooting gave every indication that the teams themselves had found new reserves of energy, and it was a pleasure to be a spectator. Later, Her Honour Justice Atkinson admitted to the large crowd in the Cerum Theatre that she had recently been assessing students for admission as barristers who had not performed so well on their feet as the two finalist teams. This made the choice of Grand Final winner even more difficult, but eventually the decision came down in favour of Marist College, Canberra, whose Senior Counsel David Bomball also secured the "Best Advocate" award of a 40% scholarship to study Law at Bond. Other recipients of similar scholarships for their advocacy were Amelia Edwards of Shelford Girls Grammar, Melbourne, and Edward Upfold of Knox Grammar.

This always busy, but rewarding, day ended in the traditional manner with drinks and dinner in the University Club, and the formal presentation of plaques and trophies, not only to the eventual winners and runners-up, but also those who had worked so hard in the regional preliminaries in order to qualify to travel to Bond for the Finals. For a competition which began some 16 years ago with only 8 local schools competing, the Bond University Law Faculty High Schools Mooting Competition has much to be proud of in the way in which it has expanded to become, not only a national event, but now an international one, with over 40 teams from Malaysia taking part in their own regional competition in 2005.