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In & Around Montreal

High schoolers argue case using Jewish law

By JANICE ARNOLD
Staff Reporter

The landmark “Tarasoff” case confounded top U.S. legal minds for years. Are mental health care professionals obliged to breach patient confidentiality if that patient makes a threat of bodily harm against another person? Can they be held liable if a patient carries out that threat?

All 300 Grade 10 students at the four mainstream Jewish high schools grappled with this case for several months during their evenings and weekends. Their assignment was to prepare a factum, or legal brief, arguing for or against the responsibility of, in this case, psychologist Lawrence Moore, who in 1969 was at the centre of case involving the murder of University of California at Berkeley student Tatiana Tarasoff.

There was one important caveat: the teens had to draw upon Jewish religious texts only,

citing chapter and verse, without ignoring the spirit of the law.

The best of them then had the nerve-racking privilege of pleading in the McGill University law faculty’s moot court before a rabbinical tribunal and an audience of their peers and adults last month.

The students worked in teams of three to five. The Judaic studies co-ordinators selected the most worthy 30 per cent of legal briefs at each school: Bialik, Hebrew Academy and both campuses of Herzliah and Ecole Maimonide. Those briefs were then submitted to the three members of the “beit din”: Rabbis Reuben Poupko, Lionel Moses and Jacob Levy.

They chose the eight best submissions, and one student from each team made the oral argument and took the rabbis’ challenging questions in the moot court.

Moore’s former patient, Prosenjit Poddar, had fantasized during therapy sessions about killing Tarasoff, who had spurned his romantic advances. Moore, who had diagnosed Poddar as suffering from severe paranoid schizophrenia, asked that the campus police detain Poddar and recommended that he be committed as a dangerous person. He did not, however, warn Tarasoff or her family.

Poddar was released shortly afterward and Moore’s supervisor ordered that he not be detained again because he appeared to be normal. After the murder, Tarasoff’s parents sued Moore and other staff of the university health service and the campus police, among others.

“My first thought was: how can Secondary IV students even begin to write a legal brief, when our second-year law students have enough trouble,” said law professor Rosalie Jukier, the master of ceremonies. She would find out that they did a “fantastic job.”

All 300 students were taught the basics in a seminar at the law faculty given by Helena Lamed, director of legal methodology.

The program, now in its second year, is called the Moot Court of Jewish Law Beit Din, and is organized by the Bronfman Jewish Education Centre. It was conceived by Federation CJA’s Gen J initiative, which aims to strengthen Jewish identity.

The point is to demonstrate to students that the Jewish sources are relevant today in, not only judging real-life, modern legal issues, but in their own daily lives.

The final presentations were divided into themes of gossip or libel, and both the sanctity and limits of confidentiality. The prohibition against lashon hara (evil tongue), described in the biblical Leviticus and expounded upon by generations of rabbinical scholars as a serious sin, was raised frequently by the students. But the sages also recognized that there may be exceptions when it is

not only permissible, but obligatory, to speak ill of a person if it serves to warn against harm.

While most of the teams argued that doctor-patient confidentiality must be breached if a life might be at risk, a minority took up the more demanding task of defending Moore.

They tried to persuade the tribunal that violating Poddar’s trust and ruining his reputation on the strength of something he said while in treatment for a mental illness would not be condoned by Jewish law. It would also have ramifications for society in general if people in trouble did not feel sure they could speak openly with those who can help them.

The winning team was a Bialik team, represented by Michelle Miller and composed of Noam Brem, Noam Blauer, Max Segal and Darren Teitelbaum, which took the side of the Tarasoff family.

The runner-up was Maimonide’s Jacob Safra campus, represented by Gisele Weizman, and including Myriam Abehsera, Anaëlle Lallouz, Roxanne Levy and Jeremy Tordjman, also for the family.

The best individual pleaders were, first place, David Youdim of Herzliah, Snowdon campus, and second place, Elana Luks of Herzliah, St. Laurent.

Dean Daniel Jutras said there is no anomaly in a school of civil law hosting an event devoted to the study of Jewish law. “It is absolutely not out of place, but a daily occurrence,” he said. Jewish law, as well as aboriginal and Islamic law, and the laws of other countries, are taught by the faculty.



David Youdim, a Grade 10 student at Herzliah High School, Snowdon campus, makes his case before a tribunal, from left, Rabbis Reuben Poupko, Lionel Moses and Jacob Levy, in McGill University’s moot court.

Rabbi Michael Whitman, whose idea it was to use the Tarasoff case, teaches Talmudic law at McGill.

Rabbi Poupko noted that naming winners was a difficult decision as all the teams had presented “an extraordinary body of work.”

It is not a coincidence that there are so many Jewish jurists, noting that three of Canada’s Supreme Court justices are Jewish.

Jews are introduced to legal principles at an early age and the study of law is a “theological expression” in the Jewish religion. And those laws, he added, are the “bedrock of a civilized society.”

The beit din did not second-guess the Supreme Court of California, which in 1976, finally decided that mental health professionals must warn potential victims of their patients.