

CASTAN CENTRE FOR HUMAN RIGHTS LAW
CHARTER OF HUMAN RIGHTS MOOTING COMPETITION 2007
FINAL (31 August 2007)

**In the Supreme Court
of Victoria**

In the Matter of:

Gillian J. Otto and Michael I. Ramsey

Plaintiff

and

Fern House Pty Ltd

Defendant

The plaintiffs are housed at a residence called Sunnyside located in Fitzroy Street, St Kilda. Sunnyside is home to 25 individuals who require state housing. It is owned and managed by a private company, Fern House Pty Ltd, which is a state funded residential care service pursuant to the *Health Services Act 1988 (Vic)*. Given the flourishing social nature of the St Kilda neighbourhood, Fern House has recently made the decision to get out of the business of providing residential care services altogether and convert Sunnyside into a backpacker's hostel.

As a result, the plaintiffs are to be relocated to community units in Broadmeadows. The plaintiffs are a de facto couple in their late 30's and are severely disabled. They have lived at Sunnyside for the past 10 years and have been residents of St Kilda their entire lives. They have a strong community in St Kilda and they consider Sunnyside to be their home. They have a 16 year old daughter who is mildly disabled and lives in Windsor. Due to her disability, travel is difficult, however the proximity of their living arrangements ensures that their daughter can visit them frequently.

The plaintiffs have brought an action seeking a declaration from the court that Fern House has breached its rules in violation of s24 of the *Health Services Act*. They also claim that Fern House, as a public authority, has acted incompatibly with human rights and that an injunction should be issued preventing the closure of the home. They argue that by providing them and the other 13 residents with accommodation at

Sunnyside, Fern House is exercising functions of a 'public nature' and therefore cannot act in a way which violates their rights under the Charter.

The plaintiffs argue that the closure of Sunnyside will interfere with their right to privacy which includes the right not to have their home arbitrarily interfered with. They further argue that the result of the closure of Sunnyside will be highly detrimental to their family unit. They are particularly concerned about the impact of the move on their teenage daughter and suggest that this move would also conflict with her best interests.

Competitors should limit their arguments to issues relating to the Charter.