

**CASTAN CENTRE FOR HUMAN RIGHTS LAW
CHARTER OF HUMAN RIGHTS MOOTING COMPETITION 2007**

SEMI FINAL (29 August 2007)

**In the Supreme Court
of Victoria**

In the Matter of:

Josephine Tyler Stone

Plaintiff

and

High Security Pty Ltd

1st Defendant

Victorian Police

2nd Defendant

The State Government decided to build a new immigration detention centre in Warragul, Victoria. They arranged for a commercial builder to undertake the job and also contracted the private security company, High Security Pty Ltd to secure and protect the construction site. High Security was contracted to make frequent security checks over the area during the course of construction to ensure that no one was stealing equipment or interfering with the development.

A group of university students decided to protest at the site of the development about the construction of another immigration detention centre. They held a number of meetings in the month before the protest in order to discuss tactics and how they wished to conduct themselves. There was strong agreement among the group that it would be a peaceful protest. The aim of the protest was not to interfere with the building works but simply to raise

awareness and distribute information to the residents of Warragul about the detention centre and the policy of mandatory detention in Australia. The student organiser distributed flyers inviting other students to join the protest, and all the flyers emphasised the peaceful nature of the protest.

The students met in the office of the *Vanguard* (the student newspaper) at their university on Friday 11th May. As they would be away for the weekend and there had been a number of bike thefts from the university grounds, six students who had ridden to the university were invited to leave their bikes in the office to ensure they remained safe. The students then boarded the mini bus and set off for Warragul at approximately 11am.

Upon arriving at the site, the students dismounted from the bus and assessed the construction site in order to determine where to set up their protest area. One of the workmen from the building company approached them to ask what they were doing and one of the students explained they were there to protest against the Government's policies associated with the detention centre. The workman immediately called High Security Pty Ltd and asked them to come as they were concerned that the students were going to interfere with the building site, compromising the students' safety and the safety of the workmen.

Three security guards from High Security Pty Ltd arrived promptly at the site and determined that the protesters presented a high security risk and that the situation might very quickly get out of hand. They had a very brief conversation with the students, which confirmed that the students were there to stage a protest. The High Security guards then proceeded to order the 20 students into a very small portable bathroom set up on the building site. The students were detained in this small space for 40 minutes until the police were called and arrived. All their bags were confiscated and as a result one student who was asthmatic, could not access her medication and suffered an asthma attack during the period of detention.

Upon arriving, the police proceeded to search the bags of the students while they remained locked in the portable bathroom. They found five chains and padlocks, belonging to those students who had left their bikes in the office. The sixth student had left her lock and chain with her bike. The police claimed that these chains and padlocks amounted to strong evidence that the protesters intended to lock themselves to machinery so as to disrupt building work on the site. After a further 20 minutes in the portable bathroom, the police determined that they had sufficient grounds to load all protesters into police vans and escort them back to Melbourne. The students were locked in four different vans and left there for one hour. The police then drove them back to Melbourne and released them once they arrived back at the university. No arrests were made however the police did inform the protesters that *“if they heard of this group having any more meetings or making any more trouble there would be consequences.”*

The students were detained by High Security Pty Ltd and the police for a total of three hours: one hour in the portable bathroom, one hour in the stationary van and the hour it took to drive to Melbourne in the police vans. The students state that they clearly and repeatedly informed the police of the reason for the chains and padlocks and even showed them the flyers which emphasised the peaceful nature of the protest. They state that the police did not listen to them, laughed at their claim that it was a peaceful protest and said they would take all means necessary to stop them from protesting and distributing their *“lefty pamphlets”* which they stated were *“filled with rubbish and lies.”*

The police assert that it was necessary for them to continue to detain the protesters in the toilet cubicle while they searched their bags in order that they could assess the situation without having to deal with protesters who may be violent or hostile towards them. They further state that given the students' intention to disrupt construction works, it was necessary for the safety of both the students and the workmen to prevent the protest from occurring and to escort the protesters back to Melbourne. The police state that the hour in which they left the students in the vans was necessary in order for them to search the mini bus and check in with their superiors as to whether to allow

the students to drive their mini bus back to Melbourne or to take them separately in the vans.

Josephine Tyler Stone, the student who suffered the asthma attack, has commenced proceedings against High Security Pty Ltd and the Victorian Police claiming negligence and false imprisonment for her detention. In addition to these causes of action she asserts that High Security Pty Ltd and the police have violated her rights under the Charter of Human Rights and Responsibilities Act, including the right to peaceful assembly and freedom of association, the right to liberty and security of person, the right to humane treatment when deprived of liberty, and freedom of expression.

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