

## Worksheet 1.19 - answers

In this activity you will see the NZBORA 'in action'. Before you start, review what you have read in part 6 of chapter 4 of your manual, and sections 22 and 23 of the NZ Bill of Rights Act 1990.

1. Access [www.nzlii.org](http://www.nzlii.org) and find the case: Zou v Police [2013] NZHC 352 (28 February 2013) You do not need to read every line of the case in full detail. Skim read the case and look out for the way that provisions of the NZBORA are used to claim that a right was breached. Find the Judge's conclusion as to whether any of the appellant's rights were breached, and if so, in what way and by whom?

Justice Woolford found that the appellant's rights not to be arbitrarily arrested or detained and his rights once he had been detained for an evidential blood test were not breached. [para 39].

2. Which sections of NZBORA were claimed to have been breached?

22 Liberty of the person

Everyone has the right not to be arbitrarily arrested or detained.

23 Rights of persons arrested or detained

(1) Everyone who is arrested or who is detained under any enactment— (a) Shall be informed at the time of the arrest or detention of the reason for it; (b) Shall have the right to consult and instruct a lawyer without delay and to be informed of that right;

3. What were Woolford J's reasons for his decision?

As to the blood test it was because Mr Zou's detention was ongoing throughout the incident - it was not that he had been allowed to go and then arbitrarily brought back and detained. As to being informed of his right to instruct a lawyer Woolford J found that "As he was informed that he was detained for the purpose of breath or blood test procedures for alcohol, s 23 of the New Zealand Bill of Rights Act was [also] not breached" and that "as he was informed that he was detained for the purpose of breath or blood test procedures or both, his jeopardy had been communicated to him and his ability to exercise his right to a lawyer was not impacted".

This case is an example of the way section 5 of NZBORA operates. Even though citizens have a right of liberty and not to be arbitrarily arrested or detained, it is demonstrably justified

in a free and democratic society that laws are made (such as the Land Transport Act 1998) so that the police can detain people in certain circumstances.

(5 Justified limitations: Subject to section 4 the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.)

4. Think for a while about your response these questions: if a person's rights **are** breached (say by the police or another government agency), what should happen? Should there be an apology, a payment, or a public statement? If so, who should apologise, pay, or make the statement? If there is to be a payment how should the amount be determined, and who should pay?

Note some of your ideas as your answer to question 4.

These questions are the constant and on-going questions about Human Rights law at the highest levels. In general the answers are that where a breach is found, there may be a declaration of the breach (rather than an apology), and in certain rare cases, a payment for damages. The Crown is responsible for this.