

The importance of human rights: the right to a fair hearing

SI bhnf CC v KS bhnf IS [2005] ACTSC 125

By Lara Radik

In a recent appeal before the ACT Supreme Court, Chief Justice Terence Higgins confirmed the fundamental right of persons in the ACT to a fair hearing, even in cases of relative urgency.

The case at first instance involved an ex parte application for a domestic violence protection order. A final protection order, which was to last for 12 months, was granted by a deputy registrar (an officer of the ACT Executive), rather than by a judicial officer.

The Chief Justice held that to deprive a person of liberty, or expose them to criminal sanctions, without first affording them a fair and public hearing, was not only inconsistent with provisions of the ACT *Human Rights Act*, but was also inconsistent with the long-standing right to due process enshrined in the Magna Carta.

The Chief Justice also appeared to question the constitutional validity of provisions of Territory laws that would require judicial officers appointed under Chapter III of the Constitution to act incompatibly with the integrity, independence and impartiality required of such judicial officers.

The case is likely to have far-reaching consequences, not only in relation to protective orders, but potentially also in relation to the new counter-terrorism powers, and police powers to issue on-the-spot traffic fines. The importance of appropriate judicial adjudication, and supervision of measures such as detention orders, is clearly highlighted. ■

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