

Applicability of the Charter to Acts and Decisions of Public Authorities Connected with a Judicial Proceeding

Guneser v Magistrates' Court of Victoria & Anor [2008] VSC 57 (5 March 2008)

In a recent decision of the Supreme Court of Victoria, Habersberger J considered the extent to which the rights protected under the Victorian *Charter* apply to the acts and decisions of public authorities that are connected with a judicial proceeding.

Facts

On 19 May 2003, a Melbourne taxi driver named Genco Guneser was involved in a violent altercation with two passengers over an unpaid fare. Four charges were laid against him in relation to this incident, each alleging indictable offences.

On 1 March 2006, the day of a contest hearing before the Magistrates' Court of Victoria, Mr Guneser dismissed his lawyers, leaving himself unrepresented. At the hearing, Mr Guneser was asked whether he consented to having the charges against him heard and determined summarily, pursuant to s 53(1) of the *Magistrates' Court Act 1989* (Vic). Mr Guneser repeatedly applied for adjournments in order to obtain legal advice on this issue. These applications were refused, but the matter was stood down on several occasions, enabling Mr Guneser to consult a Victoria Legal Aid duty lawyer. Ultimately, Mr Guneser did not consent to summary jurisdiction.

In May 2006, and after the receipt of new forensic evidence, two further charges were laid against Mr Guneser, including a charge of intentionally causing serious injury. This charge cannot be heard and determined summarily. A committal hearing took place in January 2007, as a result of which Mr Guneser was committed for trial in the County Court of Victoria on all six charges.

Mr Guneser initiated judicial review proceedings in the Supreme Court of Victoria, naming the Magistrates' Court and the police informant as defendants. Habersberger J interpreted Mr Guneser's application as seeking to either have:

1. the criminal proceedings permanently stayed, or
2. the charge of intentionally causing serious injury withdrawn or the order committing him for trial in the County Court quashed, and the remaining charges returned to the Magistrates' Court to be heard and determined summarily.

Decision

Mr Guneser's application did not make any explicit reference to the *Charter*. However, during oral argument, Mr Guneser repeatedly claimed that his rights had been infringed. In response, counsel for the police informant argued that the transitional provisions in s 49 of the *Charter* meant that it did not apply in respect of Mr Guneser's complaints.

Habersberger J held that he did not need to consider whether the rights contained in the *Charter* would apply to Mr Guneser's impending criminal trial in the County Court. Rather, the question before his Honour was whether the acts and decisions of:

1. the Magistrate before whom Mr Guneser appeared on 1 March 2006 (in refusing his applications for adjournments and determining that he had refused to consent to summary jurisdiction);
2. the police informant and the Office of Public Prosecutions on 24 May 2006 (in laying the additional charge of intentionally causing serious injury); and

3. the Magistrate before whom Mr Guneser appeared in January 2007 (in committing him for trial in the County Court);

-- were acts or decisions of public authorities that, pursuant to s 38 of the *Charter*, were required to be performed or taken compatibly with *Charter* rights.

Habersberger J held that the police informant and the Office of Public Prosecutions are public authorities for the purposes of the *Charter*. His Honour also held that a magistrate conducting a committal is acting in an administrative capacity, and hence is a public authority for the purposes of the *Charter* pursuant to s 4(1)(j).

Habersberger J doubted that a magistrate's decision to refuse an adjournment, or to determine that a defendant had refused to consent to summary jurisdiction, were decisions that were part of committal proceedings. It would follow from this that such decisions are not decisions of a public authority for the purposes of the *Charter*. However, his Honour held that he did not need to decide this question. (In fact, his Honour may have asked himself the wrong question on this point: the correct question under s 4(1)(j) may be whether a magistrate is acting 'in an administrative capacity' when considering an adjournment application, or when determining that a defendant has refused to consent to summary jurisdiction, regardless of whether these decisions form part of a committal proceeding.).

However, Habersberger J held that section 49(3) of the *Charter*, which provides that the obligations on public authorities do not apply to acts performed or decisions made before 1 January 2008, meant that the *Charter* could not be used to challenge the acts or decisions that were the subject of Mr Guneser's complaints.

Ultimately, Habersberger J rejected each of the grounds upon which relief was sought, and dismissed Mr Guneser's application.

Implications for the Victorian *Charter*

This decision clarifies that there are a number of acts and decisions connected with a judicial proceeding that are in fact acts and decisions of public authorities. These include acts and decisions of police informants and prosecutors to lay and prosecute charges, and of magistrates to commit defendants to stand trial for indictable offences. As a consequence, it is unlawful for police informants, prosecutors and magistrates to perform these acts incompatibly with, or make these decisions without giving proper consideration to, *Charter* rights.

Practitioners should note that s 38 the *Charter*, which imposes the relevant obligations on public authorities, commenced operation on 1 January 2008. Therefore acts and decisions connected with a judicial proceeding that were performed or taken on or after 1 January 2008 are subject to the *Charter* rights. It would appear to be immaterial that the relevant judicial proceeding to which the acts or decisions relate was commenced before 1 January 2008 (cf section 49(2) of the *Charter*).

The full text decision is available at <http://www.austlii.edu.au/au/cases/vic/VSC/2008/57.html>.

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