



HIGH COURT OF AUSTRALIA

10 March 2011

HOGAN v HINCH
[2011] HCA 4

Today the High Court rejected a challenge by Mr Derryn Hinch to the validity of a provision which permitted suppression orders to be made in proceedings under the *Serious Sex Offenders Monitoring Act 2005* (Vic) ("the Act"), and which made publication of material contravening those orders an offence.

In 2008, Mr Hinch was charged with contravening orders made by the Victorian County Court under s 42 of the Act. The Act has since been repealed and replaced by the *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic). Those orders prohibited publication of any information that might enable certain convicted sex offenders, made the subject of extended supervision orders, to be identified. The terms of the suppression orders reflected the words of s 42(1)(c) of the Act, a provision which empowered the courts to make such orders where it was satisfied that it was "in the public interest" to do so. Section 42(3) created an offence of publication of material in contravention of a suppression order made under s 42(1). The charges arose out of alleged publications made by Mr Hinch on the website "HINCH.net" and at a public protest rally in Melbourne. On 30 July 2010, so much of the cause as concerned the validity of s 42 was removed into the High Court.

In the High Court, Mr Hinch alleged that the section was invalid on three grounds. The first two grounds were based on implications sought to be drawn from Chapter III of the Constitution, namely, that s 42 impermissibly diminished the institutional integrity of the courts of Victoria and, secondly, that suppression orders made pursuant to s 42 were contrary to an implication to be derived from Chapter III that all State and federal court proceedings must be conducted in public. The third ground was that s 42 was invalid because it infringed the implied constitutional freedom of political communication. The Court today declared that s 42 was not invalid upon any of those grounds.

The Court, noting that the requirement that justice be administered publicly is not an absolute rule, unanimously held that the power under the Act to make suppression orders was not contrary to any implication arising out of Chapter III of the Constitution. The requirement of s 42 that courts have reference to the "public interest" when deciding whether to make a suppression order ensured that the power did not render the relevant courts inappropriate repositories of federal judicial power under Chapter III. Although the Court accepted that s 42(3) did burden freedom of communication about government or political matters, it held that the law operated in support of the broader scheme embodied in the Act, namely, the protection of the community by the effective monitoring of released sex offenders. Properly construed, it was reasonably appropriate and adapted to serve a legitimate end in a manner compatible with the maintenance of the constitutionally prescribed system of government, and therefore was not invalid on this ground.

The focus of s 42 was upon the conduct of proceedings under the Act, not upon naming a particular person as having committed or having been convicted of an offence. Whether publishing a person's name was to publish information which might enable an offender or another person who has appeared or given evidence in the proceeding under the Act to be identified would be a question of fact to be decided by reference to the whole of the publication and any other relevant evidence.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*