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# Access to Justice under the Victorian *Charter of Human Rights*

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The logo for Law Resource Centre, featuring a solid black vertical rectangle to the right of the text "law resource centre". The word "law" is in a dark blue sans-serif font, "resource" is in a lighter blue sans-serif font, and "centre" is in a dark blue sans-serif font.

law  
resource  
centre



1. There has been no flood of litigation!
  2. Where raised and engaged, the *Charter* has had a discernible positive *qualitative* impact on A2J
  3. The *Charter* has had an insignificant *quantitative* impact on A2J
  4. Legal and judicial recourse to the *Charter* has been limited, relatively unsophisticated and cursory
  5. More resources are necessary if the *Charter* is to have a substantial and substantive impact on A2J
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# A2J and the Right to a Fair Hearing under the *Charter*



- Access to justice is a human right *sui generis* and central to the promotion and protection of other rights
    - Human Rights Committee, *General Comment 32: Right to Equality before Courts and to a Fair Hearing*
  - *Charter of Human Rights and Responsibilities 2006*
    - Section 8 – Recognition and equality before the law
    - Section 24 – Fair hearing
    - Collectively provide for a ‘positive right to a fair hearing’, rather than the right ‘not to be tried unfairly as the common law provides’: *R v Griffin* [2007] ACTCA 6 (5 April 2007)
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# A2J – Where has the *Charter* made a *qualitative* difference?



- Access to the courts
  - *Pavic* (HRLRC matter – settled)
- Right to legal advice, representation and resources
  - *Kortel v Mirik and Mirik* [2008] VSC 103 (4 April 2008); *R v Williams* [2007] VSC 2 (15 January 2007); *Ford* (HRLRC matter – settled)
- Right to hearing without undue delay
  - *09-003* [2008] VMHRB 1 (8 July 2008) (on appeal to VCAT), *Gray v DPP* [2008] VSC (16 January 2008)

## A2J – Where has the *Charter* made a *qualitative* difference? (2)



- Right to competent, independent and impartial tribunal
    - *General Television Corporation v DPP* [2008] VSCA 49 (26 March 2008); *X v General Television Corporation* [2008] VSC 344 (8 September 2008); *09-003* [2008] VMHRB 1 (8 July 2008) (does fair hearing right extend to Board?)
  - Presumption of innocence
    - *Sabet v Medical Practitioners Board* [2008] VSC 346 (12 September 2008)
  - Obligations to SRLs
    - *Seachange Management v Bevnol Constructions & Developments* [2008] VCAT 1479
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## A2J – Where is the *Charter* yet to make a *qualitative* difference?



- Considerations as to costs
  - Right to interpreter where necessary, inc in civil proceedings
  - Right to procedural fairness
  - Right to a public hearing
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# Why is the *quantitative* impact of the *Charter* so limited and how do we improve?



- Transitional provisions
  - Esp. ss 49(2) and (3)
- Notice provision
  - Esp. s 35 (note call for amendment in *R v Benbrika & Ors* (*Ruling No 20*) [2008] VSC 80 (20 March 2008))
- Constitutional notice
  - Eg, *Benbrika* and *Underbelly*
- **Resources, resources, resources!**
  - A-G, DoJ and VGSO vs. VEOHRC
  - No additional funding to CLCs
  - VLA Guidelines and lack of additional funding