



78 minutes too long

The October Court of Appeal decision of *Robinson v State of New South Wales* [2018] NSWCA 231 looked at the powers of police to arrest and hold individuals.

The Appellant, Mr Robinson, voluntarily attended a Sydney police station at 5:00pm on 22 December 2013 in response to attempts by police to contact him. Leading Constable Smith immediately arrested Mr Robinson, without warrant, for breach of an apprehended violence order. Mr Robinson participated in an interview and was subsequently released, without charge, at 6:18pm.

Mr Robinson commenced proceedings against the State of New South Wales, claiming damages for wrongful arrest and false imprisonment. In the first instance, his claim was dismissed.

However on appeal, a different decision was reached. The Court determined Mr Robinson's arrest was unlawful under section 99 of Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) ("LEPRA"). Section 99 states that a police officer may arrest a person, without a warrant, if the police officer suspects on reasonable grounds that the person is committing or has committed an offence.

Leading Constable Smith gave evidence that at the time of Mr Robinson's arrest, he had not decided if he would charge him. Justices McColl and Basten stated it was this lack of intention to charge Mr Robinson with an offence that rendered the arrest unlawful. It was therefore wrongful and resulted in false imprisonment.

Mr Robinson's appeal was successful. He received damages from the State of New South Wales in the amount of \$5,000.

This decision highlights the need for police to be certain in the use of their powers of arrest under LEPRA. Any power that results in the deprivation of liberty of a person should be exercised with utmost caution.