



## Judgment Summary

Supreme Court  
Australian Capital Territory  
Full Court

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Friday, 27 October 2023

### Harlovich v Sebbens [2023] ACTSCFC 3

Baker, McWilliam and Abraham JJ

The Full Court of the Supreme Court has unanimously found that the Supreme Court has a 'residual discretion' to decline to intervene in prosecution appeals from sentences imposed in the Magistrates Court.

The 'residual discretion' allows an appellate court to refuse to intervene and re-sentence an offender where intervening could cause injustice or unfairness, even if the prosecution has demonstrated that there was an error in the sentence which was originally imposed.

The referred cases both involved prosecution appeals from sentences imposed in the Magistrates Court on the ground that the sentence was manifestly inadequate. The prosecution argued that the *Magistrates Court Act 1930* (ACT) curtails the residual discretion in prosecution sentence appeals from the Magistrates Court.

The Court reviewed divergent authority in the ACT on this issue. The Court considered the purpose of the residual discretion, which is concerned with issues of fairness and justice, along with the history of the legislative right for the prosecution to appeal against sentences imposed in the Magistrates Court. The Court found that there was no indication that the legislature intended to limit the application of the residual discretion in prosecution sentence appeals from the Magistrates Court.

*This summary has been prepared for general information only. It is not intended to be a substitute for the judgment of the Court or to be used in any later consideration of the Court's judgment.*

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