

rejected the settlement offered. Further, there was no evidence of detrimental reliance by the plaintiff upon the alleged representations.

*Summary provided by Garth Blake SC. The judgment is available at <<http://www.austlii.edu.au/au/cases/nsw/NSWCA/2007/117.html>>. Leave to appeal has been refused by the High Court of Australia.*

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## **McClintock v Department for Constitutional Affairs**

Employment Appeal Tribunal: Elias J, October 2007

*Same-sex adoption – judicial oath – discrimination – religious objection*

The appellant was a Justice of the Peace, who requested that he be relieved of his duty to officiate in cases where there was a possibility of directing the placement of children with same-sex couples, on the basis that the merits of such placements had been inadequately researched and as such were ‘social experiments’. That request was refused by the respondent, as a result of which the appellant resigned from his position on the family panel. The appellant brought proceedings alleging that, as a result of the refusal, he had been forced to resign, such refusal amounting to:

- i. Direct discrimination;
- ii. Indirect discrimination; and/or
- iii. Harassment

in breach of the Employment Equality (Religion or Belief) Regulations 2003. The appellant stated that he could not in conscience, and compatibly with his philosophical and religious beliefs, agree to place children with same-sex couples. He argued that the respondent’s refusal to accommodate his belief infringed his Article 9 right to freedom of conscience, religion and belief. The Employment Tribunal rejected the appellant’s claims. In refusing the appeal, the Employment Appeal Tribunal found that the objections raised by the appellant at the time of his request (namely that there was currently inadequate evidence to support the suggestion that single-sex parents could be in a child’s best interests) did not constitute a religious or similar philosophical belief within the terms of the 2003 regulations. The EAT further found that, in any event, the respondent had made out the defence of justification in that it was fully justified in insisting that Justices of the Peace apply the law of the land in accordance with their judicial oath. [RA]

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