

KABLE v DIRECTOR OF PUBLIC PROSECUTIONS

SUPREME COURT OF NEW SOUTH WALES — COURT OF APPEAL

5 MAHONEY JA

27 February 1995

10 [1995] NSWCA 226

Mahoney JA. This is a matter which comes before the Court on a motion for expedition and for dispensing with the filing of appeal papers. It arises because Levine J within the last few days has felt it appropriate to make an order under s 5 of the Community Protection Act 1994. I can understand the circumstances in which his Honour felt it appropriate so to do. The result of that is that a person who is presently not the subject of any conviction for an offence has been directed, as I understand, to be held in custody for the next six months.

15 Attacks have been made below and on appeal against that order. An appeal lies under s 25(1) of that Act and it is agreed between the parties that on the proper interpretation of that section no leave to appeal is necessary. No doubt if leave were necessary the Court on appeal would grant such leave.

20 It is sought to attack both the construction of the Act itself and the orders which have been made and it is proposed, in addition, to urge, as they have been described, Constitutional grounds, both State and Federal, against the validity of the Act or the orders which have been made. Dr Woods, at my suggestion, has very briefly sketched the matters in question and it is not necessary for me to repeat them.

25 This is an extraordinary Act. It may be that it was passed to deal with extraordinary circumstances but whether or not it is an Act which, considered socially, is justified, the need to determine the legal validity of it and the effect of the order which has been made is an urgent need. I think this is a case in which a very urgent hearing should be granted. I propose therefore to direct that the matter be listed for hearing urgently upon a date to be fixed by the President and notified to the parties.

30 The date will be a date which will be selected by the Court and in the circumstances of the case, which I think the parties understand, it will be necessary to fix a date without having regard to the convenience of counsel. That convenience will be taken into account as far as may be, but in the end I think the date must be fixed for the hearing of this appeal.

35 I think it is an appropriate case in which the printing of formal appeal books should be dispensed with. I have been informed by the counsel involved that they anticipate no difficulty in agreeing upon appeal papers to be prepared and placed before the Court and it is sufficient that I leave it to the good sense of counsel to do that. Those appeal papers should, I think, be filed as soon as possible. I will not fix a date but the parties should have in mind that they be ready this week.

40 This is a matter in which it is appropriate that the parties file in advance, and I mean each party to the appeal, detailed written submissions as to the matters to be argued. I think it is a matter in which chronological order in filing those written submissions should not be maintained and I think each party should file

written submissions as soon as may be. I think that what has taken place already will result in each of the parties having sufficient knowledge of the matter to be able to file those written submissions.

I would propose, unless counsel have anything to urge to the contrary, that the costs of today's application be costs in the appeal.

Orders accordingly.

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