Another Sam Case

Cotterill v Romanes

Avi, the public through your "fight the fines" donates very large sums of money.

If your lawyers are so great, why can't they get **everyone** off the covid fines? The answer is that you and your lawyers "cherry pick the cases" that have no application to anyone else, let alone the people who donate to you.

They are all rare and unusual cases that cannot be applied to anyone else's case. In court, your lawyers use the same old defence that it would be "**unreasonable"** for their client to comply with the directions and therefore should not pay the fine.

So the public donates, often tens of thousands of dollars to the "fight the fines", for your lawyers to get paid, to "beat" covid fines for which the defence used cannot be applied to anyone else!

Sounds like money well spent. I'm sure your lawyers don't mind taking tens of thousands of dollars each case, that help no one else other than the "unusual, "one in a million type of case." Perhaps the people who donate could better use that money on themselves, say to perhaps feed their families rather than your lawyers, who achieve nothing for the majority, other than give people false hope.

But it doesn't stop there AVI. This time the public donated about $100,000 for you and your lawyers to fight for their Constitutionally protected activity of protest under the implied freedom of political communication. This subject matter falls within the original jurisdiction of the High Court, but your lawyers refused to take it there. Instead, they chose to take it to the Supreme Court of Victoria. Wonder why?

Could it be that a decision of the High Court is binding on all the States and Territories throughout the country and it would free people to protest everywhere, and all these unconstitutional lockdowns would have no effect to stop people protesting throughout the country? Hmm, I wonder.

Its funny, AVI, that your barrister, Ms Foley was intimately involved with the High Court case of Brown v Tasmania 2017 in relation to the implied freedom of political communication, to protest, so she knows you can have this matter heard in the High Court. What's even funnier AVI, is in that case, it was the **validity of the Act**, the Protesters Act of Tasmania, that was challenged, but this time Ms Foley chooses to argue very differently, she is not challenging the validity of the Act, but rather **only the directions made under it.** Why is this distinction so important AVI?

The hearing held 30 April 2021 in the Supreme Court of Victoria before Justice Niall in paragraph 1, his honour states:

"On 15 October 2020, the first plaintiff and the second plaintiff commenced a proceeding by originating motion, seeking declarations that certain **directions** issued under the *Public Health and Wellbeing Act 2008* (the 'Act') were ultra vires on the basis that they impermissibly burdened the freedom of political communication implied in the Commonwealth Constitution."

Lets continue shall we. You see Avi, the implied freedom of political communication mainly derived from sections 7, 24 and 128 of the Constitution, like all constitutional guarantees, operates as a restraint upon **legislative power,** and not upon executive actions such as CHO directives.

Why does this matter I hear you ask? Well, if you argue under the statute by only challenging the directions made under it and not the Act itself, you automatically assume the Act is valid, and the implied freedom of political communication protection cannot attack and strike down the executive action, such as the directions.

In legal terms, and by all means get your lawyers to try and deny the following facts, that if you do not challenge the validity of the Act itself, but rather only the directions made under it, **it does not give rise to a constitutional question**.

And if there is no constitutional question before the court, the judicial powers of the Commonwealth pursuant to section 71 of the Constitution cannot be

engaged, meaning there is **no legal force behind the decision** at all, and can be ignored by everyone.

Kable V DPP 1996 HCA

In this case, Gregory Wayne Kable, **did challenge the validity of the Act,** the Community Protection Act 1994 NSW

Toohey J stated in the following paragraphs:

21. **The respondent accepted that in the present case the Supreme Court was exercising federal jurisdiction vested in it by s 39 of the Judiciary Act.** The reason for the concession was that the appellant was relying upon what the Solicitor-General for New South Wales described as "**federal constitutional points**", not only before this Court but at first instance and on appeal to the Court of Appeal. The reference to "federal constitutional points" was a reference to submissions made on behalf of the appellant that an implication is to be drawn from the Commonwealth Constitution **that legislation, whether federal or State, that is directed against or discriminates against an individual is invalid**. In addition, the appellant relied upon s 80 of the Constitution to argue that a charge of the offence created by the Act must be tried by a judge and jury. The federal judicial power may be attracted by the defence raised to a claim for relief (137). Thus, it was said, federal jurisdiction was attracted in the present case, whereupon "there is no room for the exercise of a State jurisdiction which apart from any operation of the Judiciary Act the State court would have had" (138).

Professor Lane has said (139):

"Jurisdiction and the judicial power of the Commonwealth are

two distinct notions, calling on different constitutional provisions and different decisional law."

Although the argument before the Court proceeded at times by reference to federal jurisdiction, **in**

truth it is the judicial power of the Commonwealth with which the Court is concerned, a power applicable by reason of s 71 of the Constitution. The Supreme Court of New South Wales was required, at first instance and on appeal, to determine questions arising under the Constitution. In those circumstances s 39(2) of the Judiciary Act, read with s 77(iii) of the Constitution, conferred jurisdiction on the Supreme Court to determine those questions. Section 71 of the Constitution ensured that the judicial power of the Commonwealth was engaged in those circumstances.

In short, the case before the Supreme Court of Victoria, Cotterill v Romanes, is a **sham trial**, designed to give the unsuspecting public the illusion there was a proper case before the court in relation to the implied freedom, when that couldn't be further from the truth.

You see AVI, your lawyers asked for an adjournment in the Supreme Court case, now called Cotterill v Romanes, awaiting the decision in Palmer v Western Australia, you know the one about section 92 of the Constitution.

In that case, Mr Dunning, Clive's lawyer, pulled the same sham, he made sure he never challenged the validity of the Emergency Management Act of WA 2005, but only the directions made under it. Low and behold, the decision in that case, as will be exactly the same decision in this Supreme court case The decision in Palmer was as follows:

1) *The exercise of the power given by those provisions to make paras 4 and 5 of the* Quarantine (Closing the Border) **Directions** *(WA)* ***does not raise a constitutional question.***

2) ***No issue is taken*** *as to whether the* Quarantine (Closing the Border) Directions *(WA)* ***were validly authorised by the statutory provisions*** *so that no other question remains for determination by a court*

You see AVI, the lawyers in *Palmer,* just like yours, did not challenge the validity of the Act and therefore there is no constitutional question before the court. What does this mean AVI?

Well, if there is no constitutional question before the court, the judicial powers of the commonwealth pursuant to section 71 of the Constitution cannot be engaged, and therefore there is no legal force behind the decision, making it worthless and can be ignored.

Thats right folks, the decision in *Palmer* is a nullity, and can be ignored. We have yet to have a proper case in relation to section 92 and these unconstitutional border closures. And we certainly do not have a valid or proper case as argued by your lawyers AVI in the Supreme Court in relation to the implied freedom of political communication. Just like *Palmer,* folks, you can completely ignore any decision Justice Niall makes in the case of Cotterill v Romanes.

How about some High Court case law to back up what I am saying folks?

The High Court knew about how constitutional guarantees operate at least as early as from the 2012 case of *Wotton v Queensland,* Justice Edelman in paragraph 230 below*:*

Edelman J (in Palmer v Western Australia 2021)

paragraph 230

*By focusing only upon particular textual aspects of ss 56 and 67, this Court's answer focused upon the application of the legislation to facts falling within a category based upon circumstances of the same general kind as those before it. There might, at first blush, be thought to be tension between, on the one hand, assessing validity, as the answer to the first question in this special case does, by focusing upon the application of legislation to circumstances of the same general kind as those before the Court and, on the other hand, remarks made in the joint judgment in Wotton v Queensland[351] which accepted a submission that "**whether a particular application of the statute, by the exercise or refusal to exercise a power or discretion conferred by the statute, is valid is not a question of constitutional law".***

In the case of ***Comcare v Banerji HCA 2019***, *Edelman J* stated in paragraphs 208 and 209 explaining how constitutional guarantees operate, as a restraint on legislative power and not upon executive actions or decisions. Ms Banerji's legal representatives, just like yours AVI, made the same fatal error in law and she too lost. I will let you decide if they did it deliberately or not:

Edelman J in Comcare v Banerji HCA 2019

208. Ms Banerji's alternative submissions should not be accepted. There is nothing in s 15 from which an implication could be made requiring a decision maker to take into account the implied freedom of political communication as a mandatory relevant consideration when making a decision under that section. If the operation of ss 13(11) and 15 would otherwise contravene the implied freedom of political communication then the implied freedom would not operate as a mandatory relevant consideration for the decision maker. **Nor could the implied freedom operate directly upon an executive act to invalidate an executive decision that is authorised by legislation. It is necessary to explain why, contrary to Ms Banerji's submission, the implied freedom operates directly upon the legislation rather than upon the exercise of executive power that has its source in that legislation.**

209. *The Attorney-General of the Commonwealth submitted that if the generality of the terms of the statutory power in s 15(1) would otherwise permit action that would be contrary to the implied freedom of political communication then, despite the generality of the terms of the legislative provision, and despite an inability to ascribe a meaning to the words of the provision which would proscribe those exercises of power that are beyond constitutional limits, each exercise of executive power could be treated as subject to a statutory requirement that the power be exercised in accordance with constitutional limits. That submission is correct.* ***The constitutional constraint does not operate directly upon the exercise of executive power. It invalidates the executive act only by operating upon the legislation, disapplying the legislative authority for the executive act if the legislation would otherwise trespass against the constitutional limits upon legislative power.***

Cited from Palmer v WA case 2021 reasons for decision.

Gordon J

paragraph 200:

As explained, **the plaintiffs did not challenge the constitutional validity of s 56 or s 67 of the Act,** or allege that the express statutory conditions for the exercise of the power to make the state of emergency declaration under s 56[312] or the Directions under s 67 had not been met. The plaintiffs submitted that the putative burden on the freedom guaranteed by s 92 arose because of the Directions.

Wotton v Queensland HCA 2012:

FRENCH CJ, GUMMOW, HAYNE, CRENNAN AND BELL JJ.

Paragraph 24:

Accordingly, this litigation turns upon **the restraint imposed by the Constitution upon the legislative power of the Queensland legislature**. It is no part of this dispute to canvass any question whether conditions (t) and (v) of the Parole Order should not have been included. **That would be for agitation in other proceedings, in particular, proceedings under the Judicial Review Act.**

Keifel J in paragraphs 73 and 74 stated:

paragraph 73;

No approval has been sought from the chief executive to the taking of a statement from the plaintiff or the undertaking of an interview by a person other than a person referred to in s 132(2)(a)-(c). The plaintiff has not sought a statement of reasons[65] from the Parole Board as to its decision to impose the conditions in question and has not sought judicial review of that decision[66]. **The plaintiff challenges the validity of ss 132 and 200(2) of the *Corrective Services Act*.** The question to be addressed in connection with these sections, arising from the questions stated for the Court, is whether they, directly or indirectly, impermissibly burden the freedom of communication about government and political matters which the Constitution guarantees[67].

Paragraph 74:

I agree with the opinion expressed in the joint reasons[68] that questions as to the

imposition of conditions (t) and (v) in the Parole Order do not arise in these proceedings. They may arise on an application for judicial review of the decision of the Parole Board. **These proceedings raise a constitutional question, arising from the freedom mentioned and the restrictions it may render necessary upon legislative power.**

Oh, Avi, let's not forget about the case of **Brown v Tasmania 2017**, where your barrister, Ms Foley was intimately apart of. They challenged the validity of the Protesters Act in that case, as was also done in **Wotton v Queensland 2012**, you know, a proper constitutional matter, not the sham that is currently before the Supreme Court in Cotterill v Romanes.

Brown v Tasmania 2017

Keifel CJ, Bell and Keane JJ Commented in paragraph 5:

5.**The plaintiffs challenge the validity of certain provisions of the Protesters Act**, and to that end invoke the test for invalidity stated in *Lange v Australian Broadcasting Corporation*[6] as explained in *McCloy v New South Wales*[7] with respect to laws which restrict the freedom of communication about matters of politics and government which is implied in the Constitution.

AVI, isn't it time to give back the people their money, given your lawyers haven't brought a proper constitutional matter before the Supreme Court in relation to the implied freedom of political communication, which includes protesting?

Now we get it AVI, you yourself may not be aware of the sleight of hand your lawyers are pulling before the Supreme Court of Victoria, but you are now, so what are you going to do about it AVI? If you make no effort, you are implicit in their scam aren't you?