Re McBain; Ex parte Australian Catholic Bishops Conference (2002) 209 CLR 372


Facts

- Dr McBain found that a particular treatment he wished to administer was prohibited by section 8 of the Infertility Treatment Act 1995 (Vic) (Vic Act).
- Section 8 restricted in vitro treatment to women who were married or with a de facto partner.
- Dr McBain claimed that this was inconsistent with the Sex Discrimination Act 1984 (Cth) and therefore invalid by section 109 of the Constitution. Commenced proceedings in Federal Court.
- The Australian Catholic Bishops Conference and Australian Episcopal Conference of the Roman Catholic Church (Bishops) supported the Vic Act, and sought to join themselves to proceedings.
- The Bishops lacked standing to be joined and were involved in the proceedings as amicus curiae ("friends of the court").
- The Federal Court ruled in favour of Dr McBain.
- Bishops commenced proceedings in the High Court to have an order made under section 76 of the Constitution that the Federal Court decision was incorrect in law.

Issue

- Did the Bishops have standing to have the decision quashed by a writ of certiorari?

Held

- The majority followed In re Judiciary and Navigation Act (1921) 29 CLR 257 - in order for the High Court to consider section 76, there needed be some "immediate right, duty or liability" to be determined by the Court.
- The Bishops had no right, duty or liability nor was there a controversy that could be solved; the Federal Court proceedings were finalised and there had been no appeal.
- In the obiter of Gaudron, Gummow and Hayne JJ, certiorari was held to be unavailable.
- Certiorari should only be available for jurisdictional error or for a superior court to supervise inferior courts.
"The first condition of any litigation in a Court of Justice is that there should be a competent plaintiff, ie, a person who has a direct material interest in the determination of the question sought to be decided. The Court will not decide abstract questions, nor will it decide any question except when raised by some person entitled by reason of his interest to claim a decision. This doctrine should certainly not be relaxed for the purpose of bringing in question the validity of Statutes passed either by the Commonwealth Parliament or by a State legislature."

(Gaudron and Gummow JJ at page 410 citing the Union Label Case)

Full Text