

## **POLLENTINE & ANOR v. BLEIJIE & ORS (B39/2013)**

Writ of summons filed: 29 July 2013

Date special case referred to the Full Court: 28 February 2014

In 1984 the two plaintiffs were jailed indefinitely pursuant to s 18(l)(a) of the *Criminal Law Amendment Act 1945* (Qld) ("the CLAA"). Section 18 empowered the District Court of Queensland to declare that a person convicted of a sexual offence against a child under 17 years of age is incapable of exercising proper control over his sexual instincts and to direct that the offender be detained during Her Majesty's pleasure. No power was conferred on the court to review the offender's detention or to revoke an order made under s 18. Rather, s 18 provided that the offender could not be released until the Governor in Council is satisfied on the report of two medical practitioners that it is "expedient" to release him or her.

The first plaintiff, Edward Pollentine, pleaded guilty on 24 July 1984 in the District Court of Queensland to two counts of attempted rape, four counts of carnal knowledge against the order of nature, two counts of indecently dealing with a girl under the age of 14 years, two counts of abduction and four counts of indecently dealing with a boy under the age of 14 years. Each offence to which he pleaded guilty was contained in the *Criminal Code* (Qld).

The second plaintiff, Errol George Radan, pleaded guilty on 4 May 1984 in the District Court of Queensland to seven counts of unlawfully and indecently dealing with a girl under the age of 14 years and one count of carnal knowledge against the order of nature. Each offence to which he pleaded guilty was contained in the *Criminal Code* (Qld).

Both plaintiffs remain detained at Her Majesty's pleasure under the orders made by the District Court pursuant to s 18(3)(a) of the CLAA.

A notice of constitutional matter was filed on 5 August 2013. The Attorneys-General for New South Wales, South Australia and Western Australia are intervening.

The questions stated in the Special Case for the opinion of the Full Court are:

- Is s 18 of the CLAA invalid on the ground that it is contrary to Chapter III of the Constitution, by way of infringing the principle identified in *Kable v Director of Public Prosecutions* (NSW) (1996) 189 CLR 51, or otherwise?
- Who should pay the costs of the case stated?