



New South Wales Supreme Court

CITATION : *Commissioner of Police v Rintoul* [2003] NSWSC 662

HEARING DATE(S) : 18 July 2003

JUDGMENT DATE : 18 July 2003

JUDGMENT OF : Simpson J

DECISION : Summons dismissed; plaintiff to pay the costs of the defendant.

CATCHWORDS : prohibition of public assembly - authorised public assembly -
privacy - exercise of democratic freedom

LEGISLATION CITED : *Summary Offences Act 1988* (NSW) s23, s24, s25

CASES CITED : *Commissioner of Police v Allen* (1984), 14 A Crim R 244
Commissioner of Police v Vranjkovic, unreported 28 November 1980,
Lee J, NSWSC

PARTIES : Commissioner of Police - Plaintiff
Ian Rintoul - Defendant

FILE NUMBER(S) : SC 30062/03

COUNSEL : I Bourke with A Eckhold - Plaintiff
KG Horler QC with D Bernie – Defendant

SOLICITORS : IV Knight - Plaintiff
Stephen Blanks & Associates - Defendant

**IN THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION
ADMINISTRATIVE LAW LIST**

SIMPSON J

Friday 18 July 2003

30062/03

COMMISSIONER OF POLICE v Ian RINTOUL

JUDGMENT

1 **HER HONOUR:** By summons filed on 17 July 2003, the plaintiff, the Commissioner of Police (“the Commissioner”), seeks an order prohibiting the holding of a public assembly proposed by the defendant and others to be held during the morning of 19 July 2003. On 17 July I made an order abridging the time for service of summons. All relevant parties have been notified and are represented today.

2 The order sought by the Commissioner is one the authority for which is conferred on this Court by s25 of the *Summary Offences Act 1988* (“the Act”). Part 4 of the Act deals generally with public assemblies. By s23 a public assembly is an authorised public assembly if:

- (i) Notice in writing of the intention to hold the assembly has been addressed to and served upon the Commissioner and contains the particulars prescribed which include the date, time, and place at which the public assembly is to be held, its purpose or purposes, and the number of persons expected to participate;
- (ii) The notice is signed by and gives an address of a person who takes responsibility for organising and conducting the public assembly;
- (iii) The Commissioner has notified the organiser that he does not oppose the holding of the public assembly.

3 If all those conditions are met, the public assembly becomes an authorised public assembly. The consequence of that, by s24 of the Act, is that, if the public assembly is held substantially in accordance with the notice, participants are protected from criminal liability for offences of participating in an unlawful public assembly or obstruction that might otherwise arise as a result of their participation.

4 In the present case, all conditions except the last are met. Far from notifying the defendant that he does not oppose the holding of the public assembly, the Commissioner has advised the defendant that he does oppose it and has sought an order that the public assembly be prohibited.

5 As I have indicated, the power to make such an order is conferred by s24 of the Act. That section, however, is entirely silent as to the considerations that ought to be taken into account and the criteria that will govern the application. It is apparent that the Act is intended to strike a balance between competing rights - the right, jealously guarded, of the citizen to exercise freedom of speech and assembly integral to a democratic system of government and way of life, and the right of other citizens not to have their own activities impeded or obstructed or curtailed by the exercise of those rights. Other rights may be involved, and this is such a case. What I have said so far is completely uncontroversial and reflects the submissions made by counsel for both parties. It is important to mention here that besides the right of free movement, there are also rights of privacy and day to day activities on the part of persons who will not be involved in the proposed assembly. I will come back to that and be more explicit in due course.

6 When these competing rights collide one must give way to the other. This Court has been given the unenviable task of determining which is to surrender to the other. It is also apposite to observe here the consequences of an order under s24 to which I have already alluded. Contrary to what might appear to be the case, given the terminology of the section, that is an order for prohibition of an assembly, the making of a prohibition order does not render the conduct of or participation in any assembly unlawful. I refer to the earlier decisions of this Court, in *Commissioner of Police v Vranjkovic*, unreported 28 November 1980, per Lee J, and *Commissioner of Police v Allen* (1984), 14 A Crim R 244, per Hunt J, as he then was. The making of a prohibition order merely deprives participants of protection that s24 would otherwise afford them.

7 It is convenient here, however, to refer to something said by Hunt J in *Allen* concerning the circumstances in which an order might be made. There his Honour rejected a submission that, in order to justify a prohibition order, it was necessary that the plaintiff, the Commissioner, establish that a breach of the peace would or would be likely to be caused by the holding of the public assembly. But his Honour did go on and recognise that it would be a rare case where that circumstance was not the justification for the making of a prohibition order.

8 I turn now to the factual issues raised by the application. Evidence in affidavit form on behalf of the Commissioner was put before me and the deponent of the affidavit, Superintendent Mennilli, was cross-examined. The defendant himself gave oral evidence and was cross-examined. The defendant gave notice of the intended assembly and I am satisfied, on the evidence, that that occurred on or about 27 June, and I am also satisfied that, regrettably, that application did not come to the notice of Superintendent Mennilli until 14 July and that, when it did come to his notice, he acted with due expedition and, indeed, he had at least two discussions with the defendant during which both parties sought to negotiate a compromise arrangement, Superintendent Mennilli having told the defendant that he would not under any circumstances approve the application in the form it had come before him.

9 The application itself is in writing and contains the particulars required by the Act. The proposed date of the public assembly is 19 July, which is tomorrow, at 11 am and thereafter. Its purpose is to protest against the government's refugee policy. It is proposed that the participants will meet at the Pennant Hills Railway Station and then process a very short distance into Brittainia Street, Pennant Hills, where there will be a stationary protest.

10 The significance of Britannia Street, Pennant Hills, is that it is the private residential address of the Commonwealth Minister for Immigration, Mr Ruddock. The defendant advised in the application that he estimated approximately 300 persons to participate. I do not think there is anything else of significance for the present case contained in the application except that it is intended that there will be one musician and three speakers. I think in oral evidence Mr Rintoul, the defendant, said that he now expects five speakers or possibly more.

11 The Commissioner has put on evidence of a variety of documents from a variety of sources from which I am invited to conclude that the proposed public assembly goes beyond the bounds of what is legitimate and also is likely to create confrontation, and from that, I take it, it is suggested that there is at least some reason to fear some breach of the peace. One document is a flyer which states that it was endorsed by the Refugee Action Coalition, which is the organisation to which the defendant belongs and which he represents. It contains in large block letters, among other things, the words, "DETAIN RUDDOCK FOR A DAY! FREE THE REFUGEES!" It also contains, as a contact point, the words, "Call Ian" (Ian being the first name of the defendant) and a telephone number.

12 Another document also advertises the proposed assembly as being for Saturday 19 July from 11 am, but adds that there will be a pre-protest candlelight vigil and special light show after sunset on 18 July, that is this evening. That document, which has not been shown to be linked to the defendant but it is clearly linked to the assembly that he proposes, also contains the words, "We are bringing the protest to his (that is the Immigration Minister's) doorstep to remind him that the lives of real people are affected by his policies."

13 Also in evidence, but admitted for a limited purpose only, is an extract from a daily newspaper which contains the following paragraph:

"Refugee activists plan to encircle the private residence of Immigration Minister Philip Ruddock with barbed wire during a protest next month ... protestors will attempt to camp outside Mr Ruddock's residence for a weekend and set up a mock detention centre outside the minister's house."

14 I admitted the extract from the newspaper as evidence of the extent of publicity afforded to the proposed assembly but not as evidence of the truth of what was contained therein. There is no other direct evidence of any proposal to encircle Mr Ruddock's residence with barbed wire or to camp outside the residence for the weekend. The defendant disavowed any intention to treat the residence as outlined in that news report. I accept that such an activity is no part of the defendant's proposal. Similarly, on the defendant's evidence, I accept that a pre-protest candlelight vigil does not form part of his proposal and neither does any special light show after sunset.

15 Superintendent Mennilli gave affidavit evidence of a conversation with the defendant in which he says the defendant said that, having protested over two years without much success, they had decided "to target his (that is Mr Ruddock's) family and get into his home the way he has been getting inside other people's houses." The defendant denied using these expressions. There was nothing in the way either witness gave evidence which would enable me to decide that one was untruthful or unreliable or to prefer to evidence of one over the other. I think, therefore, that I should put that to one side.

16 Superintendent Mennilli also gave affidavit evidence about other aspects of the application. This involved the use of the general area on Saturday mornings. It is a suburban area very close to a large park, the Pennant Hills Park, which is extensively used on Saturday mornings for sporting activities. It is also a heavy traffic area with about 6,000 vehicles using the road on any Saturday morning.

17 When cross-examined Superintendent Mennilli said that a previous public assembly organised by the defendant had featured a certain amount of violence but he was unable to be very specific about this and information very fairly and properly provided to the court by counsel for the Commissioner showed that there was very little violence, possibly some jostling or struggling but no more than that.

18 There is, in my opinion, no evidence from which I could conclude that there would be likely to be any breach of the peace. I say this, having had regard to the submissions put by counsel for the Commissioner to the effect that, given the traffic congestion that can be expected, it is likely that tempers will be frayed and there may be some confrontation. In my opinion, that submission does less than justice to the commonsense and goodwill of the residents of suburban Sydney, who may be frustrated by any delays that they encounter, but are not, in my opinion, likely to engage in such conduct as would create a breach of the peace.

19 In his affidavit Superintendent Mennilli outlined his concerns about the proposed assembly. Principal among these was the residential nature of the area in which the proposed assembly is to take place, that it targets the private residences of Mr Ruddock and his family and of other residents, that it is in the location of a heavily used park in which sporting events are fixed, that traffic is in any event heavy in that area at that time, that events of the kind I have referred to, which are extraneous to the defendant's application, have been flagged and that there have been community concerns expressed.

20 I will deal with some of those matters. First, in relation to the sporting events - and I should mention here that counsel for the Commissioner expressly acknowledged that the disruption of a sporting fixture and, indeed, disruption of traffic would not of themselves be sufficient to warrant the making of a prohibition order - the regular use of a public facility such as the Pennant Hills Park does not entitle the regular user to the exclusive and continuous possession of that facility at the cost of others who also have a legitimate claim to its use. Public facilities are to be shared and occasionally even a regular user has to give way to the claims of others. It is in the very nature of the entitlement to peaceful protest that disruption will be caused to others. The fact that the proposed assembly is likely to cause significant inconvenience to residents of Pennant Hills and to individuals involved in the events at the park is far from determinative. If matters such as this were to be determinative, no assembly involving inconvenience to others would be permitted.

21 Having dealt with those matters, I turn to what is, in my view, the most significant matter raised on behalf of the Commissioner. That is the location of the proposed public assembly. It is at a private residence of a Commonwealth Minister at a Sydney suburban address. The competing considerations are not, therefore, the usual ones of obstruction, apprehended violence, or breach of the peace. I have disposed of those. The collision of rights in this case involves the extent to which it is proper to give the court's sanction, by refusing an order to prohibit a public assembly that will undoubtedly have privacy implications for the Minister and his family but also for his neighbours, to that intrusion on privacy.

22 Access to members of parliament, and, especially, to Ministers of the Crown, is an important function of the democratic process but it has clear limits. While Ministers, not as a matter of law but as a matter of political reality, must make themselves available to receive the expressed views of members of the public on issues of significance, in my opinion that obligation does not extend to their private homes. Many might consider that protesting at a private residence takes the exercise of democratic freedoms too far. Many might consider that good taste demands respect for privacy not only of the Minister but also of his family and his neighbours. But this Court does not sit to enforce good taste.

23 I am conscious that if I were to make the orders sought, it would be taking a step towards an inhibition of the importance of freedom of expression and assembly; equally if I were to refuse the order, I would, in a small way, be providing some sanction to a significant invasion of privacy. Distasteful as I, therefore, find the balance of these considerations to be, I may not shrink from the task. In reaching my conclusion, I have been influenced by the observations of Hunt J in *Allen*, to which I have already referred, concerning anticipated breach of the peace as a feature of the proposed assembly. I am also influenced by the lack of any significant consequences of making an order. The assembly may in any event go ahead. I do not think that participants, as long as the assembly is peaceful and is in accordance with the notice, should be deprived of the protections otherwise afforded by the Act.

24 Before concluding, I wish to make an observation again about the limited nature of the application before me. An authorised assembly would protect participants only if the assembly were held substantially in accordance with the application. It does not protect against criminal prosecution of any person who engages in acts of violence or vandalism in that assembly. I observe that the Act gives me no power to do other than grant or refuse the orders sought. I am not empowered to impose conditions upon the conduct of any assembly that goes ahead but such an assembly should be in accordance with the law and participants should be aware of the very limited nature of the protection that the Act affords them. For reasons I have given, I am not satisfied that I should make an order and the summons is dismissed.

25 I order the Commissioner to pay the defendant's costs.

23/7/2003

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