

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 26/2022  
[2022] NZSC 77

BETWEEN

ATTORNEY-GENERAL  
First Applicant

CHIEF EXECUTIVE, ARA POUTAMA  
AOTEAROA DEPARTMENT OF  
CORRECTIONS  
Second Applicant

AND

MARK DAVID CHISNALL  
Respondent

Court: O'Regan, Ellen France and Williams JJ

Counsel: A F Todd and M J McKillop for First Applicant  
A J Ellis, B J R Keith and G K Edgeler for Respondent

Judgment: 22 June 2022

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JUDGMENT OF THE COURT

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**A Leave to appeal and to cross-appeal is granted (*Chisnall v Attorney-General* [2021] NZCA 616 and *Chisnall v Attorney-General* [2022] NZCA 24).**

**B The approved questions are as follows:**

- (a) **Whether the Court of Appeal was correct to make declarations that Part 1A of the Parole Act 2002 [extended supervision orders] and the Public Safety (Public Protection Orders) Act 2014 [public safety orders] are inconsistent with s 26(2) of the New Zealand Bill of Rights Act 1990 [the Bill of Rights]; and**
- (b) **Whether the Court of Appeal was correct not to make declarations that extended supervision orders and public safety orders are inconsistent with ss 9, 22, 23(5), 25(a), (c) and (d), and 26(1) of the Bill of Rights.**

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## **REASONS**

[1] The Attorney-General does not seek to challenge the finding that extended supervision and public safety orders are penalties for the purposes of the protection in s 26(2) of the New Zealand Bill of Rights Act 1990 (the Bill of Rights) against the imposition of a second penalty. Rather, the argument in support of the appeal will focus on the appropriateness of making declarations when, on the case for the Attorney-General, the discretionary powers to make extended supervision and public safety orders can and must be interpreted consistently with the Bill of Rights.

Solicitors:  
Crown Law Office, Wellington for First Applicant  
F J Handy, Wellington for Respondent