

years had passed since the person died. The petition was refused without prejudice to a new petition being submitted after three years. [JG]

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Catch the Fire Ministries Inc v Islamic Council of Victoria Inc

Court of Appeal of the Supreme Court of Victoria: Nettle, Ashley and Neave JJA, December 2006

Religious vilification – seminars and articles – reasonableness and good faith

Section 8(1) of the Racial and Religious Tolerance Act 2001 (Vic) provides:

A person must not, on the ground of the religious belief or activity of another person or class of persons, engage in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, that other person or class of persons.

Section 11(1)(b) provides that section 8 is not contravened if the person establishes that the conduct was engaged in reasonably and in good faith in the course of any statement, publication, discussion or debate made or held, or any other conduct engaged in, for any genuine academic, artistic, religious or scientific purpose. A contravention of section 8 can result in civil and criminal liability.

Catch the Fire Ministries Inc in September 2001 published articles on Islam by Pastor Nalliah on its website, and, in March 2002, organised a seminar on Islam, attended by 200 to 250 people, at which Pastor Scot spoke. The Islamic Council of Victoria Inc in a representative capacity made a complaint to the Equal Opportunity Commission of Victoria alleging that Catch the Fire Ministries, and Pastors Nalliah and Scot had committed acts that were unlawful religious vilification in contravention of the Act. The complaint was referred by the Commission to the Civil and Administrative Tribunal.

Evidence was heard from three Muslims who attended the seminar. On 22 December 2004, the tribunal found that the cumulative effect of 19 passages from a transcript of the seminar was sufficient to make out a breach of section 8. Notwithstanding that from time to time there was talk of witnessing to Muslims, the seminar taken as a whole breached section 8 because it incited hatred, contempt and revulsion because of the religious beliefs of Muslims. The tribunal found that the respondents were not entitled to the exception under section 11 because Pastor Scot did not conduct the seminar in good faith, nor were the statements made reasonably and in good faith.

On 22 June 2005, the tribunal made orders in the nature of corrective advertising and the giving of certain undertakings, which the respondents refused to do. On 9 August 2005, the tribunal made orders restraining the making of the same

or similar statements that breached section 8. Catch the Fire Ministries, and Pastors Nalliah and Scot were granted leave to appeal to the Court of Appeal, which delivered its judgment on 14 December 2006. Each of the judges held that the tribunal made two errors of law in the construction of section 8. First, it regarded the words ‘on the grounds of religious belief’ as requiring reference to the ground actuating the alleged inciter, rather than to the ground on which the audience was incited to ‘hatred or other relevant emotion’. Second, it considered the effect of the words used at the seminar on an ordinary reasonable reader, rather than on the audience to which the words were actually directed.

Nettle JA in considering section 11(1)(b) said that, assuming no lack of honesty, one should ordinarily start with the identification of the purpose for which the defendant is said to have engaged in the conduct, and determine whether it answers the description of an academic, artistic, religious or scientific purpose. A religious purpose included both comparative religion and proselytism. One should next inquire as to whether the respondent’s alleged purpose was a ‘genuine religious purpose’. One should move next to the question of whether the defendant had engaged in the conduct *reasonably* and *in good faith* for the genuine religious purpose. That then left the question of whether the conduct was engaged in *reasonably* for the genuine religious purpose, which involved an objective analysis of what is reasonable and called for a determination according to the standards of an open and just, multicultural society.

Nettle JA accepted that the tribunal had power to order corrective advertising but held that the orders made by the tribunal on 9 August 2005 were too wide, unqualified and uncertain to be allowed to stand. The Court of Appeal allowed the appeal, set aside the orders of the tribunal and remitted the proceedings to the tribunal, to be constituted by a different member, to be heard and decided again without the hearing of further evidence.

The judgment is available at <<http://www.austlii.edu.au/au/cases/vic/VSCA/2006/284.html>> [2006] VSCA 284, accessed 20 June 2007. Case note supplied by Garth Blake SC.

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R (on the application of London Borough of Hackney) v Rottenberg

Divisional Court: Scott Baker LJ, Clarke J, January 2007

Statutory nuisance – freedom of religion

The claimants appealed by way of case stated against the decision of the Crown Court to allow an appeal against conviction for six offences of breach of an enforcement notice served on the respondent. The informations charged the respondent (who was an Orthodox Rabbi occupying one half of a semi-detached house in north London as a school and synagogue) with failure to comply with an