

CASE NOTES

EDITED BY JUSTIN GAU

Barrister, Deputy Chancellor of the Diocese of Lincoln

AND RUTH ARLOW

Barrister, Deputy Chancellor of the Diocese of Chichester

Re St Oswald, Hotham

York Consistory Court: Coningsby Ch, April 2006

Chiming clock – inconvenience

The petitioners sought leave to install a chiming clock on the south face of the Norman church tower. Objections were noted on the grounds of noise and aesthetics. The chancellor was satisfied that, as the clock was to chime between the hours of 9.00 am and 5.00 pm on weekdays only, the level of inconvenience of the sound of the bell was not sufficient to justify refusing to allow the installation of the chiming clock. The chancellor concluded that, as the majority of persons, including the DAC, felt that the clock was aesthetically satisfactory, he should not refuse the petition on that ground either. The petition was granted as prayed. [JG]

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Re St Mary, Worsbrough

Sheffield Consistory Court: McClean Ch, October 2006

Memorial – procedural irregularities – passage of time

A petition was received to introduce a plaque to commemorate a member of the congregation who had given many years of service to the church. The application was first raised within only a few months of his death, and there were several procedural irregularities within the petition, including the apparent objection of one of the petitioners. The proposed situation of the plaque was also described as ‘extraordinarily insensitive’ by the chancellor. The chancellor emphasised that memorials were never a matter of right but of privilege and a privilege that should be sparingly conceded: *Re St Margaret, Eartham* [1981] 1 WLR 1129. The introduction of such a plaque needed full discussion and careful consideration, there needed to be proof of the ‘exceptionality’ of the person to be commemorated, and there needed to be evidence of wide support for the proposal. The chancellor pointed out that, in some dioceses, no application would be considered until five

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