

**COMMENTS ON THE SUPREME COURT
JUDGEMENT ON RELIGIOUS VILIFICATION**

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“A Supreme Court ruling in favour of an appeal by Catch the Fire Ministries will force the much disputed case back for re-hearing.”

On December 14, 2006 the Supreme Court of Victoria upheld the appeal against the findings of the Victorian Civil and Administrative Tribunal which had previously ruled that a seminar conducted by Catch the Fire Ministries (with Pastors Danny Scot and Danny Nalliah) contravened the *Racial and Religious Tolerance Act 2001*. The Supreme Court ruling set aside the orders of the Tribunal and remitted the proceedings back to the Tribunal, to be heard and decided again, by a different judge without the hearing of further evidence.

Catch the Fire Ministries Inc (CTF), carries on Christian ministry on an Australia-wide basis. Pastor Nalliah, is a full-time registered pastor of the Assemblies of God and a director of Catch the Fire Ministries. Pastor Scot is also an accredited pastor of the Assemblies of God and is also a director of Ibrahim Ministries International. His main ministry is speaking and teaching at seminars to groups of Christians. The respondent in the case is the Islamic Council of Victoria (ICV), which represents Muslims and Islamic societies in Victoria.

Section 8(1) of the Act provides that ‘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.’ The Tribunal concluded that Pastor Scot had made a number of statements in contravention of the Act, including saying, amongst a much longer list of charges, that the Qur’an promotes violence and killing; that Muslim scholars misrepresent what the Qur’an says; that the Qur’an teaches that women are of little value; that Allah is not merciful; that Muslims lie for the sake of Islam; that Muslims are demons and that there is a Muslim threat to Australia. The Tribunal did not accept that other statements about accepting, tolerating, reaching out to and loving Muslim people ameliorated the situation.

The Tribunal said that Pastor Scot was moved by the religious beliefs of Muslims to make statements which would mean that an ordinary reasonable person would be inclined to hate them. But the Supreme Court, with three judges sitting, ruled that the Tribunal had misinterpreted the test for this and did not give enough consideration to the distinction between hatred of religious beliefs and hatred of persons, erroneously assuming that they were identical. The Supreme Court also gave greater attention to the educational context of the meeting as a whole and to other statements by Pastor Scot calling on people to love Muslims.

Justice Nettle (who, of the three judges sitting wrote the main judgment) also commented that the affront to the feelings of the Muslim witnesses was largely if not wholly irrelevant. The prohibition in the Act is not against saying things which are offensive, or even against saying things which would cause others to despise those beliefs, it is against saying things which go so far as to incite other persons to hate persons who adhere to those religious beliefs. As a matter of logic (said the judge), it does not suffice to establish incitement to show that scorn has been poured on certain religious beliefs or practices.

The failure to distinguish between statements about beliefs and persons meant that the Tribunal mistakenly concluded that the Seminar was not a balanced discussion of Muslim beliefs because it disregarded significant aspects of Pastor Scot's statements which, the Supreme Court judgment argued, went a long way to ameliorating any risk of inciting hatred of Muslims. The judgment also suggests that the Tribunal did not take sufficient account of the defence argument that Pastor Scot was justified in saying certain things because they were true.

The Tribunal's failures included inappropriately disregarding or misinterpreting many things that Pastor Scot said. In at least a dozen places the Supreme Court repudiated what the Tribunal said about Pastor Scot's teaching with the simple, repeated phrase 'Pastor Scot did not say...'. And on a number of other occasions it notes that although 'he did say...' it goes on to argue that reference to the context or to other statements Pastor Scot made did not allow for the conclusion reached by the Tribunal. The Supreme Court ruling notes, for instance, that Pastor Scot did *not* say that the Qur'an promotes violence and killing; that looting, killing and destroying people is good for Muslim people; that Muslim scholars misrepresent what the Qur'an says by varying the emphasis, depending upon the audience; or that Allah is not merciful.

The judge, in his opinion, found certain aspects of Pastor Scot's teaching 'distasteful', 'incorrect', 'bewildering' and exhibiting a 'lack of logic'. But these are irrelevant to the question of vilification and often represent the issues associated with someone speaking in a second language. Moreover, the judge noted 'I was unable to perceive from the tape (of the proceedings of the conference) anything in the manner of Pastor Scot's delivery which rendered his statements more likely to incite the audience to hatred... on any analysis his plea to love Muslims and to 'minister' to them comes across as sincere enough as do the sounds of his audience's reaction to it.'

It is to be hoped that Justice Nettle's extensive findings on what Pastor Scot did and did not say will be disseminated widely. It is perhaps ironic for an Act concerned with vilification that one effect of the case has been to extensively and publicly vilify someone for making various derogatory statements which they did not, in fact make. Pastor Scot did not say, for example, that Muslims were demons. The law has, arguably, created a situation where such an injustice is more likely to occur.

It is now clear that the original judgment was seriously flawed. The claim that the appeal was won simply on a technicality (as claimed by a spokesman for the ICV) is disingenuous. Although the matter is technical, it is no 'mere technicality' but a significant legal issue.

The appeal result means that the politicians who framed this law can claim that this finding is simply proof of a legal system which is working well, but there is no doubt it is a rebuff to many supporters of the Act, including some churches, who thought this law would prevent apologetic and evangelical groups like CTF operating as they do.

The matter ought to be treated with caution as the case is now to be re-heard by the Administrative Tribunal. Nonetheless, in the mean-time it is possible to wonder how the original tribunal could have done so badly. One mitigating factor, in a case where many would suggest that common-sense was in short supply, is found in the Supreme Court observation that the way in which the case for Catch the Fire Ministries was presented in the Tribunal hearing made the task for the Tribunal 'extraordinarily difficult.' Consequently, CTF Ministries was reckoned to be responsible for half of its appeal costs. Nonetheless, the ICV has to pay all its own costs as well as half of CTF's and may yet have to pay part of CTF's Tribunal costs.

Despite the positive aspects of the ruling from the point of view of Catch the Fire Ministries the fact that the case is to be re-determined without further evidence means that exactly what the law means in practice is still in doubt. The determination that Pastor Scot did not say many of the things the Tribunal believed he said leaves some doubt about what can be said without breaching the Act. The forthcoming ruling may clarify that. But in the meantime a law which was intended to enhance religious harmony has, predictably for many, been the cause of considerable friction.

Experienced lawyers have previously warned of the 'penumbra effect' of legislation like this, whereby the fear of litigation creates a situation of uncertainty in which individuals and groups feel bound to take additional steps to ensure that no unintended breach of the Act occurs in public meetings. Some visiting speakers have declined to give talks in Victoria which they have given, uncontroversially, in other countries and other Australian states; organisations have restricted attendances at certain meetings or required evidence of church commitment; and the managers of facilities have insisted on giving written disclaimers to all attendees when other groups have hired halls. It has also led to the situation where various religious groups become intent on ensuring that other individuals and religious groups do not breach the Act and so embark on 'spying' expeditions to see what is being said in sermons and talks in other places. This does nothing other than create an environment of fear and uncertainty.

The Muslim community has strongly supported the law and there is no doubt that many want to see it remain and be implemented. But some admit privately (and some publicly) that resorting to the law to resolve issues of inter-faith relationships is a mistake. There are those close to the present case who have said they will not resort to the Act again - though they cannot speak for everyone.

Christians are divided over the matter. Some churches such as the Uniting Church and the Catholic church with the Victorian Council of Churches have supported the legislation. Leaders from other denominations (including the Presbyterian Church, the Anglican Church, Orthodox and Pentecostal Churches) and Christian groups (especially the Australian Christian Lobby and including the Australian Evangelical

Alliance) have opposed it and so find themselves aligned with secular civil libertarian groups, such as Liberty Victoria.

The extent of the errors in this case raises serious questions about the on-going operation of the Act. The Rev David Palmer of the Presbyterian Church notes, firstly, the problematic relationship between the Equal Opportunity Commission (which deals with matters of offence) and the Tribunal which is required to make judgments on incitement to hatred; secondly, the confusing use of the words 'vilify' and 'vilification' in the Act and, thirdly, the difficulty involved in determining whether someone is speaking 'reasonably' in what they say.

What is most clear is that the story is not yet over. The case is still to be re-determined by the Administrative Tribunal but, politically speaking, will the disaster that has been the Catch the Fire case now add new pressure for the removal of the law?

*The full Supreme Court judgment can be found at
<http://www.austlii.edu.au/au/cases/vic/VSCA/2006/284.html>.*