

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



BOTTRILL V SUNOL [2018] ACAT 21

Australian Capital Territory Civil and Administrative Tribunal, Senior Member B Meagher SC, 13 March 2018

Complaint concerning direct and indirect discriminatory blog pages that target the plaintiff's religious convictions.

Key words: Religion, Australian Capital Territory Civil and Administrative Tribunal, Discrimination, Vilification, Religious Conviction, blog, church

1. This case concerned discrimination on the basis of religion. Bottrill, a member of a recognised religion in Australia called the Ordo Templi Orientis (OTO), claimed that he had been vilified in certain blog postings under the control of Sunol. Bottrill relied on section 67A of the *Discrimination Act 1991* (ACT) (the Act). This section provides (with key words considered by the Tribunal in bold):

67A Unlawful vilification

(1) It is unlawful for a person to **incite** hatred toward, revulsion of, serious contempt for, or severe ridicule of **a person** or group of people **on the ground** of any of the following, **other than in private**:

- (a) disability;
- (b) gender identity;
- (c) HIV/AIDS status;
- (d) intersex status;
- (e) race;
- (f) religious conviction;**
- (g) sexuality.

2. The OTO is a very small religion founded by the English author Aleister Crowley in about 1912. The elements of the religion are not wholly clear from the evidence, but it appears to contain some characteristics of Freemasonry and magic and has as its texts various writings of Crowley. The religion is based on that of Thelema. Thelemic religion refers to Aleister Crowley's system of spiritual discovery of individual will or vocation. The magical instructions underpinning the system involve the use of tarot cards, yoga, meditation and several other practices including Tantric-based sex magic.
3. The OTO is also a registered charity in Australia, registered as Ordo Templi Orientis Incorporated, with the object of advancing religion. It is said to benefit the general community of Australia. It is not a basic religious charity.

4. Bottrill complained that the blog postings in contention defamed and vilified him because of their unsavoury content, which was directly linked to his religion. Was his religion within the coverage of the Act? In the dictionary to the Act, 'religious conviction' is defined as including:
 - (a) having a religious conviction, belief, opinion or affiliation; and
 - (b) engaging in religious activity; and
 - (c) the cultural heritage and distinctive spiritual practices, observances, beliefs and teachings of Aboriginal and Torres Strait Islander people; and
 - (d) engaging in the cultural heritage and distinctive spiritual practices, observances, beliefs and teachings of Aboriginal and Torres Strait Islander peoples; and
 - (e) not having a religious conviction, belief, opinion or affiliation; and
 - (f) not engaging in religious activity.
5. The Tribunal said that this definition was wider than that in *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)* [1983] HCA 40 (the Scientology case) as it extends to non-belief. Therefore, Bottrill followed a religion for the purposes of the Act.
6. Was there an incitement to hate in the postings complained of? It was held that there was, because of the nature of the imputations made in the postings that members of the OTO engaged in various unpleasant and unlawful activities. This led to the conclusion of vilification.
7. The only remaining issue was whether Sunol was responsible for the postings on his blog which he did not himself write. They were written by another person. It was held that he was responsible for the blog as a whole, and therefore for what appeared on it. He had already taken down the blog but was ordered to not post such material, or links to such material again. The Tribunal described the postings as 'archetypal hate speech' (at [81]).

IMPLICATIONS



This case is noteworthy as it establishes that the definition of 'religious conviction' is wider than that set out in the Scientology case and that he was held responsible for a blog that he did not author, but had control over.

VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/act/ACAT//2018/21.html>

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