

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

HUMAN RIGHTS DIVISION

ANTI DISCRIMINATION LIST

VCAT REFERENCE NO. A392/2002

COMPLAINANT: Islamic Council of Victoria

FIRST RESPONDENT: Catch The Fire Ministries Inc.

SECOND RESPONDENT: Daniel Nalliah

THIRD RESPONDENT: Daniel Scot

WHERE HELD: Melbourne

BEFORE: Judge Higgins, Vice President

DATE OF SUMMARY OF 17 December 2004

REASONS:

CITATION:

SUMMARY OF REASONS FOR DECISION

**JUDGE HIGGINS
VICE PRESIDENT**

APPEARANCES:

For Applicant: Mr B Woinarski QC, Ms D Mortimer SC & Mr K Farouque

For First Respondent: Mr D Perkins

For Second Respondent: Mr D Perkins

For Third Respondent: Mr D Perkins

SUMMARY OF REASONS FOR DECISION

- 1 In this matter I find that the complainant has standing.
- 2 I find that the seminar, the newsletter and the article "An Insight into Islam by Richard" all constitute a breach of section 8 of the Religious and Racial Tolerance Act 2001. That finding includes the Firstnamed Respondent, which the Body Corporate of which the Second Respondent was at all times the public officer of the First Respondent. The Firstnamed Respondents were responsible for the organisation, conduct and promotion of the seminar and the website, and that liability arises by virtue of section 15 of the Act.
- 3 I find that the conduct of the seminar by Pastor Scot, when looked at objectively and having regard to the context of the public act, and applying the test set out in Kazak at first instance, and that referred to in John Fairfax Publications Pty Ltd v Kazak (2002) N.S.W.A.D.T.A.P. 35 at paragraph 16 constitutes a breach of section 8. Furthermore, the conduct of the seminar does not fall within the exemptions contained in section 11 of the Act.
- 4 Pastor Scot, throughout the seminar, made fun of Muslim beliefs and conduct. It was done, not in the context of a serious discussion of Muslims' religious beliefs; it was presented in a way which is essentially hostile, demeaning and derogatory of all Muslim people, their god, Allah, the prophet Mohammed and in general Muslim religious beliefs and practices.

Time and again this occurs and, on any view, produces a response from the audience at various times in the form of laughter.

Pastor Scot, during the course of the seminar, made statements -

- (1) that the Qur'an promotes violence, killing and looting;
- (2) that it treats women badly; they are to be treated like a field to plough, "use her as you wish". Further, in Hadith Bukhari, women, dog and donkey are of equal value;
- (3) that domestic violence in general is encouraged;

- (4) that Muslims are liars;
- (5) that Allah is not merciful and a thief's hand is cut off for stealing;
- (6) that Muslims are demons;
- (7) that the practice of abrogation that is cancellation of words from the Qur'an and the Hadith solely to fit some particular purpose or personal need;
- (8) that Muslims operate a silent six jihad, which is the use of business connections; using money to induce people to convert to Islam, and the training of Muslims in Madrassahs and the statement there are millions of people right now under training in these schools, implying a threat to Australia;
- (9) that Muslims have a plan to overrun western democracy by the use of violence and terror, and to replace those democracies with oppressive regimes;
- (10) that people study for six to seven years and they become true Muslims, and we call them terrorists, but they are true Muslim; they have read the Qur'an, they have understood it and they are now practising it, that is the connection between the Qur'an and terrorism;
- (11) Muslims intend to take over Australia and declare it as an Islamic nation;
- (12) Muslim people have to fight Christians and Jews, humiliate them and fight them until they accept true religion;
- (13) Muslims in Australia are increasing at substantial rates and have influence or control over the migration of people to Australia. Figures are quoted which are wrong. It is said the figures are produced by the Bureau, implying the Bureau of Statistics, whereas they came from a different source, and that they are increasing at a rate which was incorrect.

There are many other references to the Qur'an and Muslims who are said to follow its teachings.

- 5 I find that Pastor Scot failed to differentiate between Muslims throughout the world, that he preached a literal translation of the Qur'an and of Muslims' religious practices which was not mainstream but was more representative of a small group in the Gulf states. The above matters constitute conduct on the grounds of the religious belief of another that incites hatred against serious contempt for or revulsion of severe ridicule of that other person or class of persons
- 6 Furthermore, I find that Pastor Scot's conduct was not engaged in reasonably and in good faith for any genuine religious purpose or any purpose that is in the public interest. I find that he fails the test of having acted reasonably and in good faith. Insofar as this provision is concerned, I have applied what was said in *Bropho v. Human Rights and Equal Opportunities Commission* (2004) F.A.A.F.C. 16. I find Pastor Scot's presentation was not performed in good faith when viewed either subjectively or objectively, nor do I find he acted reasonably. Having made that finding, he receives no protection under section 11 of the Act.
- 7 Finally, I say with regard to Pastor Scot I found his evidence to be evasive and, in two respects, lacking in credibility. The first of those matters relates to his statement that he had published three books and distributed 20,000 copies which he had sold for between \$10 to \$15, although he gave some away. He in fact named the books that he had written and gave the impression that they had been published. Indeed, that was not the case and he has not published any books, but the three which he mentioned have not yet been completed. He simply photocopied parts of the books and sells them. Until those admissions were made in cross-examination, I was under the impression that he had in fact published three books on Islam. Furthermore, the photostat copies of the books which are distributed at a seminar are not under his name but under a family name, Sarfraz Ahmed Siddiqui, which he admitted was a Muslim sounding name. The second aspect of his evidence which I found most unsatisfactory was his treatment of chapter 5, verses 38, 39 and 40 of the Qur'an. He deliberately referred to verses 38 and 40, but made no reference to verse 39, which refers to Allah

being merciful, which was a pro-Islamic verse. He gave two explanations for his conduct; one was that he did not have time, and the second was that Allah is merciful after a person has committed a second offence. I find his explanation both unconvincing and demonstrable of his intention to mislead.

- 8 Insofar as the newsletter "Raise up or Pay the Price" is concerned, there is an article written by the Secondnamed Respondent. The article is entitled "2002 - Will Australia be a Christian Country?". On the previous page he describes Muslims as "the enemy" due to some incident which took place in Saudi Arabia. Coming back to the article, he refers to Muslims coming to Australia by boats and he gives numbers who come in this way, and questioned as to why they are getting visas when our brothers and sisters in Christ are being slaughtered in mainly Islamic countries. Further, those Christians who tried to obtain a refugee visa cannot get one. He states, however, that Muslims obtain visas from the very countries where Christians are being raped, tortured and killed. He then asked his readers the following question:

"What stops the Muslims from doing the same in Australia?"

Further, he refers to the expansion of mosques in England. He said many mayors are Muslims. In referring to the expansion of mosques, he states that some churches have been closed down. They (Muslims) also very cleverly infiltrated Parliament and other influential places (even in Australia). This is in order to stop the name of Jesus being mentioned, because Islam knows the name of Jesus is trouble for him and also to spy on what the western governments are doing. He also relates a story of a pastor being told by an Imam that "Holy war is, we will make everyone in Australia worship Allah. Through peace or through violence". Finally he talks about birthing practices as being such that Muslims are increasing in numbers while "Aussies are on the decline". Viewed objectively and in their totality, these statements are likely to incite a feeling of hatred towards Muslims. They seek first of all to create fear in those who read the article of being harmed by Muslims. Further, that they are increasing in numbers while Aussies are on the decline, suggesting that they are seeking to take over Australia, which is

consistent by the quote said to be made by an Imam. I find that this breaches section 8 of the Act.

Furthermore, there is no protection to be obtained by reliance upon section 11 because I find that such statements could not be expected to be engaged in reasonably and in good faith (see Bropho's case)

9 Finally, there is the article by Richard entitled "An Insight into Islam by Richard". The date of the article is not without significance, that is 15 days after the events in New York, which make the context important in the sense that it is a response to an atrocity. It was, according to the evidence of Pastor Nalliah, intended for distribution in the United States, however he placed it on the Firstnamed Respondent's website in either 2001 or 2002. I find the article to be clearly a breach of section 8 of the Act and is a much clearer example of the type of conduct which the legislature is seeking to prohibit. The article suggests that Islam is an inherently violent religion and it was not possible to separate Islam from terrorist groups. He implies that Muslims endorse the killing of people based upon their religion, e.g. the tribe of Jews referred to in the Qur'an. He characterises terrorism as the very nature of Islam itself and suggests that the prophet is a paedophile, that the Qur'an teaches that the killing of innocent people is sanctioned and it teaches hate, not love. There is no attempt in the article to distinguish between moderate and extremist Muslims. The content of the article, when viewed objectively, incites hatred against and serious contempt for people who are Muslims. Again, as with the newsletter, I find that the Respondent does not obtain the benefit of the exemption because the person's conduct could not be regarded as reasonable and in good faith. I have elaborated in some detail with regard to this aspect in the full reasons for judgment.

10 Further, I find that Islam is a religion for reasons that are set out in the detailed ruling.

11 Accordingly, I find a breach of section 8 in respect of the seminar, the newsletter and the article.