

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

HUMAN RIGHTS DIVISION

ANTI-DISCRIMINATION LIST

VCAT REFERENCE NOS. A132/2005, A135/2005,
A137/2005, A139/2005

CATCHWORDS

Anti-Discrimination List – religious vilification – representative complaints – non-appearance by respondents – unchallenged evidence of complainants – breach of s 8 – remedy – sections 8 and 19 *Racial and Religious Tolerance Act 2001* – s 136 *Equal Opportunity Act*

A132/2005

COMPLAINANT Ordo Templi Orientis on behalf of Brent Gray

RESPONDENT Dyson Devine

A135/2005

COMPLAINANT Ordo Templi Orientis on behalf of David Bottrill

RESPONDENT Vivienne Legg

A137/2005

COMPLAINANT Ordo Templi Orientis on behalf of Brent Gray

RESPONDENT Vivienne Legg

A139/2005

COMPLAINANT Ordo Templi Orientis on behalf of David Bottrill

RESPONDENT Dyson Devine

WHERE HELD Melbourne

BEFORE Anne Coghlan, Deputy President

HEARING TYPE Hearing


DATE OF HEARING 28 May 2007


DATE OF ORDER 27 July 2007

CITATION

ORDERS

- 1 That the Respondents remove from the website named in the Particulars of Complaint and refrain from making, publishing or distributing in Victoria, including on the Internet whether in writing or orally and whether directly or indirectly (including by the Internet or by inserting any hyperlink on the Internet), any statements, information, suggestions or implications to the same or similar effect as those set out in paragraphs 11 and 18 of the particulars of complaint.
- 2 Liberty is reserved to the complainants to apply within 30 days for an order to compensate them for loss, damage and injury suffered by reason of the contravention of the Act.
- 3 The respondents are to pay the complainants' costs on County Court Scale "A" to be taxed by the principal registrar in default of agreement.


Anne Coghlan
Deputy President



The seal of the Victorian Civil and Administrative Tribunal is circular. It features a stylized wave or leaf design in the center. The text "VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL" is written around the perimeter of the circle.

APPEARANCES:

For Complainants	Ms Sion of counsel instructed by DLA Phillips Fox
For Respondents	No appearance

REASONS FOR DECISION

BACKGROUND

- 1 On or about 8 December 2004, Mr David Bottrill logged on to the internet. He typed three words into a *Google* search. They were “ordo”, “templi” and “orientis”, a search which he understood usually produced the address of the Ordo Templi Orientis website. He is a member of Ordo Templi Orientis (OTO).
- 2 Included in the displayed results was a website maintained by Dyson Devine and Vivienne Legg. He accessed that website which contained material which claimed that OTO is a protected paedophile group operating in Australia. There were further links which indicated there were copies on other websites and that the author was most probably Dr Reina Michaelson. He further located that document on a number of other sites.
- 3 Mr Brent Gray another member of OTO accessed the site in March 2005. Both were offended and distressed by the claims in the material on the websites.

HISTORY OF COMPLAINTS

- 4 Early in 2005, Ordo Templi Orientis on behalf of Mr Gray and Mr Bottrill, lodged a number of representative complaints with the Equal Opportunity Commission as it then was. The complaints allege that on or about December 2004 Mr Gray and Mr Bottrill had been religiously vilified by the content of a website produced and maintained by Dyson Devine and Vivienne Legg and contributed to by Dr Reina Michaelson. Two later complaints by Mr Bottrill of victimisation by Mr Devine and Ms Legg were also lodged with the Commission.
- 5 The complaints did not resolve at the Commission and all were referred to this Tribunal.
- 6 The complaints against Dr Michaelson, which included the Child Sexual Abuse Prevention Program Inc (of which Dr Michaelson was executive director) as a second respondent, settled by consent during a hearing in November 2006. The terms of settlement are public. Those proceedings were A131, A136 and A140 of 2005. Mr Bottrill's complaints of victimisation have been withdrawn. Those complaints were proceedings A133 and A134 of 2006.

THE HEARING

- 7 There are four remaining proceedings. They are A132, A135, A137 and A139 of 2005. Orders had been made consolidating those matters in proceeding A132/2005. The hearing of the complaints was before me on 28 May 2005.

- 8 Ms Sion appeared for the complainants, the respondents did not appear.
- 9 The complainants filed and served particulars of complaint, witness statements and supporting material.
- 10 The respondents filed and served nothing, despite orders of the Tribunal. They never attended any of the Directions Hearings listed or a mediation on 20 December 2005. They are well aware of these proceedings. The website they run refers to this hearing and says they will not be attending. In that website material, they refer to themselves as the authors of the website. It is that website that contains the material the complainants allege vilifies them.
- 11 Mr Stephen King had prepared a witness statement. He is the Chief Executive Officer of Ordo Templi Orientis. During the hearing he gave evidence and adopted his statement. Through Ms Prowse solicitor, witness statements of Mr David Bottrill and Mr Brent Gray were tendered. She confirmed that those statements were made by them and had the same content as those tendered when they gave evidence in the hearing in November 2006. Ms Prowse also confirmed that she had downloaded 65 pages from the internet site concerned. That material was tendered. Ms Sion also handed up the terms of settlement in the proceedings which resolved in November 2006.

LEGISLATIVE FRAMEWORK

- 12 Section 8 of the *Racial and Religious Tolerance Act 2001* (the Act) states :

8. Religious vilification unlawful

- (1) 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.

Note: "**engage in conduct**" includes use of the internet or e-mail to publish or transmit statements or other material.

- (2) For the purposes of sub-section (1), conduct—
- (a) may be constituted by a single occasion or by a number of occasions over a period of time; and
 - (b) may occur in or outside Victoria.

- 13 Section 9 says a person's motive in engaging in the conduct which contravenes s 8 is irrelevant and that relevantly the religious belief or activity need not be the sole or dominant reason for the conduct, but must be a substantial reason for it.
- 14 As Morris J, as he then was, commented in *Fletcher v Salvation Army Australia* [2005] VCAT 1523 at paragraph 5ff, but omitting footnotes :

The key word is “incites”. In its context, this does not mean “causes”. Rather it carries the connotation of “inflame” or “set alight”. The section is not concerned with conduct that provokes thought; it is directed at conduct that is likely to generate strong and negative passions in the ordinary person. An example of such passions would be where persons are so moved that violence might result.

It is clear that the test to be applied is an objective one. The outcome does not depend upon the reaction of the person making the complaint. Nor does it depend upon whether the conduct was intended to incite hatred.

The Act is not concerned with the vilification of a religious belief or activity as such. Rather it is concerned with the vilification of a *person*, or a class of *persons*, on the ground of the religious belief or activity of the person or class. As the Chief Executive of the Equal Opportunity Commission recently explained:

[The Act] protects religious freedom by ensuring that people are not subjected to vilification because of their beliefs. This does not mean that people cannot evangelise and proselytise, just that they must do so without inciting hatred of those who follow differing religious beliefs.

- 15 Section 19(5) provides that a representative body may complain on behalf of a named person or persons if the Commission is satisfied they are entitled to complain, have consent to the complaint being made on their behalf, the body has a sufficient interest in the complaint and the alleged contravention arises out of the same conduct.
- 16 By the operation of s 23 of the Act, Divisions 2 to 7 of Part 7 of the *Equal Opportunity Act 1995* (EO Act) apply to complainants such as those in these proceedings. Section 136 of the EO Act sets out what I can decide after hearing the evidence and representations that the parties to a complaint desire to adduce or make.

THE PARTICULARS OF COMPLAINT AND RELEVANT FINDINGS

- 17 The Particulars of Complaint claim that Ordo Templi Orientis Inc (OTO) is a religious organisation whose members practise the religion known as Thelema. That claim was supported by the evidence of Mr King. His evidence was unchallenged and I accepted it. I am satisfied that it is a religious organisation.
- 18 I am also satisfied that both Mr Gray and Mr Bottrill are members of OTO, a finding supported by the unchallenged evidence in the statements of those persons that they are members. I accepted that evidence. I am also satisfied that they have both consented to the complaints being made by OTO on their behalf, that OTO has a sufficient interest in the complaint and that the allegations of contravention arise out of the same conduct.
- 19 I am satisfied that Mr Devine and Ms Legg are the authors and publishers of the website concerned. This is self-evident from the material downloaded from the website which refers to Mr Devine and Ms Legg as its

authors and those who publish the material. It is material accessible via the internet to any person in Victoria, or anywhere else for that matter. I am satisfied that what is published on the website is published to persons in Victoria, and that use of the internet to publish or transmit statements or other material constitutes “engaging in conduct” where used in s 8 of the Act.

- 20 There are two “sets of words” on the website that the complainants claim breach the provisions of the Act. Mr Bottrill accessed and read the first set on 8 December 2004; and Mr Gray did so on 15 March 2005. Through a hyperlink on the website they also accessed and read a second “set of words”.
- 21 The first set of words is part of the Respondents’ website and is their own commentary. There is direct reference to the OTO and claims that it is a protected paedophile group which is operating in Australia. The complainants allege that the natural and ordinary meaning is that OTO is not a religion, but a paedophile group operating in Victoria and that members are paedophiles. The particulars alleged that these words incite hatred against, serious contempt for, revulsion of and severe ridicule of members of OTO, including Mr Bottrill and Mr Gray, on the ground of their religious beliefs or activities in breach of s 8 of the Act.
- 22 The particulars allege that by reason of such breach, Mr Bottrill and Mr Gray have each been held up to serious contempt, revulsion and ridicule, and each has been severely injured in his reputation and feelings and has thereby suffered and will continue to suffer loss and damage.
- 23 The second set of words is accessible through the same website via, as I said, a hyperlink.
- 24 It is a document authored by a Dr Reina Michaelson, one of the respondents in the other proceedings. Dr Michaelson has publicly acknowledged she is its author. It is a description of alleged events in Victoria, including an alleged conspiracy of silence involving high profile Australian citizens, a major television network, police and authorities and the education department around the issue of satanic and/or organised ritual sexual abuse of children. It purports to make a link between OTO and the alleged abuse. There are references in the document to OTO. The complainants allege that in their natural and ordinary meaning, the words meant and were understood to mean :
 - (a) OTO is not a religion, but is rather a child pornography and paedophile ring operating in Australia;
 - (b) members of OTO are paedophiles and producers of child pornography;
 - (c) members of OTO practise trauma-based mind control, sexual abuse and satanic rituals for the purpose of preventing or discouraging children reporting child abuse by members of OTO to the authorities;

- (d) OTO is a satanic cult which practises blood rituals where animals and small children are sacrificed and their blood and organs consumed;
- (e) OTO condones the kidnapping of street children, and babies and children from orphanages, for use and sacrifice in their satanic rituals;
- (f) OTO hosts parties at which naked children act as waiters and at which members of OTO have sex with and murder the children;
- (g) OTO condones the kidnapping and murder of children; and
- (h) members of OTO force children to participate in the production of child pornography and to have sex with other children and adults.

25 The complainants allege the words incited hatred against, serious contempt for, revulsion of and severe ridicule of members of OTO, including Mr Bottrill and Mr Gray, on the ground of their religious beliefs or activities, in breach of s 8(1) of the Act.

26 The particulars allege that by reason of the breach, Mr Bottrill and Mr Gray have each been held up to serious contempt, revulsion and ridicule, and each has been severely injured in his reputation and feelings, and has thereby suffered and will continue to suffer loss and damage.

27 The terms of settlement in the other matters refer to another website purporting to be the official website of the Child Sexual Abuse Prevention Program (CSAPP) and identifies Dr Michaelson as its executive director. In the terms of settlement CSAPP and Dr Michaelson state that the document was not intended to be released into the public domain and if it was so released by any means, that occurred without permission. The settlement terms confirm that Dr Michaelson has not produced any proof that any OTO members are or have been involved in such practices. CSAPP and Dr Michaelson acknowledge that the unauthorised release has caused offence to the members of OTO, including Mr Gray and Mr Bottrill as members. The CSAPP website at some point included a link to the website of the respondents in this proceeding, which then posted a copy of the offending document. That is the respondents have republished the document. Neither CSAPP nor Dr Michaelson owned the CSAPP website and have been unsuccessful in having the link removed. I am satisfied of these matters and so find.

28 Mr Bottrill states :

The publication of the Words on the internet, and their subsequent republication by others accepting these allegations as facts, harm the reputation of the O.T.O. and hurt its members. The Words fuel religious bigotry and create an environment of persecution, apprehension and concern in O.T.O. members and the broader Thelemic community.

Members have spoken of a feeling of persecution. Those O.T.O. members from other minority groups be they gay, lesbian, Jewish, Indian, or Chinese see a recurrence of other discriminations they have endured in the past, recurring in a truly more repellent form. Those members who have children are threatened by these allegations.

Members report concerns at being unable to freely and openly declare their religious beliefs and affiliation with the O.T.O. and Thelema. Members have reported that they have not attended various O.T.O. events due to such concerns. One member reported that her ex partner claimed that the O.T.O. only wanted her to access her child.

His statement goes on, setting out the personal hurt and humiliation he says he has suffered.

29 His evidence was unchallenged and I accept it.

30 Mr Gray states :

I was previously open to my family and friends about my OTO membership and my religious beliefs. Since I discovered the Words on the internet, I have been more reticent in declaring my religious beliefs. I find the Words to be an embarrassment because they are uncategorically false. The Respondents have forced me to conceal what I was previously proud of. The Respondents have intruded into my life by posting false, misleading and malicious Words about the OTO and its religious beliefs on the internet. I reject the stigma the Respondents seek to apply to me as Thelemite.

I have had to worry about the possible reactions of extended family members, both with and without children who do not share my beliefs, as well as the possibility that it may affect my employment.

A lot of my friends and colleagues outside of OTO have either recently had or will be having children, and it concerns me that anyone I have not told about my OTO membership may take the Words seriously. I have been put in the position where I have had to deal with member concerns regarding their non-OTO partners confronting them with the Words from the internet, and then speaking to other members who are contemplating leaving the Order because of the Words. The Local Body has also received emails from the public which cite the Words.

I was involved in organising a national conference in Victoria. One publisher of the Words sought to incite the Victorian police to disrupt the event with accusations that ritual murders were to take place. Since this VCAT proceeding began, I have developed concerns of police scrutiny, and although I have nothing to hide, I have a concern that the Words might provoke raids at my house or even Local Body events.

31 His evidence was unchallenged and I accept it.

32 What is clear from the material attached to the particulars of complaint taken from the website, is that the respondents have taken up Dr

Michaelson's material, have congratulated her and have endorsed it. They have themselves said that OTO is a paedophile and satanic network enjoying high level protection and have referred to its members as satanic ritual abusers and satanist paedophiles. The site demands readers take action. It is clear from the material and all the evidence before me and all the material tendered, that the respondents, on the grounds of the religious belief of the complainants, on whose behalf representative complaints were made, by the publishing of this material incite hatred against the complainants, and contempt, revulsion and severe ridicule of them in breach of s 8 of the Act.

- 33 The respondents have provided no response to the complaints and I am satisfied from all the material, including its context, that a substantial ground for the respondents' conduct is the complainants' religious beliefs or activities.

REMEDY

- 34 Where I have found a complaint proven, s 136(a) sets out what orders can be made. There is no need to recite them.

- 35 The complainants in their particulars sought the following :

- A An order that the Respondents not make, publish or distribute in Victoria, including on the Internet whether in writing or orally and whether directly or indirectly (including by the Internet or by inserting any hyperlink on the Internet), any statements, information, suggestions or implications to the same or similar effect as those set out in paragraphs 11 and 18 of the particulars of complaint.
- B An order that the Respondents publish a statement on the website under the Respondents' control currently located at (as set out in the particulars) in a form approved by the Tribunal, which fairly and accurately summarises the findings of the Tribunal, and undertakes not to make, publish or distribute any statements, information, suggestions or implications to the same or similar effect as those set out in paragraphs 11 and 18 of the particulars of complaint in the future.
- C An order that the Respondents maintain that statement on that website for a period of 12 months.
- D An order that the Respondents pay the Complainants an amount the Tribunal thinks fit to compensate the Complainants for loss, damage and injury suffered by reason of the conduct set out in the particulars of complaint.
- E An order that the Respondents pay the Complainants' costs of and incidental to this proceeding.

- 36 During the hearing the complainants did not press for orders with respect to paragraphs B and C.

- 37 With respect to the first order sought, whilst the “damage is done”, in that the material now appears on a number of other internet sites, I regard it as appropriate to make orders that the respondents remove the material from the website specified in these complaints and refrain from including on the internet any material to the same or similar effect as set out in the specified paragraphs of the Particulars of Complaint.
- 38 Submissions were made about what costs orders should be made in the event of what findings the Tribunal might make. Whilst the complainants sought an order for their costs on Scale D of the County Court scale of costs and provided a bill of costs in taxable form on that scale, I gave a general indication during the hearing that were the complainants successful, I would not be minded to make an order on Scale D, but an order on Scale A.
- 39 So far as an order for an amount to compensate the complainants is concerned, I reserved to the complainants liberty to apply further with respect to that. I did so because in the absence of making any findings of breaches of the Act on the day, the parties had not had the opportunity to address me fully on this matter. One matter that potentially would be relevant to these considerations became apparent upon my closer examination of the material tendered. In that material there is a reference to orders for \$30,000.00 compensation having already been made against the respondents by a Magistrate. Because it was not clear to me what that related to and what impact it might have, if any, on the status of these proceedings of any remedies, on 5 June 2007, I sought clarification from the complainants’ solicitor. A response was not received until 16 July 2007. From the information provided, it appears that three separate orders were made in the Small Claims Court at Canberra in the ACT. The applicants are variously Ordo Templi Orientis Incorporated, David Bottrill and Stephen King. In each there was an ex parte order for judgement for the applicants against the respondents Dyson Devine and Vivienne Legg, the same respondents as in these proceedings, in the sum of \$9,998.00. It is not clear to me what the claims that gave rise to those orders were and the degree to which the orders made in that jurisdiction were intended to provide compensation for the discrimination found in these proceedings.

ORDERS

- 40 I make the following orders :
1. That the Respondents forthwith remove from the website specified and refrain from making, publishing or distributing in Victoria, including on the Internet whether in writing or orally and whether directly or indirectly (including by the Internet or by inserting any hyperlink on the Internet), any statements, information, suggestions or implications to the same or similar effect as those set out in paragraphs 11 and 18 of the particulars of complaint.

2. Liberty is reserved to the complainants to apply within 30 days for an order to compensate them for loss, damage and injury suffered by reason of the contravention of the Act.
3. The respondents are to pay the complainants' costs on County Court Scale "A" to be taxed by the principal registrar in default of agreement.

Anne Coghlan
Deputy President

