
EATOCK V BOLT

[2011] FCA 1103 (28 SEPTEMBER 2011)

Federal Court of Australia (Bromberg J)

Compiled by UNSW Indigenous Pre Law Program Participants 2011

FACTS

Andrew Bolt published two articles in the Herald Weekly Times. The articles were entitled 'It's so hip to be black' and 'White fellas in the black', respectively ('Articles'). The Articles identified a trend of fair-skinned people 'choosing to identify as Aboriginal' to gain career advantages. In response to the articles, Aboriginal activist Pat Eatock commenced proceedings in the Federal Court of Australia against Mr Bolt and the Herald Weekly Times ('HWT') as first and second defendants. Ms Eatock was seeking an apology and an injunction in regards to the publication of the articles.

In their pleadings both Mr Bolt and HWT have admitted that each of the 9 individuals who gave evidence (each of which were named in the Articles) are of Aboriginal descent; that since each was a child, at the times of publication of the Articles each person did genuinely self-identify as an Aboriginal person and did have communal recognition as an Aboriginal person. It was further admitted that each of these persons has fairer rather than darker skin colour.

LEGAL ARGUMENTS

Ms Eatock argued that the Articles contravened s 18C of the Racial Discrimination Act ('RDA') because they conveyed offensive messages about Aboriginal people who have fairer skin.

Mr Bolt disputed that the message(s) Ms Eatock claimed were actually conveyed. However, in the event that the Court found that the Articles did satisfy the test in s 18C, Mr Bolt argued that the articles fell under the exception in ss 18D(b) and (c) of the RDA.

LEGAL REASONING

Bromberg J was not satisfied that the conduct of Mr Bolt and the HWT was exempt from unlawfulness by s 18D of the RDA. The reasons for that conclusion have to do with the manner in which the articles were written, including that they contained erroneous facts, distortions of the truth and inflammatory and provocative language.

JUDGMENT

Bromberg J held that Andrew Bolt and the HWT contravened the racial vilification provisions (s 18 C) of the RDA. It was held that some of the messages which were conveyed by the Articles were reasonably likely to offend, insult, humiliate or intimidate the people in question (or some of them), and that those articles were written or published by Mr Bolt and HWT because of the race, colour or ethnic origin of those people.

On 19 October 2011, Bromberg J ordered the publication of a 500 word corrective notice next to Mr Bolt's column. Re-publication of the articles was restricted to 'historical or archival purposes' and only where accompanied by the corrective notice.

The original decision can be found online at: www.austlii.edu.au/cases/cth/FCA/2011/1103.html

Orders can be found online at: www.austlii.edu.au/cases/cth/FCA/2011/1180.html

The UNSW Pre Law Program was developed by Nura Gili, in conjunction with the Faculty of Law at the University of New South Wales. It is open to Indigenous students who are looking to explore the area of Law and apply for entry into law at the University of New South Wales.

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