Federal Court of Australia

Jeremy Jones, and on behalf of the Executive Council of Australian Jewry v The Bible Believers Church [2007] FCA 55 (2 February 2007)

Last Updated: 5 February 2007

FEDERAL COURT OF AUSTRALIA

Jeremy Jones, and on behalf of the Executive Council of Australian Jewry v The Bible Believers' Church [2007] FCA 55

HUMAN RIGHTS AND DISCRIMINATION LAW – racial vilification – racial discrimination – whether conduct of respondent rendered unlawful by s 18C of the *Racial Discrimination Act 1975* (Cth) – whether publication of material on World Wide Web reasonably likely to offend, insult, humiliate, or intimidate Jewish people in Australia – whether first respondent has legal personality – relief granted against second respondent

PRACTICE AND PROCEDURE – Federal Court Rules – failure of respondent to file a defence

Human Rights and Equal Opportunity Commission Act 1986 (Cth) ss 46PH(1)(i), 46PO(1)
Racial Discrimination Act 1975 (Cth) ss 18C, 18D
Federal Court Rules O 6 r 2, O 9, O 11 r 20

Toben v Jones (2003) 129 FCR 515 applied
Jones v Toben (2002) 71 ALD 629 applied
Miller v Wertheim [2002] FCAFC 156 referred to
Bropho v Human Rights and Equal Opportunity Commission and Anor (2004) 135 CLR 105 referred to
Jones v Scully (2002) 120 FCR 243 referred to

JEREMY JONES, AND ON BEHALF OF THE EXECUTIVE COUNCIL OF AUSTRALIAN JEWRY v THE BIBLE BELIEVERS' CHURCH AND ANTHONY GRIGOR-SCOTT

NSD 768 OF 2005

CONTI J
2 FEBRUARY 2007
SYDNEY

IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY **NSD 768 OF 2005**

BETWEEN:	**JEREMY JONES, AND ON BEHALF OF THE EXECUTIVE COUNCIL OF AUSTRALIAN JEWRY** **Applicant**
AND:	**THE BIBLE BELIEVERS' CHURCH** **First Respondent**
	ANTHONY GRIGOR-SCOTT **Second Respondent**
JUDGE:	**CONTI J**
DATE OF ORDER:	**2 FEBRUARY 2007**
WHERE MADE:	**SYDNEY**

THE COURT ORDERS THAT:

1. It be declared that the second respondent by himself and purportedly on behalf of the unincorporated entity The Bible Believers Church has engaged in conduct rendered unlawful by Part IIA s 18C of the *Racial Discrimination Act 1975* (Cth) by having published or allowing to be published on the World Wide Web at websites collectively known as 'the Bible Believers' Website' (the internet address of which is http:\\www.biblebelievers.org.au) (which website is owned and controlled by the respondents) the document headed Bible Believers' Newsletter #242 a true copy of which is part of exhibit 'JJ1' to the affidavit of Jeremy Jones sworn the 17 May 2005 and filed in this proceedings ('the document headed Bible Believers' Newsletter #242').
2. The second respondent forthwith do all acts and things necessary to remove the document headed Bible Believers' Newsletter #242 from the Bible Believers' Website.
3. The second respondent be restrained from publishing or republishing to the public by himself or any agent or employee and whether on the World Wide Web or otherwise:
(i) the document headed Bible Believers' Newsletter #242 or any part thereof;
(ii) any material with substantially similar content to the document headed Bible Believers' Newsletter #242;
(iii) any other material which conveys the following imputations or any of them:

(a) there is serious doubt that the Holocaust occurred;
(b) it is unlikely that there were homicidal gas chambers at Auschwitz;
(c) Jewish people who are offended by and challenge Holocaust denial are of limited intelligence; and
(d) some Jewish people, for improper purposes, including financial gain, exaggerated the number of Jews killed during World War II and the circumstances in which they were killed.
4. The second respondent pay the applicant's costs of the proceedings.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY **NSD 768 OF 2005**

BETWEEN:	**JEREMY JONES, AND ON BEHALF OF THE EXECUTIVE COUNCIL OF AUSTRALIAN JEWRY** **Applicant**
AND:	**THE BIBLE BELIEVERS' CHURCH** **First Respondent**
	ANTHONY GRIGOR-SCOTT **Second Respondent**
JUDGE:	**CONTI J**
DATE:	**2 FEBRUARY 2007**
PLACE:	**SYDNEY**

REASONS FOR JUDGMENT

Nature of and basis for the application instituted in this Court on behalf of the Executive Council of Australian Jewry - the statutory regime and circumstances otherwise contextual to the pursuit of the proceedings and the course taken by the respondents by way of resistance to the relief sought

1 The applicant Mr Jeremy Jones is the authorised representative of the Executive Council of Australian Jewry for the purpose of conducting the present proceedings, and has brought this application on his own behalf and on behalf of that Council. The application was filed on 18 May 2005, and was made pursuant to s 46PO(1) of the *Human Rights And Equal Opportunity Commission Act 1986* (Cth) ('HREOC Act'), following upon the termination of a complaint made to the President of the *Human Rights And Equal Opportunity Commission* ('HREOC') in accordance with s 46PH(1)(i) of the HREOC Act, the President being Mr von Doussa QC (formerly Justice von Doussa of this Court). That complaint was originally made to HREOC on 25 August 2004. The proceedings were originally commenced by Mr Jones in those respective capacities as applicant against The Bible Believers' Church, conceivably an unincorporated association and originally the sole respondent, by the application filed on 18 May 2005, which initiating process was supported by an affidavit of Mr JD Landis sworn on 17 May 2005. A formal extension of time for that purpose

was sanctioned by order of the Court made on 22 June 2005. Subsequently by order of the Court made on 21 July 2005 pursuant to Order 6 Rule 2 of the *Federal Court Rules,* there was added as second respondent to the proceedings Mr Anthony Grigor-Scott, who has described himself as a pastor of The Bible Believers' Church, and who has conducted what may be described as denial of the complaint and resistance to consequential relief in person.

2 The subject matter of complaint by Mr Jones was the publication of material claimed to be racially vilifying of Jewish people, being material which appeared on the World Wide Web, and in particular at websites collectively described as The Bible Believers' Website (the internet address of which is http\\www.biblebelievers.org.au) purportedly owned and operated at all material times by the Bible Believers' Church (hereafter referred to as 'the BBC'). At all material times the BBC was the listed 'registrant' of the website and Mr Grigor-Scott was registered as the 'registrant contact name' and 'tech name' for the website, and as will become apparent in these reasons, he has controlled the purported activities of The Bible Believers' Church to the extent that those activities were capable of being attributed to an apparent unincorporated association, and has otherwise and in any event undertaken such activities himself. The initiating application was subsequently amended by Mr Jones on 27 September 2005, and declaratory relief and orders were sought by that amended pleading against both respondents, and otherwise to the same effect as appeared in the original pleading. It may be taken for the purpose of the proceedings there has existed at all conceivably material times a relatively speaking substantial community of persons comprising the Australian Jewry.

3 The statutory provisions identified above, together with the related s 46P(1) of the HREOC Act, read in sequence as follows:

'46P Lodging a complaint
(1) A written complaint may be lodged with the Commission, alleging unlawful discrimination.

...

46PH Termination of complaint

(1) The President may terminate a complaint on any of the following grounds:

...
(i) The President is satisfied that there is no reasonable prospect of the matter being settled by conciliation.

...

46PO Application to court if complaint is terminated
(1) If:
(a) a complaint has been terminated by the President under section... 46PH; and

(b) the President has given a notice to any person under subsection 46PH(2) in relation to the termination;

any person who was an affected person in relation to the complaint may make an application to the Federal Court or the Federal Magistrates Court, alleging unlawful discrimination by one or more of the respondents to the terminated complaint... .'

4 Pursuant to s 46PO(1)(b) above, the President of HREOC gave notice as to termination of the complaint in the further context outlined below, after which the present proceedings were commenced. At no stage during the proceedings has either respondent filed or served a form of notice of appearance or a defence pursuant to O 9 and O 11 r 20 of the *Federal Court Rules* respectively. Nevertheless, Mr Grigor-Scott has assumed to have an entitlement to be heard to dispute the entirety of the claims the subject of the proceedings by making to the Court very lengthy written submissions, purportedly in the form of affidavit material, as well as oral submissions from the Bar Table, whether on behalf of himself or of the BBC, or both, irrespective of that so-called church not having any apparent legal personality known to the law. The practical course adopted by the applicant has been to treat the proceedings as being wholly resisted and to pursue relief by way of s 46PO with as much expedition as achievable in the circumstances.

5 The application of Mr Jones brought at the outset of the proceedings on behalf of the Executive Council of Australian Jewry, as well as by himself, seeks relief by reason of what is pleaded to be breaches on the part of either or both respondents of s 18C of Part IIA of the *Racial Discrimination Act 1975* (Cth) ('the RD Act'). That section, along with s 18D relating to exemptions from the operation of the RD Act, read respectively as follows:

'18C Offensive behaviour because of race, colour or national or ethnic origin
(1) It is unlawful for a person to do an act, otherwise than in private, if:
(a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and
(b) the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.
[Then appears a legislative *Note* which I do not reproduce.]
(2) For the purposes of subsection (1), an act is taken not to be done in private if it:
(a) causes words, sounds, images or writing to be communicated to the public; or
(b) is done in a public place; or
(c) is done in the sight or hearing of people who are in a public place.

(3) In this section:
public place includes any place to which the public have access as of right or by invitation, whether express or implied and whether or not a charge is made for admission to the place.
18D Exemptions
Section 18C does not render unlawful anything said or done reasonably and in good faith:
(a) in the performance, exhibition or distribution of an artistic work; or
(b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or
(c) in making or publishing:

(i) a fair and accurate report of any event or matter of public interest; or
(ii) a fair comment on any event or matter of public interest if the comment is an expression of a genuine belief held by the person making the comment.'

Reference to '*a group of people'* in s 18C may be observed, as may also the reference to '*reasonably and in good faith'* in s 18D. As previously observed, the absence of any material elements of the statutory scheme have not been formally pleaded by either respondent by way of defence to the application in accordance with the *Federal Court Rules*, though as will shortly appear, the respondents or at least the second respondent Mr Grigor-Scott, have or has (as the case may be) purported to make an application to the Court for dismissal of the proceedings upon the footing of s 18D. I will later make observations upon the status in law of the BBC in the proceedings. The practical course adopted by the applicant has been to oppose and join issue upon or demur to the causes of action and the relief purportedly sought by any and all of such purported process or processes sought to be put in place by Mr Grigor-Scott.

6 Earlier on 25 August 2004, a complaint had been lodged with HREOC by the present applicant Mr Jeremy Jones, in his capacity as President of the said Executive Council of Australian Jewry. Contained within that letter of complaint was the following:

'We write to lodge a formal complaint under the anti-racial-hatred provisions (Part IIA) of the Racial Discrimination Act 1975 (Cth) in respect of material published on the Australian website http://www.biblebelievers.org.au ("The website").

The Executive Council of Australian Jewry, the peak representative organisation of the Australian Jewish community, complains that:
(i) the material on the website is reasonably likely in all the circumstances to offend, insult, humiliate and intimidate Jewish Australians; and

(ii) one of the reasons that the material has been published is the race or national or ethnic origin of Jewish people, including Jewish Australians.

The specific matters complained of are as follows:
1. At http://www.biblebelievers.org.au/nl242.htm under the heading Lies and the First Anniversary of the 9/11 Conspiracy where the following words appear:

We have all seen how the holocaust hoax of six-million Jews claimed to have been gassed and cremated by Germany in World War I failed to deceive the mob in 1919. Whereas monopolistic control of the media, film, and a more boldly pursued holocaust hoax of six-million Jews claimed gassed and cremated by Germany in World War II has produced such powerful psychological and material results the entire world is enslaved to the beneficiaries of the lie and Temples of Equivocation affront the intelligence of humanity in major cities world-wide.
2. At http://www.biblebelievers.org.au/wasthere.htm the following words appear:

The Holocaust has become the greatest instrument of sympathy which any nation has ever been able to use to gain support for wars, expansion and foreign-aid: This has made Israel the world's sixth strongest military power. The gravest threat to all this wealth and influence is the growing doubt over the question of whether or not a real

holocaust of 6 million Jews actually took place.

3. At the "wasthere.htm" webpage the following words appear at the conclusion:

The main theme of Jewish fund-raising is the holocaust and has been for 38 years. When they don't use the holocaust the money collection sharply drops off. Thus the more the Press, TV and Hollywood promotes the holocaust the more money the United Jewish Appeal and other Zionist funds can extract from gullible people... Jewish leaders have discovered that by repeating holocaust stories over and over again they can instil a guilt complex within all Gentiles. This effectively silences most critics of Zionist political goals... Why doesn't the Jew-controlled press, TV and film industry give massive media attention to real victims and to proven holocausts of Gentiles in recent history.

...
In our submission, the above material breaches the provisions of Part IIA of the Racial Discrimination Act *because it conveys the following imputations:*
(a) there is serious doubt that the Holocaust occurred;
(b) it is unlikely that there were homicidal gas chambers at Auschwitz;
(c) Jewish people who are offended by and challenge Holocaust denial are of limited intelligence; and
(d) some Jewish people, for improper purposes, including financial gain, exaggerated the number of Jews killed during World War II and the circumstances in which they were killed.

...

In this respect, we refer you to the case of Toben v Jones *[2003] FCAFC 137 in which the Full Court of the Federal Court upheld the decision of Branson J at first instance that it is unlawful under Part IIA of the Act to publish material that conveys inter alia the imputations particularised above.*

In our submission the material complained of conveys further imputations that are also in breach of Part IIA of the Act, namely that:
(a) Jews as a group are inherently malevolent towards other people;
(b) Jews as a group are engaged in a global conspiracy to dominate other people; and
(c) the State of Israel, as the State of the Jewish people, is a product of that conspiracy.

We further submit that none of the material complained of falls within the exemptions contained in s 18D of the Act.

You will be aware that this Council has brought two cases of racial hatred before HREOC in the past, one against Olga Scully and the other against Fredrick Toben. Both cases were ultimately heard and determined in favour of the Council by the Federal Court of Australia. In both cases the Court was satisfied that Jews, and Jewish Australians in particular, constitute a race or a national or ethnic group for the purposes of the Act. In the Toben *case, the Court also found that the publication of material on the internet is an act that is done otherwise than in private for the*

purposes of s 18C of the Act.

We are seeking to have the material complained of removed from the internet and an apology to Australia's Jewish community being given publicly by the website's owner/s.'

The reference in the above letter to *'Jewish Australians'* and *'Australian Jewish Community*' may be observed. The connection of the BBC and of Mr Grigor-Scott to the foregoing Bible Believers' website will be further indicated in these reasons. The grounds or particulars of the complaint were at least implicitly adopted by Mr Jones therein and subsequently pursued in the present proceeding.

7 The foregoing decision on appeal in *Toben v Jones* (2003) 129 FCR 515 was made on 27 June 2003 by a Full Federal Court comprising Carr, Kiefel and Allsop JJ in favour of Mr Jones as complainant also in those proceedings, in line with the decision at first instance of Branson J in *Jones v Toben* (2002) 71 ALD 629. Mr Jones, being the applicant for relief there involved, is the same representative person for the Executive Council of Australian Jewry as here constituted.

8 The circumstances leading to the Court's decision-making in *Toben* 129 FCR 515 were similar in substance to those which have led to the bringing of the present proceedings, and reflected a not dissimilar theme to the subject matter of complaint involving denial of the Holocaust which preceded and continued throughout World War II, an attack upon the widespread exposure of those circumstances on the part of Jewish people, and assertions that Jewish people exaggerated the number of Jews killed in the Holocaust for improper purposes. The language the subject of complaint in *Toben* was described by Carr J at [45] as *'deliberately provocative and inflammatory'* and a *'flamboyantly-worded challenge'*, and lacking in good faith, those being descriptions adopted by the applicant in relation to its case against the respondents.

9 I observe moreover that in the concurring appellate judgment of Kiefel J in *Toben* 129 FCR 515, her Honour concluded, at [77], that:

'[t]*he likelihood that the appellant wrote only to pursue the truth of those subjects is rendered implausible by this unnecessary aside, which appears to have no real purpose in such a debate other than to disparage Jewish people. In my view, it confirms what a reading of the article as a whole raises as a prospect, namely that it was published with Jewish people in mind, as those responsible for concocting the Holocaust and, indeed, as an attack upon them'*.

A similar approach has been adopted by Mr Jones in his presentation of the present case. Her Honour agreed with Carr J that there was no proof of the appellant's (ie Toben's) good faith.

10 In the further concurring judgment of Allsop J, his Honour made the following observation at [98]:

‘98. The above history (taken from the works of scholars, Lerner and Schwelb, working contemporaneously with events) is given to illuminate what it was that the international community was dealing with. By this time in the twentieth century, the nations of the world had experienced a century stained by, amongst other catastrophes, racial slaughter, pogroms, forced removal and relocations of whole peoples, religious and ethnic genocide, and were undergoing the trauma involved in the break-up and disintegration of colonial empires and national and regional political structures based on racial characteristics. The unexpected recrudescence, in the winter of 1959-1960, of some of the most recent and horrific manifestations of racist behaviour enlivened the world community to act swiftly and (with an inevitable degree of variation in political perspective) unanimously, to take steps towards the elimination [his Honour’s emphasis] *of the perceived evil. The perceived evil was* all [again his Honour’s emphasis] *forms of racial discrimination and racial prejudice, the manifestation of which had been, in recent generations, at times horrifically violent and strident, at times overt, and at times less overt and less brutal, but nevertheless insidiously pervasive. In any form, it was recognised, by all nations in the international community, to strike at the dignity and equality of all human beings.’*

Thereafter at [100]-[101], his Honour added:

‘100. Racial hatred was one form or manifestation of the perceived evil. Unhappily, it was a form with which the nations in the General Assembly in 1960 to 1965 were all too familiar. It was the form of the perceived evil most likely to lead to brutality and violence, but it was not the only form of the perceived evil antithetical to the dignity and equality inherent in all human beings upon which the Charter of the United Nations was based. It was to all [his Honour’s emphasis] *such forms and manifestations that the Convention was directed.*

101 The definition of "racial discrimination" in Art 1 of the Convention confirmed the wide aim of the Convention:

Article 1
1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.’

His Honour then referred at some length to the public discussion and debate, and to issues as to in-roads into freedom of speech, which led to the enactment of the RD Act in Australia.

11 The material relied on, in particular, by the Executive Council of Australian Jewry was *The Bible Believers’ Newsletter #242*, (the copy before the Court bearing the date 9 May 2005). It is 15 pages in length and contains the following segments (*inter alia*):

‘(i) an introduction commencing ‘We focus on the PRESENT Truth – what Jesus is doing NOW...’

‘Seven Pillars of Jewish Denial’
‘Landmark Court Ruling Against Holocaust Denier’
‘September 11 – US Government Accused’
‘Thinking Up a Pretext for War’
‘Lies and the First Anniversary of the 9/11 Conspiracy’
(ii) the following concluding material:

‘Pass it on... Send this article to someone you know Brother Anthony Grigor-Scott is a non-denominational minister. He has ministered full-time since 1981, primarily to other ministers and their congregations in other countries. He pastors Bible Believers’ tiny congregation, and is available to teach in your Church.’

Below that appeared reference to the details of the BBC website.

12 The website also contained the following material:

(i) an article by Dr E R Fields headed ‘*Was there Really a Holocaust*’?

(ii) an abridgment of a book titled ‘*The International Jew, The World’s Foremost Problem*’ (the author whereof was stated to be Henry Ford Senior) containing the ‘*Editor’s Forward*’ of one page in length, together with a summary of the life of Henry Ford contained in a journal apparently published, and which referred to the circumstances that Mr Ford ‘*was accused by many Jews’ and ‘was a resolute opponent of Roosevelt’s policy of "controls" in industry and commerce...*’.

13 Following upon that material being placed before HREOC, Mr Grigor-Scott purportedly on behalf of the BBC or in any event in the name of the BBC, wrote further to HREOC the following communications in support of his request that it terminate what he described as ‘Mr Jones unwarranted complaint’ (now forming Exhibit A1 in the present proceedings):

(i) letter dated 5 November 2004;
(ii) letter dated 18 November 2004 (which comprised in all some 11 pages);
(iii) email dated 19 November 2004;
(iv) letter dated 18 January 2005.

14 On 9 February 2005, the President of HREOC Mr von Doussa QC (already identified at [1] above) responded to that complaint of Mr Jones made on behalf of the Executive Council of Australian Jewry. Set out below is that response, omitting the formal parts thereof:

‘...

Summary of Complaint

In a letter dated 25 August 2004, you claim that material published on an Australian website under the name of www.biblebelievers.org.au is in breach of Part IIA of the

[Racial Discrimination Act] *"Prohibition of offensive behaviour based on racial hatred" because it is "reasonably likely in all the circumstances to offend, insult, humiliate and intimidate Jewish Australians", and "one of the reasons that the material has been published is the face or national or ethnic origin of Jewish people including Jewish Australians". During the investigation process, the Commission identified that the Bible Believers' Church ("The Church") is the owner of the website in question.*

In particular, you claim that the material conveys that:
• There is serious doubt that the Holocaust occurred;
• It is unlikely that there were homicidal gas chambers at Auschwitz;
• Jewish people who are offended by and challenge the Holocaust denial are of limited intelligence, and
• Some Jewish people, for improper purposes including financial gain, exaggerated the number of Jews killed during WW II and the circumstances in which they were killed.
In support of the allegations, you provided extracts from the published material, including that:
• "We have all seen how the holocaust hoax of six-million Jews claimed to have been gassed and cremated by Germany in World War I failed to deceive the mob in 1919..."
• "... Thus the more the Press, TV and Hollywood promote the holocaust the more money the United Jewish Appeal and other Zionist funds can extract from gullible people..."
• "... Part of fabricated work known as "The Protocols of the Learned Elders of Zion", are reproduced to show that the Jews as a group attempt to use government, control of bans and media to control the world for financial gain"

Summary of Response
In a series of letters dated 27 October 2004, 5 November 2004, 18 November 2004, 7 December 2004, 13 December 2004 and 18 January 2005, Mr Anthony Grigor-Scott, Minister of the Gospel of the Church, advised that whilst he is prepared to provide the Commission with his views for consideration, he does not wish to respond to your complaint.

The Church submitted that the issues raised in your complaint involved a religious matter that the Commissioner has no jurisdiction to deal with, that the racial vilification law under the RDA is in breach of the Australian Constitution, that the complaint is vexatious and frivolous because many Jews agree with what the Church understands. The Church also submitted that the published material is not in breach of the RDA, that the exemptions under section 18D of the RDA apply because the views expressed are based on a genuine belief for the purpose of public interest and that the complaint is "out of time" because the material was initially published in the Church's Newsletter more than two years ago.

Decision

Your complaint was investigated as a possible breach of sections 18C and 18D of the RDA.

Having carefully considered the information before me including Mr Grigor-Scott's letters and your submission dated 17 December 2004, I am satisfied that there is no reasonable prospect of the matter being settled by conciliation. Accordingly, I have decided to terminate your complaint on that basis pursuant to section 46PH(1)(i) of the [HREOC Act].

My reasons for this decision are set out below.

Reasons for decision

The Commission provided copies of Mr Grigor-Scott's letters to you for your information and in a letter dated 17 December 2004, you maintained the allegations and challenged the basis on which the Church's views are formed. The Commission provided a copy of your letter to the Church on 21 December 2004 and in a further letter dated 18 January 2005, the Church proposed that the resolution of the matter is for you to withdraw the complaint. I am also advised that during a telephone conversation with Mr Hien Le of the Commission on 4 February 2005, Mr Grigor-Scott further advised of his view that the matter is not capable of being resolved by conciliation.

Under the circumstances, I am satisfied that there is no reasonable prospect of your complaint against the Church being settled by conciliation. Accordingly I have decided to terminate your complaint on that basis pursuant to section 46PH(1)(i) of the [HREOC Act].

The [HREOC Act] *states that once I have terminated your complaint and given notice, you may make an application to the Federal Court of Australia or the Federal Magistrates' Court for the court to hear the allegations. Information about this process can be obtained from a Federal Court/Federal Magistrates Court Registry. The contact details for the nearest Registry are provided below.*

...'

I observe at this point of the narrative of preceding events that the respondents (or either of them) did not purport to pursue in the present proceedings any defence as to breach of the Australian Constitution in the context of the present proceedings in this Court.

The initial steps taken on behalf of the Executive Council of Australian Jewry to set in train and pursue proceedings in this Court

15 Initially the first respondent, the BBC, was named as the sole respondent to the proceedings, which were commenced by an application filed by Mr Jones on behalf of the Executive Council of Australian Jewry on 18 May 2005. Service of a sealed copy of the original application, together with the formal affidavit of Mr Landis (solicitor) in support of the grant of an extension of time, the principal affidavit of the applicant Mr Jones sworn 17 May 2005, and the form of Claim made under the HREOC Act (s 46PO) and the RD Act (s 18C), were lodged with the Court on that date, and delivered to Mr Grigor-Scott in person on 16 June 2005 at his residence known as 'Cravallee' situated in Breeza Road Currabubula in the State of New South Wales.

Mr Grigor-Scott said to the process server at the time of service 'I'm not accepting them just leave them there'. No issue as to invalidity of service was subsequently raised on behalf of either respondent.

16 On 22 June 2005, I ordered that an extension of time for the filing of the application be allowed *nunc pro tunc* up to and including 18 May 2005. Thereafter on 21 July 2005 as I have earlier mentioned, the Court ordered, pursuant to Order 6 rule 2 of the *Federal Court Rules*, that Mr Grigor-Scott be joined to the proceedings as second respondent. The evidence filed in support of the relief the subject of that notice of motion indicated that the BBC was not listed in records of the Australian Securities and Investments Commission ('ASIC'), nor in the Australian Business Register, but that there had been at all material times a domain name 'biblebelievers.org.au' accessed through the World Wide Web (*infra*), whereof the 'registrant' was the BBC and the 'registrant contact name' was Mr Grigor-Scott. I observe that earlier on 18 January 2005, Mr Grigor-Scott wrote to HREOC on a printed letterhead of the BBC.

17 An amended application of Mr Jones was presented to the Court on his own behalf and on behalf of the Executive Council of Australian Jewry on 27 September 2005. The following declaratory and other relief was thereby sought against the respective respondents therein named (by then the BBC and Mr Grigor-Scott):

'1. A Declaration that the First Respondent and/or Second Respondent has engaged in conduct rendered unlawful by Part 11A Section 18C of the Racial Discrimination Act by having published or allowing to be published on the World Wide Web at websites collectively known as "the Bible Believers' Website" (the internet address of which is http:\\www.biblebelievers.org.au) (which website is owned and controlled by the respondent) material which is racially vilifactory of Jewish people ('the Material').

2. An order that the First Respondent and/or Second Respondent forthwith do all acts and things necessary to remove the Material from the Bible Believers' Website from the World Wide Web.

3. An order that the First Respondent and/or Second Respondent be restrained from publishing or republishing to the public by itself or by any agent or employee on the World Wide Web or otherwise:

(i) the Material or any part thereof;
(ii) any material with substantially similar content to the Material;
(iii) any other material which conveys the following imputations or any of them:
(a) there is serious doubt that the Holocaust occurred;
(b) it is unlikely that there were homicidal gas chambers at Auschwitz;
(c) Jewish people who are offended by and challenged Holocaust denial are of limited intelligence; and
(d) Some Jewish people, for improper purposes, including financial gain, exaggerated the number of Jews killed during World War II and the circumstances in which they were killed.

4. An order that the First Respondent and/or Second Respondent forthwith deliver to the Applicant, Jeremy Jones, a written statement of apology, signed by the Second Respondent, in the following terms:
"I hereby unreservedly and unconditionally apologise to you and to the Australian Jewish community for having published materials inciting hatred against the Jewish people in contravention of the Racial Discrimination Act. I undertake that neither I nor any employee or agent of mine (actual or ostensible) will publish any such material in the future and that all such material which is presently published by the Bible Believers' Church, or by any employee or agent thereof (actual or ostensible) in any print or electronic media (including the Internet) will forthwith be withdrawn from publication."
5. An order that the First Respondent and/or Second Respondent pay the Applicant's costs.

6. Such further or other Order as the Court may deem appropriate.'

18 On 30 May 2006, Mr Grigor-Scott remitted electronically to the Federal Court Registry, in the context of the subject proceedings NSD 768 of 2005, a purported notice of motion seeking the following orders against 'Jeremy Jones, and on behalf of the Executive Council of Australian Jewry':

'1. the action in this matter be dismissed.
2. that an order for exemption under Section 18D of the Racial Discrimination Act be made in favour of Bible Believers' Church and Anthony Grigor-Scott.
3. An order that the Human Rights and Equal Opportunity Commission expunge their files of all and any unfavourable, uncomplimentary or negative commentary on our Church.'

19 I have of course already extracted the text of s 18D of the RD Act. HREOC was not joined to the proceedings the subject of that notice of motion purportedly filed in the Federal Court by Mr Grigor-Scott, notwithstanding the terms of the order sought in paragraph 3 immediately above.

20 In summary, the applicant's case in chief, being of course that of Mr Jones for and on behalf of The Executive Council of Australian Jewry, was to the effect that the material complained of was reasonably likely to offend, insult, humiliate or intimidate Jewish Australians, by reason of what it contains or comprises in relation to the racial, national and ethnic origin of Jewish people including Jewish Australians, especially when read as a whole. In that regard, although the BBC may be conceivably described as an unincorporated association or body of persons, nevertheless as I have already indicated, it has been recorded and disclosed at all material times as the registrant of the subject website conducted in its name. It was the applicant's further case, as I have also foreshadowed, that Mr Grigor-Scott was the instigator and controller of the conduct complained of, and further that the written material thus described by the applicant as offensive did promote and involve the imputations framed by the applicant which I have above recorded. The case for breach of Part IIA of the RD Act was thus contended by the applicant, to have been duly made out and further that no case had been established by or on behalf of the respondents or either of them which would attract the operation of any of the exemptions stipulated in s 18D of the RD Act. I have of course already extracted the full text of s 18D of the RD Act.

21 The applicant submitted that 'Jews in Australia comprise a group of people with an 'ethnic origin' for the purposes of the Act...'. In support of that proposition, the applicant relied on *Miller v Wertheim* [2002] FCAFC 156 at [14], where Heerey, Lindgren and Merkel JJ observed as follows:

'... it can be readily accepted that Jewish people in Australia can comprise a group of people with an "ethnic origin" for the purposes of the Act (see King-Ansell v Police [1979] 2 NZLR 531)....'

I agree with that submission by the applicant, and find that Jews in Australia are a group of people with a common "ethnic origin" within the meaning of s 18C of the RD Act.

22 Whether the first respondent has legal personality upon the basis of being the registrant of that domain name may be a moot point. The applicant submitted that the BBC was an unincorporated association and 'does not appear to have any corporate identity or existence'; the applicant supported that proposition with evidence that the BBC is not listed in either ASIC or Australian Business Registrar records. The applicant made the further submission that in *Jones* 71 ALD 629, the first respondent, 'the Adelaide Institute', was also found to be an unincorporated association in the control of the second respondent, Mr Toben. In *Jones* 71 ALD 629, Branson J found, at [66], as follows:

'The respondent has made it plain during the course of the proceeding that he does not dispute that he controls the Adelaide Institute. He describes himself as the director of the Adelaide Institute and in correspondence utilises the letterhead of the Adelaide Institute [...] I am satisfied that the respondent is responsible for the actions of the Adelaide Institute. In particular I am satisfied that at all material times it has been the respondent who has caused the material which is displayed on the websites of the Adelaide Institute to be displayed on those websites.'

The applicant observed that the first respondent's letterhead identified the second respondent, Mr Grigor-Scott, in the email contact as ags@biblebelievers.org.au. In any event of course, Mr Grigor-Scott has legal personality as a natural person and he at least has been properly constituted as a respondent to the proceedings, and can be appropriately sued by the applicant.

The steps taken and the case presented by the respondents, or either of them, in opposition to the application for the relief sought in the proceedings by Mr Jones on behalf of the Executive Council of Australian Jewry - initial observations of the Court in respect thereof and initial rulings or confirmation of rulings upon evidence tendered by respondents

23 As already indicated, neither The Bible Believers' Church (which I have foreshadowed is to be abbreviated as the 'BBC'), nor Mr Grigor-Scott, filed a notice of appearance with the Registry of this Court, whether in accordance with the *Federal Court Rules* or at all. As I have foreshadowed, the BBC does not appear to have been registered anywhere in Australia, whether as any form of incorporated or deemed legal entity created under the auspices of Federal or State legislation in Australia or

otherwise, though as already exemplified as well as explained, it does operate a website. As I have foreshadowed, it would seem that the BBC has no legal personality, being at most an unincorporated association and merely an emanation of Mr Grigor-Scott, which is probably the more accurate description. There is no evidence of any other person being a member of the BBC, whether by way of a register of members or otherwise. Nevertheless in the light of the way in which the proceedings have been structured and the litigation conducted by each of Mr Jones in his stated represented capacity as applicant and of Mr Grigor-Scott as respondent, the Court record in respect of the proceedings has continued as a matter of expediency to be as it presently appears in the heading to these reasons for judgment.

24 Prior to the filing and service of the amended statement of claim by Mr Jones, which remained in operation for the purpose of the hearing, the proceedings had been on 20 September 2005 the subject of what may be described imprecisely as preliminary proceedings. On that occasion Mr Grigor-Scott informed the Court that '... the Church is not a justiciable body' and that '... nobody can appear for it', and hence he was not seeking to appear for the BBC. Notwithstanding that neither respondent had filed an appearance, counsel for the applicant informed the Court that the applicant did not seek to exclude either respondent in those circumstances from objective relief. Mr Grigor-Scott explained to the Court on that occasion the following:

'[BBC] *is not a legal entity. It's not a corporation. It's not registered with anybody. It's just a group of believers. It's just part of the Body of Christ. As such, it cannot sue, neither can it be served a Summons'*.

On that purported basis he said that he appeared for himself alone.

25 Thereupon counsel for the applicant formally read the affidavit in chief of the applicant Mr Jones sworn on 17 May 2005, to which was annexed or exhibited the complaint made to HREOC and the BBC Newsletter # 242, thereby drawing attention to what therein appeared in particular as to serious doubts about the occurrence of the Holocaust and its incidents, and as to the global conspiracy of the 'Jews as a group' to dominate other people, and to raise funds on the theme of the Holocaust. Mr Goot referred further to the content of the allegedly offending material concerning 'The Problems of Mass Gassing' and the implications of the Holocaust as the main theme of Jewish fund-raising for the past 38 years, being a theme described in that 'Newsletter' as 'a hoax'. Counsel further drew attention to a letter of 18 January 2005 appearing on the BBC letterhead, from the respondent to HREOC, which claimed that the BBC website was 'covered against the allegations by exclusions 18C and 18D of the Act', referring thereby of course to the RD Act. Counsel further drew attention to what appeared in that BBC newsletter in relation to the Henry Ford Senior book (*ante*).

26 At that stage of the proceedings, Mr Grigor-Scott acknowledged the authenticity of the BBC newsletter #242 *per se*, but asserted that he was 'not the web administrator', that person being described as an 'American citizen domiciled in the United States', who he did not identify; upon that footing Mr Grigor-Scott asserted that the Court did not 'have jurisdiction over [the website] at any rate'.

27 At the close of the evidence in chief of the applicant, Mr Grigor-Scott sought to tender indiscriminately a very large bundle of documents which he had sent to the Court prior to commencement of the hearing, but being a tender which I rejected as plainly oppressive. I further pointed out to him in that context, first, that '[y]ou can adduce evidence to show that you are not responsible for this material [and that] it is a responsibility that should be attributable to someone else or to some [other] legal entity', and secondly, that 'if you wish to produce to me material that shows the contrary of the complaints that are made about the subject matter then you would be welcome to produce that material as well ...'. After I further asked Mr Grigor-Scott whether there was any other material which would throw light on the complaint made against him, and which he would seek to tender into evidence, certain dialogue between counsel for the applicant, Mr Grigor-Scott and the Court ensued in relation to the need or expediency to produce to the Court the applicant's letter of complaint to HREOC, which was ultimately attended to.

28 Moreover I further invited Mr Grigor-Scott to indicate '... what documents [he] would like to tender to show that this case is misconceived and that you have not and do not intend to make statements which would offend the Racial Discrimination Act', he responded as follows:

' ... they don't, they cannot offend the Racial Discrimination Act because we're a church and, as the 18D and C and what-not says, we can write things where genuine academic discussion and so forth-and that is what the National Library in Australia feels we have done.'

No such indication from the National Library was however produced and addressed in evidence. I also indicated to Mr Grigor-Scott that it was open to him to testify orally in the witness box if he chose to do so, but after discussion he indicated that '... we shall have to leave it to an address ...'.

29 Mr Grigor-Scott was also invited specifically to ask Mr Jones any questions, and in response he in effect declined, stating:

'All I can rely upon is the truth of the Lord, Jesus Christ. Anything which is on the church website is supported by the Bible, by the Talmud, by the most eminent Jewish scholars, or by history, historical fact, everything.'

30 When further invited to tender any material in relation to his rejection of the applicant's case that he had breached the RD Act, Mr Grigor-Scott next replied:

'I cannot do that now ... The website is over 600 megabytes, thousands of files, and there is not one file against any particular group from Adam's race, not one ... [a]s a matter of fact we speak about the glorious future of Israel'.

Part however of the context to his writings complained of concern his historical thesis as to an absence of identification of Jewish people today with the Israelites the subject of what may be described for ease of modern identification as the Old Testament of the Christian Bible. He further said that of the entire website material, '[t]here is only one there of my authorship. Only the newsletter is my authorship', and in the course of his ensuing purported explanations, he added:

'Henry Ford has recorded them and its history, the Jews don't like it ... it's still history'.

I have of course earlier referred to what appeared in the controversial *Newsletter # 242* by way of extract of material authored by the late Henry Ford Senior.

31 It should be observed that during the subsequent hearing that occurred on 5 June 2006, counsel for the applicant informed the Court that the applicant no longer relied upon the Henry Ford material, appearing within exhibit 'JJ1' attached to Mr Jones affidavit of 17 May 2005, in support of his application.

32 I informed Mr Grigor-Scott during the hearing on the 20 September 2005 of the need to provide to the Court written submissions that addressed the issues put against him, and to refrain from submitting to the Court what would be excessive written submissions otherwise. Unfortunately Mr Grigor-Scott did not heed that request.

33 By the time of the continuation of the proceedings on 5 June 2006, there had been filed on behalf of the respondents, or at least of Mr Grigor-Scott, the following documents, which were apparently intended to serve as written submissions at least, and conceivably also as affidavit material, though in that latter case the situation was unclear:

(i) a 17 page purported affidavit filed on the 30 May 2006 and bearing date May 2006;
(ii) a 10 page similarly styled document also the same date;
(iii) a 19 page similarly styled document also bearing the date of May 2006 (the last page duplicating the 18th page but bearing a purported attestation clause); and which attached certain documentary material not already tendered in evidence and moreover of no relevance or otherwise of assistance.

Each of those documents reflected partly a purported affidavit format. In relation to the above documents, counsel for the applicant acknowledged to have received all three. Counsel submitted that the same ' ... can be described as raising irrelevant matters [and] as being scandalous, if not contemptuous of the Court', and additionally 'vexatious', descriptions which were substantially correct.

34 Mr Grigor-Scott additionally sent to the Court by electronic transmission a 41 page document and certain of the annexures or exhibits thereto, which transmission the applicant complained as to not having been actually received, and thus not having been seen by the applicant. Once again this material was seemingly put forward at least primarily as submissions or contentions. Mr Grigor-Scott informed the Court that there should have been received by my associate submissions of 49 pages and 29 pages, in relation to which any receipt thereof by the applicant was once again denied by his counsel. Mr Grigor-Scott's response was '... I had so much work to do that I've only been able to print out what I have been able to print out, I worked till 11 o'clock last night and I've been working since June or July of last year'. Hence his explanation for having available no additional copy of those purported submissions available for the applicants' legal representatives. Moreover when I passed down to Mr Grigor-Scott for confirmation those documents which the Court had received from him since the last hearing day, he observed unspecifically '[t]here are more'. It is

matter for speculation what Mr Grigor-Scott could conceivably have sought to achieve by the provision of that wholly disproportionate amount of material to the Court.

35 I made the observation in the foregoing context to Mr Grigor-Scott that I had directed the provision of written submissions and not further evidence, since the giving of evidence from both parties had been completed on the previous occasion of the hearing of the proceedings. Counsel for the applicant reminded the Court that during the intervening period of time, Mr Grigor-Scott had sought and obtained from the Court an extension of time to provide his written submissions, yet the applicant had only received 'a plethora of affidavits at the end of last week' (referring to those documents enumerated in [33] above to the partial extent that actual receipt was acknowledged). Counsel for the applicant reminded the Court in any event that at the intervening directions hearing on 23 February 2006, Mr Grigor-Scott had informed the Court that he wanted to put on further evidence, and that I had said that if he had wanted to re-open his case, he would have to do so by application supported by affidavit showing what viable information he wished to rely on. Mr Grigor-Scott then stated that 'we have no affidavit in support of an application to re-open'. I thereupon recorded that no such notice of motion to adduce further evidence at the instance of the respondents had been filed in the Registry or had otherwise been provided to the Court.

36 Counsel for the applicant then indicated to the Court, in relation to each of the documents described in [33] above, that '... we are content for the affidavit material upon which Mr Grigor-Scott relies to be treated as submissions', despite the extent of prolixity of the material. Mr Grigor-Scott objected to the adoption of even that course, asserting that 'I've got the evidence here'. I pointed out to Mr Grigor-Scott *inter alia* that the issue arising was one of infringement of the subject legislation, being an issue the resolution whereof did not '.... mean ... you can now provide to the Court a mass of material, historical material, material that relates to events long ago passed', referring thereby of course to the materials identified in [34] above, and further that '[t]he critical thing you have to answer as a matter of evidence is have you contravened the legislation of which you are accused of doing'. Earlier in the course of the proceedings, I had emphasised to Mr Grigor-Scott that it was that issue which he needed at least primarily to address.

37 Thereafter on 5 June 2006 there was tendered to the Court by the applicant four (4) letters of Mr Grigor-Scott addressed to HREOC, being those bearing date 5 November 2004, 18 November 2004, 19 November 2004 and 18 January 2005, and which comprised at least the part of the context in which Mr von Doussa QC had terminated the original complaint of Mr Jones in the circumstances I have recorded earlier in these reasons. After formally reading the affidavits of the applicant's solicitor sworn on 21 July 2005 and 20 September 2005, counsel for the applicant informed the Court that he did not seek to cross-examine Mr Grigor-Scott upon the material the subject of his foregoing lengthy written communications made to the Court as identified above, or otherwise. The applicant's case in chief was thereupon formally closed.

38 Mr Grigor-Scott next sought to tender formally into evidence a box of material appropriately described by counsel for the applicant as 'piles of photocopied

documents and a number of books and leaflets and the like', being material which had not evidently been provided at least in that loose form in advance of the hearing in Court on that day, either to the applicant or his legal representatives. I indicated to Mr Grigor-Scott that I could not and would not accept the tender of such 'a massive bundle of material unless you can explain to me precisely how it bears upon the issue in these proceedings.' The essence of his response was merely that the material '... establishes that the one with the hatred is Mr Jones. We have got no hatred. We have got no animosity against the Jews. Why should we care? ...'. And he continued further what I would record perhaps for completeness:

'But we do differentiate because, you see, the Christian church works on the basis of what the Bible teaches, not on what or the purposes of the Act is a Jew. We teach what the Bible teaches. And there was no such word as Jew in any Bible until a couple of years ago or any language. And the Jews are not a Semitic people ... there are a lot of things missing out on that transcript. I paid $550 for a transcript which had been tampered with and I have written those things down in these affidavits things which are missing questions and answers, just not there'.

That contention was seemingly a reflection of the dichotomy of his case, or a major aspect thereof, that modern day claimants to being Jewish people, whom he asserted Mr Jones to be representing, were to be distinguished from the Israelite people of the Old Testament. Mr Grigor-Scott did not point specifically or verbatim to any of the contents of the transcript which had been allegedly 'tampered with', and which I have not in any event since noticed or detected. After I thereupon asked Mr Grigor-Scott '... is that all you wish to say in support of the tender of that material ...', pointing out to him that '... you have not uttered one word that demonstrates a legitimate legal basis [for] the admissibility of that material in these proceedings?', Mr Grigor-Scott responded:

'I'm not on my territory ... My territory is the word of God and we don't argue. We just present the truth and if someone doesn't receive it, well, it is not for them. Maybe another religion is but, you know, ... we just walk away. So we don't argue about things.'

39 It was largely in the foregoing context that I thereupon rejected the evidentiary legitimacy, as well as of the relevance, of that relatively massive as well as eclectic affidavit material of Mr Grigor-Scott which he presented to the Court without any prior concurrence of the Court and seemingly for the most part at least, not to the applicant's solicitor as well. His forwarding of purported evidentiary material and contentions to the Court, and without apparently any prior or contemporaneous distribution to the applicant in accordance with the *Federal Court Rules*, or largely so, involved an abuse of process, in terms both of methodology of dispatch or communication as well as size. The provision of that material constituted a failure on his part to come to issue in relation to the subject matter of complaint raised by the applicant in the proceedings.

40 The next course sought to be implemented by Mr Grigor-Scott was to place before the Court a package bearing date '2 August 2006', which contained a large bundle of largely random and disconnected documentation sent to the Court under cover of a

letter bearing date 1 August 2006. I caused my associate to inform him, by letter bearing date 7 August 2006, that the leave of the Court would be necessary before at least any such further and written material could be considered, given the stage to which the proceedings had by then advanced. The random or unsystematic manner by which documentary material was simply bundled together was obviously oppressive in the technical sense, aside from absence of relevance.

41 On 22 August 2006, Mr Grigor-Scott dispatched to the Court electronically a further substantial package of documentation, as well as filing a form of application bearing that date. The basis or purpose of the application was stated therein '... to reopen the hearing of this matter to formally present as evidence all the material already provided to his Honour Mr Justice Conti and to the Plaintiff and also to make a further submission.' The date when such application was sought by him to be heard by the Court was left blank on that form.

42 In any event, the Court appointed a date in September 2006 for the hearing of the foregoing application of the respondents 'to re-open the hearing of this matter'. At the commencement of that hearing on 14 September 2006, Mr Grigor-Scott asked 'to go into the witness box if I may ...'. I explained to him, in response to his assertion that 'I have actually sent the evidence to you', that he did not merely by dispatching the purported affidavit material, which included material in electronic format, to the Court, which he had done, thereby formally establish facts '... according to legal rules of evidence', being facts purportedly recorded literally on a massive historical scale. I explained to him moreover that it was not the Court's task 'to wade through a massive amount of material that you might see fit to... unload upon the court'. I further pointed out to him that he needed to confront the issue arising at the instance of the applicant and involving that material alleged by the applicant in its pleadings to have offended the legislation and which he appeared to have adopted as his own, and as that also of the BBC. I explained to him further that it was not the Court's function to undertake the onerous task of examining and determining the admissibility of such a substantial amount of material which he had sought to submit electronically to the Court, and indeed much more, even if it was admissible, the accuracy, historical truth, or justification otherwise of those contents of the material the subject of complaint. Moreover I emphasised to Mr Grigor-Scott that '[w]hat I am concerned about is what you have said, and then I have to form a judgment as to whether what you have said offends the legislation or otherwise'.

43 Significantly, Mr Grigor-Scott stated to the Court in purported response that he did not disown any of the material published in the name of the BBC. I indicated to him that it was apparent to the Court in any event that he was the person who had published the material complained of in the name of the BBC. After repeating to the Court that he agreed 'generally speaking' with 'what is on that church website', Mr Grigor-Scott asserted, in my view paradoxically, that 'I don't agree with the anti-Semitic material, which is all written by Jews, such as the Babylonian Talmud and many many works of rabbis', thereby apparently referring to the persons in Australia for instance purportedly represented by Mr Jones rather than people whom he would distinguish as the Israelites historically of the Old Testament of the Bible. I further explained in any event to Mr Grigor-Scott *inter alia* that 'I am only concerned about what particularly has been produced by the applicant [Mr Jones] in support of its case and you are here [seeking] to answer what the applicant has said in its case'. I

informed him moreover that '... on the face of it, there appears to be a prima facie case of allegations of racial hatred under the terms of the [RD Act].' In that regard, I should record at once that Mr Grigor-Scott acknowledged to the Court that 'I have associated myself' with the publication of the book '*The International Jew, The World's Foremost Problem*' (that being of course the subject of authorship of Henry Ford Senior as earlier recorded in [12(ii)] of these reasons), but he explained to the Court that his purpose in associating himself for instance with that published literary work was '... to show my people ... show believers and seekers of truth that Jews are not Israelites, they are a separate people altogether ... they have deceived ... by masquerading as the so-called chosen people which they are not, they are the enemy of Israel'.

44 Mr Grigor-Scott also testified on that occasion that the BBC website was 'not under my control, neither is it under my authorship' and asserted that 'I am a pastor of the Church ... the web administrator is in the United States', though he did not disclose that person's identity to the Court on any occasion. The evidence, and I would add Mr Grigor-Scott's conduct of the proceedings on behalf of himself, and purportedly on behalf of the unincorporated BBC, points overwhelmingly to that website being controlled and directed at least by him.

The concluding proceedings conducted on 18 October 2006

45 The final day of the proceedings took place on 18 October 2006. On that occasion Mr Grigor-Scott continued to appear for himself and to defend his conduct and actions complained, and in particular that his publication of material complained of in the name of The Bible Believers' Church (which I will continue to abbreviate as 'BBC').

46 The purported submission put forward by Mr Grigor-Scott on the occasion of that final day's hearing of the proceedings comprised a document bearing date 25 September 2006 and headed as follows:

'Jones v The Bible Believers' Matter No NSD 768/2005 Submission – Section 18D of the RDA'

Mr Grigor-Scott described the document as 'our submission for a section 18D exemption'. The document did not comprise in whole or in part the form of application, notice of motion or pleading prescribed by the *Federal Court Rules*. The last preceding document of an initiating character had been the 'Application' sent electronically to the Court on or about the date it bore, being 22 August 2006, and bearing his signature, and to which I have already referred at [41] above.

47 Earlier on 5 June 2006, senior and junior counsel for the applicant Mr Jones had provided to the Court a so-called 'Applicant's Supplementary Written Outline of Submissions' directed to the issue of the statutory reasonableness of an act for the purpose of the scope of operation of s 18D of the RD Act, that being germane to the outstanding question or controversy apparently remaining within the scope of the proceedings. The full text of s 18D has been earlier extracted in these reasons.

48 The question as to the reasonableness or otherwise of conduct for the purposes of s 18D was explained by a Full Federal Court in *Bropho v Human Rights and Equal Opportunity Commission and Anor* (2004) 135 CLR 105 comprising French, Lee and Carr JJ. My attention was drawn by counsel for the applicant to the following passages in the reasons for decision, being pars [80]-[82], [96] and [102] in the reasons for judgment of French J, [141] and [144] in the reasons of Lee J and [178] in the reasons of Carr J. I would draw attention in particular to the formulation of the reasonableness requirement addressed by French J in those passages in his reasons, and in particular the following in [80]-[81] concerning 'the public interest':

'80. An Act will be done reasonably in the performance, exhibition or distribution of an artistic work if it is done for the purpose and in a manner calculated to advance the purpose of the artistic expression in question. An act is done reasonably in relation to statements, publications, discussions or debates for genuine academic, artistic or scientific purposes, if it bears a rational relationship to those purposes. The publication of a genuine scientific paper on the topic of genetic differences between particular human populations might, for one reason or another, be insulting or offensive to a group of people. Its discussion at a scientific conference would no doubt be reasonable. Its presentation to a meeting convened by a racist organisation and its use to support a view that a particular group of persons is morally or otherwise "inferior" to another by reason of their race or ethnicity, may not be a thing reasonably done in relation to para (b) of s 18D.
81. The same kind of criterion may be applied to acts done in reports or comments on events or matters of public interest. A presentation of a report or comment which highlights, in a way that is gratuitously insulting or offensive, a matter that is irrelevant to the purported question of public interest under discussion may not be done "reasonably". A feature article on criminal activity said to be associated with a particular ethnic group would in the ordinary course be expected to fall within the protection of para (c). If it were written in a way that offered gratuitous insults by, for example, referring to members of the group in derogatory racist slang terms, then it would be unlikely that the comment would be offered "reasonably".'

The second respondent Mr Grigor-Scott made the following assertion in his submission document bearing date 25 September 2005 (*ante*):

'Everything that has been said or done by the respondents, or either of them, about which complaint has been made in this matter, has been said or done reasonably and in good faith for the purpose of making a fair and accurate report of events or [sic] *matters of public interest or had been the expression of a genuine belief about such events or matters held by the person making the comment'.*

49 As to the statutory notion of 'good faith', I would draw attention to what was said by French J at [96] and [102] on that subject in his majority judgment:

'96. It follows from the preceding discussion that good faith may be tested both subjectively and objectively. Want of subjective good faith, ie, seeking consciously to further an ulterior purpose of racial vilification may be sufficient to forfeit the protection of s 18D. But good faith requires more than subjective honesty and legitimate purposes. It requires, under the aegis of fidelity or loyalty to the relevant

principles in the Act, a conscientious approach to the task of honouring the values asserted by the Act. This may be assessed objectively.
102. A person acting in the exercise of a protected freedom of speech or expression under 18D will act in good faith if he or she is subjectively honest, and objectively viewed, has taken a conscientious approach to advancing the exercising of that freedom in a way that is designed to minimise the offence or insult, humiliation or intimidation suffered by people affected by it. That is one way, not necessarily the only way, of acting in good faith for the purpose of s 18D. On the other hand, a person who exercises the freedom carelessly disregarding or willfully blind to its effect upon people who will be hurt by it or in such a way as to enhance that hurt may be found not to have been acting in good faith.'

50 What was next submitted to the Court on the occasion of Mr Grigor-Scott's attempted re-opening of the evidence in the case was a large bundle of documents. That course of re-opening was opposed by counsel for the applicant upon the basis that Mr Grigor-Scott's affidavits of 7 September 2006 and 11 October 2006 were in any event of no relevance to the defence by the respondents of the proceedings, and otherwise to any issue in the proceedings relevantly to the statutory scheme. Moreover it was emphasised that the respondents had already passed up ample opportunity to present any such material to the extent that it was relevant, and in any event, no relevance to the issues properly arising had been demonstrated by Mr Grigor-Scott.

51 By way of rejoinder, Mr Grigor-Scott pointed broadly to what appeared on the BBC's website and 'to ... what I have got on the computer here', that being however a response of no utility, much less an explanation as to how any specific instance of his website documentation bore upon the issues arising, or for what reason. It is convenient at this point that my impression was that Mr Grigor-Scott's purported unspecific tender of vast numbers of unidentified documents might operate to draw out the current proceedings indefinitely. Moreover Mr Grigor-Scott continued to repeat in the course of his purported address to the Court vaguely or at best broadly expressed criticisms of the applicant's case of obviously no assistance, such as that '[t]here were a whole series of implausible submissions ...', that 'they have no case', that there was 'no evidence of breach of the statute', that 'the applicant is misusing the Act in order to promote the objectives of the Anti-Defamation League of B'nai B'rith', that 'my church has done nothing wrong', and that the applicant's case was 'untruthful'.

52 Mr Grigor-Scott next invoked reliance upon documents which I have identified earlier in my reasons as having emanated from the authorship of the respondents or either of them. It was an unjustified submission in the light of what I have recorded earlier in these reasons in relation to such documents. Thereafter he invoked reliance upon the affidavits bearing dates 7 September 2006, 25 September 2006 and 11 October 2006, without invoking any justifiable basis for doing so. Mr Grigor-Scott repeatedly asserted that I did not 'understand the case'. I explained to him that in relation to his affidavit material, I was '... at a loss to understand how [the same] bear even remotely on the issues that have been raised against you' and that '[t]hey relate to a massive amount of information that just doesn't bear upon the precise case that has been raised by you'.

53 To exemplify the nature and content of the affidavit evidence most recently assembled and upon which Mr Grigor-Scott purportedly sought to rely on, I drew attention in particular to his most recent affidavit sworn on 11 October 2006 and tendered at the hearing of the proceedings on that day. It comprised in all 118 paragraphs, whereof a sufficient exemplification of its failure to come to issue with the case presented by the applicant may be obtained from pars 1 to 14 thereof reading as follows:

'1. I am the second respondent.

2. It will be immediately obvious from the url: BIBLEBELIEVERS.ORG. AU and the banner over our main page" "the PRESENT Truth – what Jesus is doing NOW," *and "The Principles of Bible Believers'," that the material on our Church Website is published exclusively for the benefit of Bible believers, not for unbelievers or critics.*

3. Web statistics show that the majority of people using the resources are believers who regularly *use our Church Website for study purposes and connect to* specific files *and primarily are not random visitors from search engines seeking information on specific or key words... .*

4. The resources on our Church Website are a matter of academic interest and public debate as established by the fact a minimum 15,000 persons daily visit our Church Website and study or download on average four articles each.

5. The academic interest and public debate is further established by the number of academies established within Australia and throughout the world as well as myriad academic publications committed to the matters published on the Church Website. Scores of millions of books, MP3 CDs, video and cassette tapes of the Prophet's Message are published and distributed worldwide every year – fee [sic] *of charge to the believers in developing countries through the love of the Brethren and the grace of God.*

6. The new printing works in Kinshasa, Congo, alone printed 7 million books in 2005, and the goal for 2006 is 17 million. Printeries elsewhere publish Message books in greater quantities and also in many languages. Time is of the essence, we are at the very end of the Gentile dispensation, soon the Lord will turn to Israel to fulfil Daniel's Seventieth Week and our day of grace will have expired along with that of Jews who are Gentiles.

7. This is the Work of the Lord. The enormous quantity of material submitted or referred to as "evidence" (and returned three times unread), the professional and academic expertise reflected in that material, the very wide publication and distribution of that material by people other than the respondents, the public interest that must exist for that material to have been produced in the first place and then so widely distributed, and the extent to which such material has been used by the respondents indicates the dedicated state of mind of the respondents in relation to the fact that our reports, comments and statements were made reasonably and in good faith.

8. Ministers and Brethren throughout the world study the material on our website and

"prove all things" *as commanded by the Scripture.*

9. The Applicant's complaint is untrue. It cannot be substantiated and is refuted by the incomplete so-called evidence they have submitted .'
10. The complaint is not based upon racial discrimination or racial hatred but is an attack upon Bible Believers' Church because, like Jewish Authorities around the world, we do not recognize the hoax of the extermination of six million Jews in either World War I or World War II, and because of the applicant's false accusations that we are a religion that impersonates the Israelite people and therefore in competition with their own impersonation.
11. The complaint has not been tested by the HREOC, by Solicitor for the Applicants, Mr Steven Lewis, by their Barrister Mr Robert Goot, or by this Court. The Applicant's Attachment B is a misrepresentation of the facts.
12. My Church and my person have borne the burden of this professional negligence with the expenditure of our time and resources.
13. The "specific matters" referred to in the Applicants' claim must be studied online and in conjunction with supporting files. The printouts supplied by the Applicant are incomplete since the linked material has been omitted. Besides, the quotations are a systematic misrepresentation of facts clearly set forth and fully substantiated from independent, generally Jewish sources in each article.
14. None of the three Articles can be construed as racial hatred unless it is Jewish hatred for non-Jews. If the Applicants are offended, their offence derives from substantiated truthful reports of offensive behaviour of Jews toward non-Jews.
...'

I draw attention to what appears in particular at par 10 of Mr Grigor-Scott's above affidavit. Of course the circumstances merely that material is published on the internet purportedly for the information of a segment of persons, as Mr Grigor-Scott thus sought to explain above, provides no answer *per se* to the cause of action pleaded by Mr Jones on behalf of the Executive Council of Australian Jewry.

54 The reference in par 6 of Mr Grigor-Scott's affidavit above to '*Jews who are Gentiles*' reflected of course the distinction which Mr Grigor-Scott sought to propound, both on the subject website purportedly of the BBC, and elsewhere in the literally massive amount of affidavit material which he progressively sought to tender to the Court. That purported distinction was said by him to be between '... the word Jew [and] the word Israelite and because the vast majority of Jews even before the days of [the] Messiah were not Israelites', and because '[w]hereas Israelites are a Semitic people descended from the Hebrew race through Abraham, Isaac and Jacob, Jews are mostly non-Semitic peoples... [v]ery few Jews have any historical or blood link to Palestine with no common ethnic or racial background'. At the conclusion of discussion with Mr Grigor-Scott at the final hearing conducted on 18 October 2006 in relation to his purported affidavit of 11 October 2006, I observed that the contents thereof did not relevantly or at all address the issues arising in the proceedings, and ruled adversely to its admissibility of the same, as in the case of his preceding purported affidavit of 7 September 2006.

55 As previously observed, a letter bearing date 18 January 2005 from Mr Grigor-Scott as 'Minister of the Gospel' appears on the letterhead of Bible Believers' Church, which was addressed to HREOC and was in evidence in the subject proceedings. It

may be readily inferred from the evidence in the present proceedings that the operations and activities of BBC are controlled and directed by Mr Grigor-Scott, and so far as the evidence extends, by him alone. No other person has given evidence for the respondents in the proceedings other than Mr Grigor-Scott himself, and no other person has been identified by him by name as a member of the so-called the BBC, or has engaged in the operation of the website. In some of his correspondence, he has however referred obliquely to his receipt of legal assistance. To the extent to which Mr Grigor-Scott literally inundated the Court with documentation, he thereby imposed upon the Court an inappropriate as well as burdensome amount of reading matter, some of which was written material in purported affidavit form which was not presented or framed in any event in compliance with the Federal Court evidentiary and structural rules and regulations, and which at least for the most part was irrelevant to the issues tendered by Mr Jones for resolution in the proceedings, as I have already explained or observed.

56 Mr Grigor-Scott alone presented the respondents' case moreover to the extent that it was oral in form. Many of those publications which he cited or extracted, and the other documents he produced, appeared to have emanated from overseas sources. To have endeavoured to adopt the normal course of causing each affidavit tendered by the respondents to be verbally read in Court, and contemporaneously ruled upon paragraph by paragraph in terms of admissibility, would have been as impractical as it would have been inherently time consuming and otherwise burdensome to the Court. As I have foreshadowed, the only realistic course open for adoption was unfortunately for me to receive the material produced by Mr Grigor-Scott and to read the substantial detail thereof in Chambers. For me to have endeavoured to read the respondents' affidavits in open Court in the traditional way would have been inimical to any reasonable and orderly conduct of the subject proceedings.

Conclusions

57 The case of the applicant advanced on his behalf and on behalf of the Executive Council of Australian Jewry against the respondents The Bible Believers' Church ('the BBC', as I have already abbreviated), being an unincorporated association whereof only Mr Grigor-Scott could be conceivably described as a member, and Mr Grigor-Scott himself, relates to behaviour characterised rightly by the applicant as offensive and insulting to and racially vilifying of Jewish people, including Australian Jewish people. That behaviour has comprised or included the propagation of what may be described as written material appearing and published in the name of the BBC which has appeared on a website whereof the BBC is the registrant, and which website has been operated and controlled at all material times by Mr Grigor-Scott directly. As I have already indicated, the BBC does not *per se* appear to have legal personality cognisable in the common law of Australia, irrespective of its purported website status. In the course of the hearing of the proceedings, which took place on four hearing days at intervals during the period of time from September 2005 to October 2006, it became apparent that although Mr Grigor-Scott made unsubstantiated claims as to the existence of a world-wide congregation of the BBC at least *per medium* of that website, no other person or legal entity was identified, by viable evidence according to law as susceptible to rejoinder as an additional respondent to the proceedings.

58 In my opinion therefore the case of the applicant, which I have summarised at length in these reason, has been established by the applicant, and the relief sought by the applicant should be in principle as well as in scope duly sustained, at least largely for the reasons which the applicant has submitted to the Court, and which I have sought to record or to summarise in the reasons for judgment. Despite the voluminous number and extent of purported submissions and contentions made to the Court by Mr Grigor-Scott, both written and oral, and whether explicitly or implicitly advanced on behalf of the BBC and/or himself, the case so advanced has neither in substance or in reality come to issue with that presented with precision by the applicant (of course in referring to the BBC, I do not overlook its apparent absence of legal personality). The literally massive amount of written material purportedly, at least for the most part, in the nature of affidavits, and with which Mr Grigor-Scott has sought literally to 'flood' this Court, has failed to come adequately to issue with the case propounded by the applicant, with appropriate precision or at all, and moreover was not presented in conformity with established rules of evidence, and with the procedural requirements of the Federal Court.

59 Mr Grigor-Scott's case has failed moreover to confront and answer the nature and the extent of the findings and reasoning of this Court in *Jones v Toben*, both at first instance and on appeal, to which authority I have of course earlier made reference. There was ample corresponding support in the present case for the making here of similar findings to those made in *Jones v Toben*. Moreover it is unnecessary for me to determine the validity of the second respondent's assertions regarding the Holocaust. Hely J observed in *Jones v Scully* (2002) 120 FCR 243 at [176]-[177] as follows:

'176. I am not in a position to determine, as a matter of fact, whether the claim made by the author of the pamphlet that the Holocaust never occurred is true or not. I do not have the evidence which would be needed to enable me to make that determination, assuming that the matter is susceptible of proof in a court. As Gray J observed in Irving v Penguin Books Ltd [2000] *EWHC QB 115 at [1.3], that is a task for historians whose role it is to provide an accurate narrative of past events; whereas my role is to determine whether the public dissemination of the leaflet by Mrs Scully in Launceston contravenes s 18C of the RDA.*

177. In my view, a leaflet that conveys an imputation that Jews are fraudulent, liars, immoral, deceitful and part of a conspiracy to defraud the world is reasonably likely to offend, insult, humiliate or intimidate Jews in Australia. This would be so regardless of whether or not the leaflet made mention of the Holocaust. However, the fact that the imputation arises in the context of a debate about the Holocaust makes it even more likely that the leaflet would cause offence. This is particularly so owing to the inflammatory language used in the leaflet, as well as the fact that it is unambiguously dismissive of the Jewish view of the Holocaust. I therefore find that this leaflet contravenes s 18C.'

I think it is appropriate for me to refrain from addressing further what appears in the evidence as to Mr Grigor-Scott's apparent views concerning the occurrence or otherwise of the Holocaust.

60 In the course of the concluding day's hearing of the proceedings conducted on 18 October 2006, and in particular of Mr Grigor-Scott's assertions and submissions of

that concluding day, he acknowledged that 'we agree' that he was either the author of the material placed on the BBC website complained of in the proceedings, or else he agreed in any event with that material, but he asserted that the same '... has no relevance whatsoever to racial discrimination against Jews', and further '[i]t does, however, demonstrate the Jews discrimination against non-Jews', though upon what basis he did not appear to articulate, at least with any specificity. He described incidentally, in my opinion without any plausible basis for justification advanced in his evidence, that the eleven page letter of 17 December 2005 of the Executive Council of Australian Jewry (Exhibit R1) was '... a compound of lies, bold-faced lies and the evidence that they have put [is] untruthful evidence'.

61 I have recorded in some detail Mr Grigor-Scott's assertions and submissions, advanced as they were from the Bar Table and which were contained in written material which he sought to tender, inclusively of his short purported written submissions dated 25 September 2006. He maintained to the Court that all that he had done in the course of the proceedings the subject of complaint was undertaken ' .... to determine reasonableness and good faith', in line with the operation of s 18D of the RD Act upon which he repeatedly claimed reliance. I should further record additionally that on the concluding day's hearing, I rejected the admissibility of the remaining evidence of 7 September 2006 and 11 October 2006, which he sought to tender into evidence, as 'oppressive and irrelevant', though I nevertheless agreed to treat his relatively short two and a half page 'submission' of 25 September 2006 as having been placed before the Court for consideration. By that document, Mr Grigor-Scott asserted reliance upon what appeared in the judgments of the Full Federal Court in *Bropho* (2004) 135 FCR 105, and specifically at [79] and [101]-[102] in the case of French J and [178] in the case of Carr J, though I am unable to discern how those passages conceivably assisted his case.

62 As foreshadowed, counsel for the applicant placed reliance upon what appeared in the reasons for judgment in *Bropho* 135 FCR 105 of French J at [96] and [102], of Lee J (dissenting) at [141], and of Carr J at [178], and contrary to the submission of Mr Grigor-Scott, counsel for the applicant explained further by supplementary outline of written submissions the basis for his invocation of those principles enunciated in *Bropho* 135 FCR 105 which he thereupon cited. Those principles related to the statutory tests as to '*reasonableness*', '*public interest*' and '*good faith*', in relation to which tests it was submitted by counsel that Mr Grigor-Scott's case fell well short, being a submission which in my opinion, in the light of the matters I have recorded in these reason, was clearly correct. Mr Grigor-Scott's purported invocation of s 18D was made incidentally by way of a so-called written 'submission', and not by way of formal application for relief in the form prescribed by the *Federal Court Rules*.

63 I should record for completeness that Mr Grigor-Scott sought to contend in his belated 25 September 2006 document that '[t]he matters about which the complaints in this matter have been made do not relate to every "Jew", but are part of an academic or public interest discussion in relation to "Zionist" policies and practices'. I have not been able to identify, much less rationalise however, the existence of any such discussion in the context of the present proceedings and of the conduct complained of by the applicant which has led thereto. I agree with the response of counsel for the applicant that the submission is misconceived in its purported aspects.

64 I should acknowledge that by letter bearing date 1 August 2006 written very belatedly by Mr Grigor-Scott, there was sent, without prior approval of a direction or otherwise of the Court, a comprehensive five page closely typed letter. This document bore implicitly the fact of a likely receipt by him of legal assistance, by at least the latter stage of the proceedings. It included what may be described as an unfortunate hotchpot of repetition, abuse of the applicant's case, misstatements, and otherwise irrelevant material that constituted no sufficient basis for specific consideration in the course of these reasons.

65 In the result the application by Mr Jones made on his own part and on behalf of the Executive Council of Australian Jewry should be granted, and the relief sought thereby should be ordered in principle. Given however that the BBC does not have legal personality, not being an incorporated entity as I have earlier explained, no order may be made against what is merely a name or description, though of course restraints may be made against future conduct of Mr Grigor-Scott as to causing or committing proscribed conduct to occur, including proscribed conduct undertaken in the name of the BBC. I should add that the applicant's amended application sought *inter alia* an order that the second respondent, Mr Grigor-Scott, deliver to the applicant a written statement of apology. I consider such an order to be inappropriate. I refer in that regard to the observation of Branson J in *Jones v Toben* (2002) 71 ALD 629 at [106], where her Honour stated as follows:

'...I do not consider it appropriate to seek to compel the respondent to articulate a sentiment that he plainly enough does not feel. As Hely J pointed out in Jones v Scully *at [245]*, "prima facie the idea of ordering someone to make an apology is a contradiction in terms"...'

The second respondent must pay the applicant's costs of the proceedings, including any previously reserved costs.

I certify that the preceding sixty-five (65) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Conti.

Associate:

Dated: 2 February 2007

Counsel for the Applicant:	Mr RM Goot AM SC and Mr SEJ Prince
Solicitor for the Applicant:	Slater & Gordon Lawyers
Second Respondent appeared in person	

Date of Hearing:	20 September 2005, 5 June 2006, 14 September 2006 and 18 October 2006.
Date of Judgment:	2 February 2007