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IDIOMATIC ANTICS, CORRUPTION, TV/RADIO ADS AND THE COMMONWEALTH CONSTITUTION

'IT'S ALL GREEK TO ME.'

In 1992, Mr Bruce Ruxton, President at the time of the Victorian branch of the Returned Services League, decided to have his say about Dr Andrew Theophanous, a member of the House of Representatives. He sat down and wrote a letter expressing his thoughts and sent it to the editor of the Herald & Weekly Times who then published it in The Sunday Herald Sun.

The letter said: "If reports coming out of Canberra are true about the alleged behaviour of Dr Andrew Theophanous, then it is high time he was thrown off Parliament's immigration committee.

I have read reports that he stands for most things Australians are against.

He appears to want a bias shown towards Greeks as immigrants.

Let me say at the outset that the Greeks who have come to this country have been a splendid example to everyone. They are hard working, honest, delightful people, and they would agree with me, I'm sure, that right now too many immigrants are being allowed in.

There are just no jobs for newcomers- or those who already live here.

It has been reported that Dr Theophanous wants the British base of Australian society diluted so that English would cease to be the major language.

What is this man about? And what language would he suggest we use to replace English?

I'm grateful there's an election in the wind. I hope the people of Calwell give Dr Theophanous the heave.

Poor old Arthur Calwell must be spinning in his grave at the idiomatic antics of the man in the seat named after him.

Calwell was a great Australian and the architect of this country's post-war immigration policy". (68 ALJ 1994 at 714-715).

DISCUSSION QUESTIONS

1. What aspects of Mr Ruxton's letter do you think Dr Theophanous might have found offensive?
2. Why do you think this?
3. Is there any particular language or phrase which you consider is not acceptable?
4. Do you think that the newspaper should have published this letter or not?

CLASS RESEARCH QUESTION

What is the 'alleged behaviour' of Dr Theophanous which motivated Mr Ruxton to write his letter?

Dr Theophanous took defamation proceedings against the Herald & Weekly Times and Bruce Ruxton.

In these proceedings, the complaint was made by the plaintiff (Dr Theophanous) against the portrayal of him as:

*biased towards Greeks;
that he stood for things that most Australians were against;
that he was an idiot and his actions were the antics of an idiotic man.*

FREEDOM OF SPEECH

In their defence, one of the things the Herald & Weekly Times argued was that there is a freedom guaranteed by the Australian Constitution to publish material:

about government and political matters;

about members of Parliament and parliamentary committees in terms of how they are doing their job;

about whether people are suitable to be in Parliament.

As far as Bruce Ruxton (the second defendant) was concerned, the average person should have the right to comment on the way a person is representing them in government, and if this meant that the average person made some criticisms of that person then that was the way that 'representative democracy' worked.

The case went to the High Court of Australia (Theophanous v Herald & Weekly Times Ltd (1994) 68 ALJR 713)

The questions the Court considered were:

Is there a freedom guaranteed by the Commonwealth Constitution to publish material; discussing government and political matters;

of and concerning members of the Parliament of the Commonwealth of Australia which relates to the performance by such members of their duties as members of the Parliament or parliamentary committees;

in relation to the suitability of persons for office as members of the Parliament?

In addressing these questions, the Court considered some previous cases which had come before it raising similar questions regarding freedom of speech.

FREEDOM TO SPEAK OF LAW-MAKERS

One of these cases was Nationwide News P/L v Wills (1992) 177 CLR 1. In this case, Nationwide News had published in its newspaper, The Australian, an article which had been written by a freelance journalist containing a strong attack on the integrity and independence of the "Arbitration Commission" and its members. The article was headed "Advance Australia Fascist".

Among other things, the newspaper article said that the work of

Australian workers is regulated by "a mass of official controls, imposed by a vast bureaucracy in the ministry of labour and enforced by a corrupt and compliant judiciary". It also described the members of the Arbitration Commission as "corrupt labour judges".

It was argued before the Court that Nationwide, by publishing the article, had committed an offence under s. 299(1)(d)(ii) of the Industrial Relations Act 1988 (Cth) (the Act) which says that a person shall not by writing or speech use words calculated to bring a member of the Commission or the Commission into disrepute.

Nationwide, on the other hand, argued that s. 299(1)(d)(ii) of the Act was invalid because it was beyond the legislative powers of the Commonwealth due to the guarantee said to be 'implicit' in the Australian Constitution that citizens shall be free, to voice their criticisms of governmental institutions, in particular law-making bodies.

The Court held in this case that the section of the Act argued was invalid because it went against the implied right in the Constitution that citizens have freedom of expression of opinion and criticism upon matters of public policy and public administration. This right includes being able to discuss and debate such matters and that such a right is essential to the working of parliamentary democracy.

DISCUSSION QUESTIONS

1. Mason J stated in the case of *The Commonwealth v Fairfax & Sons Ltd* (1980) 147 CLR 39 that "it is unacceptable in our democratic society that there should be a restraint on the publication of information relating to government when the only vice of that information is that it enables the public to discuss, review and criticise government action".

Do you agree with this statement? If so why? If not, why not?

2. In an American case, *Smith v Daily Mail Publishing Co* (1979) 443 US 97 the presiding judge

said that "Historically we have viewed freedom of speech and of the press as indispensable to a free society and its government".

What are the strengths and weaknesses of such a viewpoint?

3. In the case of *Gallagher v Durack* (1983) 152 CLR at 243 it was said that the law of contempt is not for the purpose of restricting honest criticism based on rational grounds of the manner in which the Court performs its functions. The law permits in respect of Courts, as of other government institutions the fullest discussion of their doings so long as that discussion is fairly conducted and is honestly directed to some definite public purpose.

What is the law of contempt?

When might it be applied?

Are there any other laws which can operate to curtail freedom of speech?

ESSAY QUESTION

In *West v Commissioner of Taxation (NSW)* (1937) 56 CLR 657 Dixon J. held that in interpreting the Australian Constitution, if you took the viewpoint that no implications could be made, such a method of construction would defeat the intention of any instrument, especially a written constitution.

Discuss this statement in light of the fact that there is no express or general freedom of speech written into the Australian Constitution.

