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Freedom to speak of laws

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FREEDOM TO SPEAK OF LAWS

Another case the High Court considered in detail during Theophanous was *Australian Capital Television Pty Ltd v The Commonwealth* (1992) 177 CLR 106.

In this case Australian Capital Television (ACTV) which is a commercial television broadcaster with a commercial television licence sought to have Pt 111D of the Broadcasting Act 1942 (Cth) (the Act) declared invalid.

Part 111D was introduced into the Act by the Political Broadcasts and Disclosures Act 1991 (Cth).

In essence, Pt 111D was intended to prohibit political advertising on radio or television during elections. One section referred to federal elections or referendums and another section extended this to Territory elections and to State or local government elections.

The Commonwealth argued that Pt 111D was put in place to safeguard the integrity of the political system by reducing, if not eliminating, pressure on political parties and candidates to raise substantial sums of money in order to engage in political campaigning on television and radio.

It argued that this pressure would render them vulnerable to corruption and to undue influence by those who donate to political campaign funds. The high costs of broadcast advertising can expose political parties and candidates for

election to attempts by substantial donors to exert influence. This, it was said, affects the integrity of the political process.

ACTV argued, on the other hand, that Pt 111D elevates news, current affairs and talkback radio programmes to a position of considerable importance as they become the principal vehicle for political discussion in an election period.

It was argued that it may be hard for a political party, person or group to effectively respond to information or comment contained in such programmes which was adverse to their interests. This situation was said to severely impair the freedoms previously enjoyed by citizens to discuss public and political affairs and to criticise federal institutions. In essence, it was argued, Pt 111D was in breach of the implied constitutional guarantee of freedom of communication as to public and political discussion.

DISCUSSION QUESTIONS

1. Another argument that came up in the case was that the ban imposed by Pt 111D was contrary to international law.

Australia is a party to the *International Covenant on Civil and Political Rights (ICCPR)*. Article 19(2) of ICCPR requires parties to guarantee the right of freedom of expression. This right however is not absolute.

Article 19(3) provides that the right may be limited in the interests of public order.

Do you agree with the Commonwealth's response that the ban did not constitute a breach of ICCPR?

What sorts of things do you think might come within 'the interests of public order' under ICCPR?

2. The Commonwealth argued the ban imposed by Pt 111D would have the effect of halting the advantage enjoyed by wealthy persons and groups in gaining access to the use of the airwaves. Furthermore, it was said that it would stop the trivialising of political debate resulting from very brief political advertisements.

What is your response to these two arguments?

In what way, besides prohibiting political advertising on the electronic media could the risk of corruption or the reduction of the advantage of wealth on the formation of political opinion be achieved?

The Court held in the ACTV case that Pt 111D was invalid because, among other things, it denied the implied guarantee of freedom of communication regarding public and political discussion in the Australian Constitution.

DEBATING QUESTION

"If our Constitution has to be continually interpreted by the High Court it is nothing more than a confusing document"