



## Summary of Judgment

### **CHRISTIAN YOUTH CAMPS LTD & ANOR v COBAW COMMUNITY HEALTH SERVICES LTD & ORS**

[2014] VSCA 75

16 APRIL 2014

In 2010, the Victorian Civil and Administrative Tribunal (the 'Tribunal') upheld a complaint of discrimination against Christian Youth Camps ('CYC'), over its manager's refusal to allow one of CYC's camping resorts to be used for the purposes of a weekend camp to be attended by same-sex-attracted young people. The manager of the camp was also found liable for the discriminatory conduct.

CYC and the manager applied to the Court of Appeal for leave to appeal against the Tribunal's decision. An appeal from the Tribunal is limited to questions of law.

Today, the Court of Appeal (by majority) dismissed CYC's appeal. The appeal by the manager was allowed, also by majority.

### **Background**

The request for accommodation was made by Cobaw Community Health Services Limited, an organisation concerned with youth suicide prevention. Cobaw focuses particularly on same-sex-attracted young people and aims 'to raise awareness about their needs and the effects of homophobia and discrimination on young people and rural communities generally'.

CYC was established by the trustees of the Christian Brethren Trust, itself established for purposes connected with the Christian Brethren Church. CYC and the manager gave evidence before the Tribunal that they were opposed to homosexual sexual activity, as they consider it to be contrary to God's teaching as set out in the Bible.

The Tribunal held that the refusal amounted to unlawful discrimination on the basis of the sexual orientation of those who would be attending the proposed camp. This was a contravention of the anti-discrimination provisions of the *Equal Opportunity Act 1995* (the 'EO Act').

On the appeal to this Court, CYC disputed that finding, maintaining that there was a fundamental distinction between an objection to 'the syllabus' to be taught at the

proposed camp — that is, to beliefs or opinions which would be expressed by Cobaw to those attending the camp — and discrimination on the basis of the sexual orientation of those attending.

Before the Tribunal, CYC contended that if, contrary to their principal submission, the refusal would otherwise have constituted unlawful discrimination, the exemption provisions in the EO Act concerning religious freedom were applicable, such that there had been no contravention. These exemptions apply to conduct by 'a body established for religious purposes', and to discrimination by a person which is necessary in order 'to comply with the person's genuine religious beliefs or principles'. The Tribunal held that neither exemption was applicable.

The complaint brought by Cobaw alleged that it was the manager who had committed the act of discrimination. CYC, his employer, was said to be liable only vicariously. In the result, the Tribunal upheld both of these claims, concluding that the manager was directly liable and CYC vicariously liable for the contravention of the EO Act.

### **Court of Appeal decision**

The majority of the Court of Appeal (Maxwell P and Neave JA) concluded that there was no error of law in the Tribunal's decision. That is, there was no error in her Honour's findings that:

- (a) there was discrimination on the basis of sexual orientation; and
- (b) neither of the exemptions directed at preserving religious freedom applied in the circumstances of the case.

In view of Maxwell P and Neave JA, CYC was directly liable for the act of discrimination. This was so because, when the manager refused Cobaw's request for accommodation, he was acting with the authority of CYC and in the course of managing its business. His actions were the actions of CYC.

Maxwell P further concluded that, in consequence, the manager himself had no personal liability for the contravention. His appeal should therefore be allowed. Neave JA, on the other hand, concluded that the manager remained liable, notwithstanding that CYC itself was directly liable.

Redlich JA concluded that the Act made both CYC and the manager liable for the relevant conduct, but that the conduct was exempt under one of the religious freedom exemptions (see below).

### **The religious freedom exemptions**

The unanimous view of the Court was that CYC was not 'a body established for religious purposes' and hence could not invoke the exemption under s 75(2) of the

Act. That section permits a body of that kind to engage in otherwise prohibited conduct, where that conduct:

- (a) conforms with the doctrines of the religion; or
- (b) is necessary to avoid injury to the religious sensitivities of people of the religion.

Even if CYC had been a body of the requisite kind, the Court held, the refusal of accommodation was not conduct to which the exemption would have applied.

The other exemption relied on was that contained in s 77 of the EO Act, which permits discriminatory conduct by a person which 'is necessary for the ... person to comply with [his/her] genuine religious beliefs or principles'.

In the view of Maxwell P and Neave JA, this exemption was not applicable either. In relation to the manager, the refusal of accommodation was not necessary for him to comply with his religious beliefs.

In relation to CYC, their Honours concluded that the exemption was not intended to be available to a corporation. There was no indication in the Act that Parliament contemplated that a corporation would be deemed, for this purpose, to be able to hold a religious belief and therefore the exemption could not apply to CYC. Accordingly, Maxwell P and Neave JA dismissed CYC's appeal.

Redlich JA dissented on this question. In his Honour's view, s 77 was intended to be available to all persons, which by definition included corporations as well as individuals.

His Honour concluded, moreover, that the exemption applied, as the refusal of the accommodation was necessary for both CYC and the manager to comply with their genuine religious beliefs. On that basis, his Honour would have allowed the appeals of both CYC and the manager.

### **Outcome**

The majority dismissed CYC's appeal, holding that there was no error of law in the Tribunal's decision that the conduct was discriminatory and that neither of the religious freedom exemptions applied.

The manager's appeal was allowed:

- (a) by Maxwell P, on the ground that it was CYC, not the manager, which committed the act of discrimination; and
- (b) by Redlich JA, on the ground that the conduct of the manager, which would otherwise have breached the Act, was covered by the religious belief exemption.

**NOTE:** This summary is necessarily incomplete. The only authoritative pronouncement of the Court's reasons and conclusions is that contained in the published reasons for judgment.