



## Précis Paper

### The Scientology Case

David Bennett remembers the landmark decision of *Church of the New Faith v Commissioner for Pay-Roll Tax (Vic)* [1983] HCA 40.

#### Discussion Includes

- Introduction
- Significance of the case
- Freedom of religion under the Australian constitution
- Influence of this case in other countries
- Lessons from this case

## Précis Paper

### The Scientology Case

1. In this edition of BenchTV, David Bennett AG QC (Barrister, 5 Wentworth) and Stephen Griffiths (Solicitor, AR Conolly and Co) discuss the landmark case of *Church of the New Faith v Commissioner for Pay-Roll Tax (Vic) [1983] HCA 40*, which raised the question of what, legally speaking, constitutes a religion?

#### Significance of the case

2. The case was not so significant because of its definitions of what defines a religion, which each of the three judges involved defined quite differently, but rather that it rejected a large number of arguments put up by the respondent, the Victorian Government, as to why it couldn't be a religion.
3. It is the rejection of each of these arguments which gives the case its real significance, in the steps towards defining a religion.

#### Freedom of religion under the Australian Constitution

4. This case had nothing to do with the Constitution, although the Court will apply various aspects of its reasoning to a case where there is a need to define religion.
5. The Constitution states firstly that the Commonwealth cannot establish a religion.
6. Secondly, the Commonwealth cannot engage in various forms of religious discrimination.

#### Influence of this case in other countries

7. There has been litigation involving Scientology in many countries.
8. In many countries Scientology is recognised by statute as a religion.
9. The UK case relied heavily on the Australian Scientology Case, as well as *Malnak v. Yogi, 440 F. Supp. 1284 (DNJ 1977) (USA)*.

#### Lessons from this case

10. Don't be discouraged in going to the High Court by the fact that the courts below have been unanimously the other way.
11. The populist result is not necessarily the correct result.
12. It is important that new religions be treated in the same way as the old established ones.

## **BIOGRAPHY**

### **David Bennett AC QC**

Barrister, 5 Wentworth Chambers, Sydney

David was called to the Bar in 1967 and appointed Queens Counsel in 1979. He served two five-year terms as the Solicitor-General of Australia from 1998. His current practice includes appellate, constitutional, administrative, revenue, trade practices and competition law. David has also served as President of the NSW Bar Association and President of the Australian Bar Association.

### **Steven Griffiths**

Director, BenchTV, Sydney

Steven Griffiths graduated from the Queensland University of Technology (QUT) in 2003 obtaining a Bachelor of Laws. He had previously studied at University of New South Wales, obtaining a Degree in Sport Science. He was admitted as a solicitor in 2004 to the NSW Supreme Court and worked as a Government solicitor from 2004 to 2017 advising senior departmental staff and appearing in a wide variety of matters in the NSW court and tribunals including Supreme, District and Local courts as well as the State Parole Authority and Coroner's Court. He opened his own practice in 2017 specialising in criminal law and is currently the Director of Bench TV.

## **BIBLIOGRAPHY**

### **Focus Case**

*Church of the New Faith v Commissioner for Pay-Roll Tax (Vic) [1983] HCA 40*

### **Cases**

*R v Registrar General, ex p Segerdal CA 1970 (UK)*

*Malnak v. Yogi, 440 F. Supp. 1284 (DNJ 1977) (USA)*

*United States v. Kuch, 288 F. Supp. 439 (D.D.C. 1968) (USA)*

*R (on the application of Hodkin and another) v Registrar General of Births, Deaths and Marriages [2013] UKSC 77*

### **Legislation**

*Payroll Tax Act 1971 (Vic)*

*Psychological Practices Act 1965 (Vic)*