

King-Ansell v Police [1979] 2 NZLR 531

1) Reference Details

Jurisdiction: Court of Appeal, New Zealand
Date of Decision: 14 December 1979
Case Status: Concluded

2) Facts

The appellant was given leave to appeal by the Supreme Court against a decision upholding his conviction for an offence under s25 of the Race Relations Act (RRA) 1971. He was charged with publishing a pamphlet which incited ill-will against Jews on the grounds of their ethnic origins. The appellant was the leader of the National Socialist Party and purported to publish the pamphlet on their behalf, of which some 9000 copies were made. The charge was founded on the idea that Jews as a group were identifiable based on their ethnic origins. He was convicted by the Magistrate's Court and appealed to the Supreme Court, which upheld the Magistrate's decision but granted leave to appeal to the Court of Appeal.

Four grounds of appeal were raised before the Supreme Court: that the Magistrate erred in finding that Jews have 'ethnic origins'; that there is no evidence the appellant 'published' the pamphlet; the evidence did not establish the necessary intent; and that the pamphlet was not 'insulting and likely to cause ill-will against' Jews in New Zealand. The Supreme Court granted leave to appeal as it considered that the meaning of the words 'ethnic origins' involved a question of law of public importance. The Court of Appeal considered solely the question of 'ethnic origin.'

3) Law

- Race Relations Act 1971

4) Legal Arguments

The appellant argued that the RRA ought to be interpreted as adopting a strict biological meaning of race that refers to a particular 'species' of human who are distinguishable from other groups based on genetic inheritance. On such a basis the appellant contends that Jews do not form a common genetic group. Considering that 'ethnic origin' is commonly intended to refer to race, and that Jews are not a distinct racial group, they cannot be said to have origins that pertain to race.

5) Decision

Richmond P formulated the question of law for the Court as "In what sense is the word 'ethnic' used in its context in s25?"

The Court held that religious discrimination was outside the scope of the RRA, but that 'ethnic' was to be given a meaning within this scope. They contended that the answer needed to ensure that the concept was interpreted in a broad and non-technical sense while also preventing a meaning which would take the operation of the act outside a broad interpretation of racial discrimination. While it is commonly accepted usage in New Zealand that 'ethnic' is related to

race and is also accepted as meaning common racial, cultural, religious or linguistic characteristics that would, according to Richmond P, render the act too broad. He concludes that 'ethnic' should be taken to mean 'pertaining to race or nation', a proposition for which he finds support in *Ealing LBC v. Race Relations Board [1972] AC 342*.

Considering expert testimony by anthropologist and sociologist Dr MacPherson, Richmond P reasoned that while Dr MacPherson's definition of 'ethnic group' is too wide for the act, it does however inform an appropriate definition and conclusion in relation to Jews. He concluded that the RRA covers groups of persons who have common ethnic origins, which include groups "marked off from the generality of our society by shared beliefs, customs and attitudes". (p535)

A separate opinion delivered by Richardson J provided the general statement which is commonly used to define ethnic origin in later New Zealand jurisprudence:

"The ultimate genetic ancestry of any New Zealander is not susceptible to legal proof. Race is clearly used in its popular meaning. So are the other words. The real test is whether the individuals or the group regard themselves and are regarded by others in the community as having a particular historical identity in terms of their colour or their racial, national or ethnic origins. That must be based on a belief shared by members of the group." (p542)

Ethnic origin is therefore established by reference to shared customs, beliefs, traditions and characteristics derived from a common or presumed common past. A combination which gives them a 'historically determined social identity based ... on their belief as to their historical antecedents.' (p543)

He concludes that '*Jewishness*' is much more than just religion and therefore does fall into the category of an ethnic group.