

Eatock v Bolt: a controversial Australian hate speech case

Max Harris explains why journalist Andrew Bolt was found in breach of Australia's Racial Discrimination Act for articles about "fair-skinned Aboriginal people".



In August 2009, the Australian journalist Andrew Bolt wrote several articles and blogs for the Australian newspaper, the Herald Sun, claiming that some fair-skinned Aboriginal Australians were identifying as Aboriginal in order to gain political or financial benefits. Pat Eatock, one of the women referred to in the article, claimed in the Federal Court of Australia that these articles were race-based offensive behaviour and so breached the [Australian Racial Discrimination Act 1975](#).

The judge in the case, Bromberg J, pointed out, in an enormous 470 paragraph judgment that can be read [here](#), that two values undergird section 18 of the Racial Discrimination Act: the need for Australians to live free from the harm of racial prejudice, and the value of free speech.

When coming to applying the law to the facts, Justice Bromberg noted that for race-based offence to be "reasonably likely", there must be a real chance (not remote or fanciful) that a person or group will be offended, intimidated, insulted, or humiliated. He stated that the articles conveyed the

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imputation that individuals were identifying as Aboriginal for activist or political purposes, and that these individuals were not genuinely Aboriginal. This was likely to be seen as a truthful statement, which could lead to a reluctance on the part of the group to express their identity. Thus, Bromberg J found that at least some of the group were reasonably likely to be offended.

The defence of fair comment required Bolt and the Herald Weekly Times (the newspaper's publisher) to be acting reasonably and in good faith, and to be making comments based on true facts. But Justice Bromberg found that there were factual inaccuracies in the article. He accepted that freedom of expression included the freedom to speak offensively; however, the language used here was inflammatory, provocative and cynical. As for the defence of expressive activity for genuine purpose in the public interest, section 18D, the court found that the journalist had gone well beyond what was necessary to make his point. Accordingly, the judge agreed that a declaration that the articles were unlawful was appropriate, though he refused other remedies, such as requiring that the articles be removed from the website. No damages were awarded.

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