

# The perils of Pauline

*The continuation of the injunction stopping the ABC from broadcasting the Pauline Pantsdown song "Backdoor Man" has disturbing implications for free speech*

**P**olitical satire isn't dead yet but it has taken a bruising with the Queensland Court of Appeal's decision to dismiss the ABC's appeal against the September 1997 injunction on the Pauline Pantsdown "Backdoor Man". Heard and decided several days before the October Federal election, the judgment will keep the song off the airwaves at least until the trial and probably beyond, unless the ABC can successfully appeal to the High Court.

Given that only a short time ago, Hanson's outspokenness on sensitive issues was promoted by some as a working model of a new "free speech", it is not hard to find the irony in her use of the courts to suppress someone else's expression.

Since her maiden speech, Hanson has been a fertile subject for satire. The Mambo clothing label produced a T-shirt parody of a Redheads matches box with a Pauline Hanson head, titled "Rednecks: Av Contents: Ignorance". Television comedy program Full Frontal regularly screens a Hanson lookalike lambasting an articulate Asian man for not properly pronouncing "Oz-trayun". Her policies have always been provocative. (As we were recently reminded by Richard Ackland in the Sydney Morning Herald, these included endorsement of "The Truth" book which alleged aboriginal cannibalism of children).

So, it is not surprising to find Hanson occupying a curiously analogous position to the Reverend Jerry Falwell, who was the butt of scathing critique by Hustler magazine publisher Larry Flynt. But there's one big difference. In the celebrated U.S. case, the Supreme Court found that a parody of a Campari advertisement featuring Falwell describing his "first time" with his mother in an outhouse did not defame Falwell because readers would realise it was not to be taken seriously. The Queensland Court of Appeal has taken the opposite approach.

## Backdoor man

"Backdoor Man" is a cut and paste of Hanson's voice, reshaped into statements like "I'm a backdoor man. I'm very proud of it...I'm homosexual...I'm not natural. I'm not human" and "I'm a very caring potato". Before each ABC broadcast, a disclaimer explained the song was "satirical and not to be taken seriously".

Hanson argued the song imputed she is a homosexual, a prostitute, involved in unnatural sexual practices, associated (and had anal sex) with the Ku Klux Klan, was a man and/or a transvestite and involved in sexual activities with children.

## The decision

Upholding an injunction granted in September 1987, the Court of Appeal confirmed that the power to grant injunctions to stop defamation should be exercised with great caution and only where the publication was defamatory (not just "capable" of being defamatory). If there was room for debate about the defam-

atory meaning, the defendant might establish a defence or damages would be nominal, the injunction should not be granted.

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The ABC argued the "cut and paste" made it clear to listeners that references to, say, sexuality, were not literal, but rather "alluding in a satirical or ironic sense" to Hanson's conservative political views. The Court of Appeal rejected this, finding there was "no real room for debate that an ordinary sensible listener not averse to scandal would conclude that at least one or more of these imputations arose. If a jury were to find the opposite, I am satisfied that this Court would on appeal set aside its verdict as unreasonable. One or more of these imputations do arise and they are plainly defamatory for exposing the respondent to ridicule and contempt".

The ABC's disclaimer did not "convert grossly defamatory into acceptable material". In effect, the Court

found that listeners would have taken the song literally or colloquially.

The ABC could not rely on the Queensland qualified privilege for a good faith publication made during "discussion of a subject of public interest because, in the Court's view, the "major subject" of the song was Hanson's "sexual preferences or orientation". "Derisory fun or nonsense" would not be protected by this defence.

The injunction did not infringe the need for "free and general discussion of public matters" fundamental to our "democratic society" because the song and its "grossly offensive" imputations about a member of parliament were "part of an apparently fairly mindless effort at cheap denigration".

## The implications

While the Court applied the right test of whether or not an injunction should be granted, the way in which it was applied to these facts is concerning.

The strong implication is that ordinary Australian listeners (unlike Larry Flynt's American audience) can't be trusted to pick up subtext.

The song is clearly critical of Hanson. But it is far from "mindless". Unlike much of the overt satirism of Hanson, and despite its sometimes "in your face" content, "Backdoor Man" is more subtle in its underlying message: what makes it funny and scathing is the absurdity of that voice saying those things. The internal irony is comparable to a Beazley cut and paste of "I'm a frontman for anorexics anonymous" or a mock-up of John Howard promoting the drug ecstasy. Hanson's real life sexual preferences are not the "major subject" of the song: these words are a device which highlight her political conservatism, clearly signposted to listeners by phrases like "I am not human".

"Backdoor Man" asks listeners to distinguish between the real ("Please explain") and the unreal ("I am not human"). It brings to mind an episode of "Wildside" broadcast on ABC TV some months ago with a controversial Hanson-esque central

character, whose young son is used as a political pawn by her minder. The ABC ran a disclaimer that while "inspired" by current events, characters and incidents were fictional. They counted on viewers being sophisticated enough to distinguish between what reflected the real - a character strongly based on the Hanson persona, and what was artifice - a plot-line that justified the character's inclusion in a weekly police show. While the episode probably (and defensibly) defamed the real Hanson, it certainly did not impute that she might be involved in a plot to kidnap her young child for political gain.

The decision also raises concerns about the role of the jury in defamation cases. The Court of Appeal has made it clear that if the trial jury doesn't interpret the song in the same way, the court will overturn the jury's finding. Juries in defamation cases serve as a window on how the "ordinary person" would react to a publication. A NSW jury in *Howlett v Saggars* illustrated this point earlier this year - as a threshold issue, the jury found it wasn't defamatory to say someone was bankrupt but it was defamatory to say their mismanagement of their affairs led to bankruptcy. This is a fine distinction which is very real to a late 1990s audience but doesn't necessarily leap out of the pages of legal textbooks.

The decision also treads awkwardly over late 1990s questions about sexual morality. In December 1997, NSW Supreme Court judge, Justice Levine, left for determination by a jury the question of whether or not it was defamatory to call someone a homosexual. (CU issue 141, March 1998). In contrast, the Queensland Court of Appeal has effectively set community standards without hearing full argument on those issues. Publicity surrounding the injunction would surely send a strong message to the future jury. (And, by the way, since when was it defamatory to call someone "a man"?)

The decision to grant an injunction is always a balancing process, with free speech given a heavy weighting. During the oral argument, Hanson's

counsel said: "What's the harm in the ABC not being able to broadcast this song. There's no detriment at all".

Whether it's the ABC or any other media providing a platform for satire or criticism about public and political figures, the harm in shutting out alternative voices is clear.

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In the context of the level of criticism surrounding someone like Pauline Hanson, it is also dangerous and naive to treat an individual song or story in isolation. Defamation law can at times be formulaic but even leaving aside questions about the Court's interpretation of the song, it is hard to see how a week of broadcasting "Backdoor Man" on Triple J truly damaged her reputation. Yet, if the Court of Appeal's decision is left to stand, the trial jury will have little to do but tally up the dollars.

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