

BETWEEN

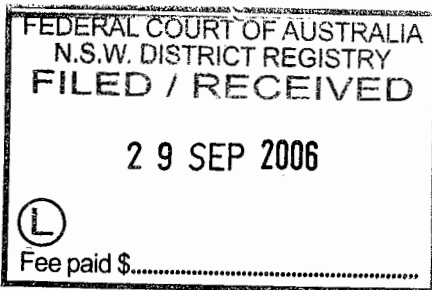
New South Wales Council of for Civil Liberties Inc
Applicant

AND

Classification Review Board
First Respondent

AND

Attorney General (Commonwealth)
Second Respondent



AMENDED APPLICATION FOR AN ORDER OF REVIEW

Application under s5 *Administrative Decisions (Judicial Review) Act 1977*

Application to review the decisions of the first respondent made pursuant to s44 of the *Classification (Publications, Films and Computer Games) Act 1995* (the **Act**), on application by the second respondent, that:

1. The Classification Board's decision to classify the publication "Defence of the Muslim Lands" as "Unrestricted" be set aside; and the publication "Defence of the Muslim Lands" be classified as "RC (Refused Classification)", and
2. The Classification Board's decision to classify the publication "Join the Caravan" as "Unrestricted" be set aside; and the publication "Join the Caravan" be classified as "RC (Refused Classification)".

The applicant is aggrieved by each of the decisions because:

3. The applicant was a party to the proceedings in which the first respondent made each of those decisions.

Filed on behalf of the Applicant by

SBA Lawyers
119 Evans Street
Rozelle NSW 2039

Phone: 02 9555 8654
Fax: 02 9555 7354
Ref: Stephen Blanks

4. Each decision makes it unlawful for any person to sell or deliver the publication the subject of the decision, in New South Wales, by reason of s19 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995 (NSW)*.
5. The effect of each decision is to deny to people living in New South Wales and other parts of Australia the liberty of reading the publications the subject of each decision.
6. The applicant is established under the *Associations Incorporation Act 1984 (NSW)* with objects which include assisting in the maintenance and protection of the liberties of persons in Australia and its territories against use of powers by government agencies to the detriment of the liberties which inhabitants of Australia should enjoy.

The grounds of the application in respect of each decision are:

7. The decision involved an error of law within s 5(1)(f) of the *Administrative Decisions (Judicial Review) Act 1977*.

Particulars

- (a) The first respondent was obliged to classify each publication in accordance with the *National Classification Code* (the **Code**) made under section 12 of the Act;
- (b) a publication does not promote or incite crime or violence within the meaning of the Code unless an effect of the publication, is to:
 - (i) further or advance the likelihood of a person or persons to whom the publication is published or intended or likely to be published committing an offence or violence; or
 - (ii) stir up or stimulate a person or persons to whom the publication is published or intended or likely to be published to commit an offence or violence.

the publication, objectively considered, has both a purpose and a tendency of encouraging and equipping people to commit crime or violence;

- (c) the first respondent considered that it was sufficient for the publication to be found to promote or incite in matters of crime or violence if, objectively considered, it had the purpose of encouraging and equipping people to commit crime or violence without considering its effect.
- (d) in applying the test of "promotes or incites in matters of crime or violence" the first respondent considered "violence" meant violence in Australia or elsewhere when "violence" means violence in Australia only.
- (e) in applying the test of promotes or incites in matters of crime or violence the first respondent considered it was not necessary when determining that the publications promote or incite the crime of engaging in a terrorist act contrary to section 101 of the *Criminal Code* to consider the effect of the publication in connection with each element of that offence, when it was necessary to consider the effect of the publication in connection with each element of that offence.
- (f) the first respondent did not consider it was necessary to determine whether the publications had any educational merit which was not inconsequential when:
 - (i) the classification RC was not available if the publication had any educational merit which was not inconsequential; or
 - (ii) in the alternative if the publication had educational merit which was not inconsequential the first respondent was obliged to weigh that educational merit against the effect of the publication in promoting or inciting in matters of crime or violence.

8. The decision was an improper exercise of the power conferred on the first respondent by s44 of the Act namely failing to take into account a relevant consideration in the exercise of that power.

Particulars

The first respondent was obliged to consider, but did not consider;

- (a) the educational merit (if any) of each publication;

- (b) the persons or classes persons to or amongst whom each publication was published or is intended or likely to be published
- (c) whether an effect of the publication is to:
 - (i) further or advance the likelihood of a person or persons to whom the publication is published or intended or likely to be published committing an offence or violence; or
 - (ii) stir up or stimulate a person or persons to whom the publication is published or intended or likely to be published to commit an offence or violence.

~~, whether the publication had a tendency to encourage and equip people to commit crime or violence~~

~~9. The decision was an improper exercise of the power conferred on the first respondent by s44 of the Act namely taking into account of irrelevant considerations in the exercise of that power.~~

~~Particulars~~

- ~~(a) Sections 9, 12 and 44(1) of the Act required the first respondent to exercise the power in accordance with the Code.~~
- ~~(b) The first respondent took into account that the author of each publication was "often known as the "Godfather of Jihad"", when that was irrelevant to any question under the Code.~~
- ~~(c) The first respondent took into account that the author of each publication "is known as a mentor to Osama bin Laden" when that was irrelevant to any question under the Code.~~
- ~~(d) The first respondent took into account that the publication "was written by a well-known Jihadi who had engaged in acts of terrorism, who had ties to the Taliban, Osama bin Laden and associates" when that was irrelevant to any question under the Code.~~
- ~~(e) The first respondent took into account that the publication was "written by an extreme Jihadi, presented a one-sided and extreme interpretation of~~

Islam and did not have any discernible educational or literary merit " when that was irrelevant to any question under the Code.

~~(f)(d) Each of the matters which was taken into account by the first respondent referred to in paragraph 9 b. to 9 e. is irrelevant to determining whether the publication incites or promotes crime or violence.~~

9. There was no evidence or other material to justify the making of the decision within the meaning of s. 5(i)(h) of the Act.

Particulars

- (a) In classifying the publications the first respondent was obliged by law to determine the persons or class of persons to or amongst whom the publication was published or is intended or likely to be published. If the first respondent did that, there was no evidence or other material from which it could reasonably have been satisfied as to the persons or class of persons to or amongst whom the publication was published or is intended or likely to be published.
- (b) In classifying the publications the first respondent was obliged by law to determine whether the publication had educational merit which was not inconsequential. If the first respondent did that, there was no evidence or other material from which it could reasonably have been satisfied as to the educational merit of the publication.

10. The decision was not authorized by the Act in pursuance of which it was purported to be made because:

- (a) The classification of the publication as "RC Refused Publication" on the ground that it incites or promotes violence or crime made it an offence to sell or distribute the publication anywhere in Australia and in some circumstances to have sold or distributed the publication.
- (b) The provision of the Code that publications that incite or promote violence or crime are to be classified "RC Refused Publication" imposes an

effective burden on communication about governmental and political matters.

- (c) If that provision of the Code does not make it a condition for the classification of the publication as "RC Refused Classification" that the publication has an effect of furthering or advancing the likelihood of a person or persons to whom the publication is published or intended or likely to be published committing an offence or violence; or stirring up or stimulating such a person or persons to commit an offence or violence a tendency to encourage violence or crime that provision of the Code is inconsistent with the constitutional system of representative government and is therefore void.
- (d) There is no other provision of the Code which authorised the making of the decision.
- (e) Section 9 of the Act requires that publications be classified in accordance with the Code.

The applicant claims:

- 11. A declaration that the decision of the first respondent that the Classification Board's decision to classify the publication "Defence of the Muslim Lands" as "Unrestricted" be set aside; and the publication "Defence of the Muslim Lands" be classified as "RC (Refused Classification)" is invalid and of no effect.
- 12. A declaration that the decision of the first respondent that the Classification Board's decision to classify the publication "Join the Caravan" as "Unrestricted" be set aside; and the publication "Join the Caravan" be classified as "RC (Refused Classification)" is invalid and of no effect.
- 13. An order that the decision of the first respondent that the publication "Defence of the Muslim Lands" be classified as "RC (Refused Classification)" be set aside.
- 14. An order that the decision of the first respondent that the publication " Join the Caravan " be classified as "RC (Refused Classification)" be set aside.

15. An order that the first respondent reconsider the second respondent's application to review the classification of the publication "Defence of the Muslim Lands" in accordance with law.
16. An order that the first respondent reconsider the second respondent's application to review the classification of the publication "Join the Caravan" in accordance with law.
17. Costs.
18. Such further or other Order as the Court thinks fit.

Date: ~~7 August~~ 29 September 2006



 Solicitor for the Applicant

NOTICE TO THE RESPONDENTS

TO the first respondent
of: Classification Review Board
Level 6,
23-33 Mary Street
Surry Hills, NSW

TO the second respondent
of: Attorney-General (Cth)
c/- Australian Government Solicitor
Level 23, Piccadilly Tower
133 Castlereagh Street
Sydney NSW 2000

This application has been set down for the time and place stated below. If you or a legal practitioner representing you do not attend the Court at that time, the application may be dealt with and judgment may be given, or an order made, in your absence. As soon after the time mentioned as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard;
- (b) directions may be given for the further conduct of the proceeding;
- (c) any application for interlocutory relief may be heard.

Before any attendance at Court, you must file an appearance in the Registry.

Time and date for hearing:

Place: Federal Court of Australia
Law Courts Building
Queens Square
Sydney NSW 2000

Date: 28 November 2006

Registrar

FILING AND SERVICE

This application is filed by SBA Lawyers for New South Wales Council ~~of~~ for Civil Liberties Inc whose address for service is:

c/- SBA Lawyers
119 Evans Street
Rozelle NSW 2039
Tel: 02 9555 8654
Ref: Stephen Blanks

The applicant's address is: New South Wales Council for Civil Liberties Inc
149 St Johns Road
Glebe NSW 2037

It is intended to serve this application on each person listed below:

1. Classification Review Board
2. Attorney General (Cmth)