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Subject: A WIN FOR UNIVERSITY SECTOR: Supreme Court Judgement Will Cause Tertiary Institutions To Think Twice
Date: 16 June 2022 at 11:15 am
To:



Good morning

From Solicitor Peter Fam with judgement below.

A judgment from Parker J in the Supreme Court last week should cause tertiary institutions to think twice before delaying or blocking the progress of students whose views on politically charged issues (in this case Government handling of Covid-19) differ to the mainstream.

Unfortunately, many students part way through or, like the Plaintiff in this case, at the tail end of their degrees or certificates have been booted from their courses, or blocked from attending, by inflexible Universities and private colleges who have put arbitrary rules above their contractual and statutory obligations.

In this case, a Nurse's placements were all cancelled after she simply expressed a divergent view about Covid-19 to some supervisors. The Court found that s35 of the Western Sydney University Act 1997 precluded the University from discriminating against her by blocking her progression through her degree on the basis of her "political affiliations, views or beliefs". Most Universities around the country have equivalent enacting statutes. The Court was scathing of the internal disciplinary process that had preceded the case, and the staff members who ran it.

Some of the 'human rights highlights' from the judgment;

"I think the purpose was quite clear from the statutory language. It was to protect freedom of thought for researchers and students at universities. That was reinforced by the presence of s 36, which was similarly directed to freedom of conscience.

Historical events also provided context for the enactment of the provisions reflected in s 35. Galileo's persecution by the Inquisition was a famous example. More recently, and more immediately relevantly for present purposes, were Stalinist and Maoist enforcement of academic conformity with the party line (including in particular forced recantation of "incorrect" beliefs, and forced self-criticism for having professed those beliefs in the first place): see Priestland, D, *The Red Flag: A History of Communism* (Grove Press, 2009), 144."

"It is hard to overstate the importance of this subject. Freedom of thought and freedom of speech have been bracketed together as indispensable conditions of a free society: *Palko v Connecticut*, 302 U.S. 319 (1937) at 327. But thought precedes speech; therefore, of the two, freedom of thought must be seen as the most fundamental."

Congratulations to Counsel, Mahmoud Rocky Mando and the legal team for a result which will help many others.

<https://www.caselaw.nsw.gov.au/decision/18146167eb6f3e4b72e1a807>

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Best regards

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