IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Revised
Not Restricted
Suitable for Publication

Case No. AP-21-0857

Neil Erikson — Appellant

v

Brendon Pollock (informant) — Respondent

JUDGE:	HIS HONOUR CHIEF JUDGE KIDD
WHERE HELD:	Melbourne
DATE OF HEARING:	2 and 3 August 2022
DATE OF JUDGMENT:	1 September 2022
CASE MAY BE CITED AS:	Erikson v Pollock
MEDIUM NEUTRAL CITATION:	[2022] VCC 1388

RULING

Subject:	Criminal law.
Catchwords:	Appeal against conviction and sentence imposed by the Magistrates' Court – one charge of disturbing a meeting of persons lawfully assembled for religious worship – s 21 of the *Summary Offences Act 1966* (Vic).
Legislation Cited:	*Summary Offences Act 1966* (Vic); *Criminal Procedure Act 2009* (Vic); *Charter of Human Rights and Responsibilities Act 2006* (Vic).
Cases Cited:	*Project Blue Sky Inc & Ors v Australian Broadcasting Authority* (1998) 194 CLR 355; *SZTAL v Minister for Immigration and Border Protection* (2017) 347 ALR 405; *R v Lohnes* [1992] 1 SCR 167; *Li v Chief of Army* (2013) 250 CLR 328; *McNamara (McGrath) v Consumer Trader and Tenancy Tribunal* (2005) 221 CLR 646; *Walker Corp Pty Ltd v Sydney Harbour Foreshore Authority* (2008) 233 CLR 259; *Cottrell v Ross* [2019] VCC 2142; *Magee v Delaney* (2012) 29 VR 50; *Sunol v Collier (No 2)* (2012) 289 ALR 128; *Durston v Anti-Discrimination Tribunal (No 2)* [2018] TASSC 48; *Owen v Menzies* (2012) 293 ALR 571; *Royall v The Queen* (1991) 172 CLR 378.
Ruling:	The sentence of the Melbourne Magistrates' Court on 2 August 2021 is set aside and the appellant is convicted on Charge 1.

APPEARANCES:	Counsel	Solicitors
For the appellant	Ms S Wallace	Paul Vale Criminal Law
For the respondent	Mr W Stougiannos	Solicitor for the Office of Public Prosecutions of Victoria

HIS HONOUR:

CONVICTION

Preliminary

1 On 2 August 2021, the appellant was convicted in the Melbourne Magistrates' Court of disturbing a meeting of persons assembled for religious worship contrary to s 21 of the *Summary Offences Act 1966* (Vic). On the same day, the appellant was sentenced to 70 days' imprisonment and lodged a Notice of Appeal against conviction and sentence.[1]

2 The appellant's offending is alleged to have occurred in Hawthorn on Sunday, 12 May 2019 when he attended a religious service being held by the Metropolitan Community Church of Melbourne ('the Community Church').

3 In this appeal, the parties agreed that the respondent is required to prove the following elements beyond reasonable doubt in order to make out the offence charged:

(a) The offence occurred at the time and place alleged;

(b) The offender was the appellant;

(c) There was a meeting of persons lawfully assembled for religious worship; and

(d) The appellant wilfully and without lawful justification or excuse disturbed the meeting of assembled persons.

4 The first three elements are not in dispute.[2] The appellant accepts that he has been correctly identified as the alleged offender who attended the Community Church service. He also accepts that there was a meeting of persons lawfully assembled for religious worship. The only element that the appellant denies is that

---

1 *Criminal Procedure Act 2009* (Vic) s 255.

2 The first two elements were conceded by the appellant in written submissions prior to the hearing of the appeal, and the third element was conceded by the appellant during the running of the appeal on 2 August 2022.

he wilfully (and without lawful justification or excuse) disturbed the meeting of persons.[3]

5 The appeal was heard before me on 2 and 3 August 2022. The respondent called four civilian witnesses to give evidence, and the statements of three police officers were read into evidence. The respondent also tendered a police interview and a video into evidence.

6 For the reasons that follow, I have concluded that the respondent has proved the charge beyond reasonable doubt. The appellant is guilty of the offence charged. I publish my reasons.

The law

Section 21 of the Summary Offences Act 1966 (Vic)

7 In determining the appellant's criminal liability, I am required to interpret s 21 of the *Summary Offences Act 1966* (Vic) ('the Act'). The starting point must be the text of the provision itself. However, the text of the provision must be considered in light of its context and purpose.[4]

8 The term, 'disturbs' is not defined in the Act. Counsel for the appellant submitted that some minimum level of disturbance must be required by the offence. It was said that it would be ridiculous if some momentary and frivolous disturbance could constitute the offence.

9 In *R v Lohnes*,[5] the Supreme Court of Canada observed that:

> The word 'disturbance' encompasses a broad range of meanings. At one extreme, it may be something as innocuous as a false note or a jarring colour; something which disturbs in the sense of annoyance or disruption. At the other end of the spectrum are incidents of violence, inducing disquiet, fear and apprehension for physical safety. Between these extremes lies a vast variety of disruptive conduct.

10 In the context of this appeal, I must consider where, within that spectrum, the requirement of having 'disturbed' a meeting of persons under s 21 lies.

While s 21 of the Summary Offences Act 1966 (Vic) reads 'disquiets or disturbs', the respondent explicitly indicated that it only alleged that the appellant disturbed the meeting of persons.' This is how the charge was pleaded.

4 *Project Blue Sky Inc & Ors v Australian Broadcasting Authority* (1998) 194 CLR 355 [69]; *SZTAL v Minister for Immigration and Border Protection* (2017) 347 ALR 405 [14].

5 [1992] 1 SCR 167, 171.

11 The respondent submitted that the term should be given its plain English meaning and relied on the Oxford English Dictionary definition. It was submitted that the word 'disturb' means to agitate and destroy; to break up the quiet, tranquillity or rest; to stir up, trouble, disquiet; to interfere with the settled course or operation; or to interrupt.

12 The respondent referred me to the High Court decision in *Li v Chief of Army*.[6] In that case, a member of the Australian Defence Force was charged before a restricted court martial constituted under the *Defence Force Discipline Act 1982* (Cth) ('*DFDA*') with the service offence of having created a disturbance on service land contrary to s 33(b) of the *DFDA*. In broad terms, the alleged offending involved entering the office of a public servant, speaking in a raised voice in an agitated and aggressive manner approximately three inches from the public servant's face, and refusing to leave immediately when requested to do so.

13 The accused was convicted of creating a disturbance on service land. He appealed to the Defence Force Discipline Appeal Tribunal, then to the Full Court of the Federal Court, and finally to the High Court of Australia. The High Court held that, in the context of s 33(b) of the *DFDA*:[7]

> A disturbance is a non-trivial interruption of order. Violence or a threat of violence is not necessary to the existence of a disturbance. Quarrelling may, in a particular factual context, be enough.

14 Clearly enough, the High Court's interpretation of the phrase 'creating a disturbance' under the *DFDA* is not determinative of my consideration of the meaning of disturbing a meeting of persons under s 21 of the Act; I must interpret the particular text of s 21 in light of its particular context and purpose.[8] The decision in *Li* is nonetheless instructive.

15 As I have said, there is no issue in this case that the gathering being held by the Community Church members constituted a meeting of persons lawfully assembled for religious worship within the meaning of s 21. This case largely, if not wholly, turns upon contested factual issues – or more accurately, the inferences available

---

6 (2013) 250 CLR 328.

7 *Li v Chief of Army* (2013) 250 CLR 328, [18].

8 *McNamara (McGrath) v Consumer Trader and Tenancy Tribunal* (2005) 221 CLR 646 [40]; *Walker Corp Pty Ltd v Sydney Harbour Foreshore Authority* (2008) 233 CLR 259 [31].

to be drawn on the uncontested evidence. That said, the meaning of what constitutes a meeting of persons being disturbed under s 21 must be informed by the activity which s 21 seeks to protect, or the mischief to which it is directed. Section 21 seeks to protect the freedom of religion and in particular the freedom to practise one's religion in worship. It does this by prohibiting certain conduct which disturbs the exercise of these freedoms or rights.[9] These rights are enshrined in s 14 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('the Charter').

16 The provision should be given its plain meaning consistent with that legislative context and purpose. It may be accepted that a trivial, peripheral, momentary, or minor interruption might be insufficient. Hostile, disruptive, or confrontational behaviour which constitutes a consequential or impactful interference with the meeting of persons will be enough. Quarrelling may, in a particular factual context, suffice. Violence or a threat of violence is not necessary to the existence of a disturbance. The true meaning of 'disturb' extends well beyond conduct involving the application of force, or physical intimidation. It is also clear the legislature intended that this offence would capture behaviour falling short of existing violent related offences.

17 In the end, I do not need to decide precisely what minimum level of disturbance is required to satisfy the offence charged. Whether the conduct in question 'disturbs' within the meaning of s 21 turns upon the facts and circumstances of every case and it would be unwise to be overly prescriptive.

18 As shall become apparent, I am satisfied that the offending alleged here involved a significant and consequential interruption, and clearly extended well beyond the trivial or minor. The church service was brought to an abrupt halt, through the appellant's physical imposition at the head of the gathering, by his abusive verbal confrontation of the congregation and their beliefs, and by his refusal to leave. Indeed, on the spectrum of what might be said to be a disturbance, the appellant's conduct in this case – if proved – falls at the higher end. Even allowing for the possibility that some disturbance of a low order may fall outside the reach of s 21, to narrow the field of operation of s 21 to exclude disturbance of the degree alleged

---

9 Alastair Pound and Kylie Evans, *Annotated Victorian Charter of Rights* (Thomson Reuters, 2nd ed, 2019), [14.40].

here would rob the provision of its intended utility and would involve an artificial re-casting of the section.

19 As to the fault element of the offence, on this point, the parties agreed that the respondent was required to prove that the appellant intended to bring about the specific outcome, or result, of disturbing a meeting of persons assembled for religious worship. That is, it would not be sufficient for the respondent to prove simply that the appellant intended to engage in certain conduct, which happened to disturb such a meeting. I am content to proceed on the basis of this agreed position. In order for me to find the charged proved, I must be satisfied that the appellant willed this outcome in the sense that I have described.

20 I return briefly to the Charter.

21 The appellant has not suggested that the Charter has any material bearing upon the construction I must give to s 21. Certainly, no argument was made that the Charter requires an interpretation of s 21 which would see the appellant's conduct fall outside the ambit of that provision.

22 I recently made the following observations in the case of *Cottrell v Ross*:[10]

> Section 32(1) of the Charter provides that '[s]o far as it is possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is compatible with human rights'.
>
> Where a Victorian legislative provision engages a human right referred to in the Charter, s 32(1) must be considered in conjunction with other relevant principles of statutory interpretation in the process of construing the provision in question. It applies such that '[w]here more than one interpretation of a provision is available on a plain reading of the statute, then that which is compatible with rights protected under the Charter is to be preferred'.
>
> Importantly, s 32(1) does not allow the reading in of words which are not explicit or implicit in a provision, or the reading down of words so far as to change the true meaning of a provision. Consequently, if the words of a statute are clear, the court must give them that meaning.
>
> Section 32(1) thus applies to the interpretation of statutes in the same way as the principle of legality, but with a wider field of application.

23 Despite not being raised by the parties, I note that s 32(1) of the Charter requires that all Victorian statutory provisions, whenever enacted, be interpreted in a way

---

10 [2019] VCC 2142 at [70] to [74] (footnotes omitted). This case and the Charter were raised with the parties at preliminary hearings in this matter.

that is compatible with human rights so far as it is possible to do so consistently with their purpose.[11] I have done that.

24 While it may be accepted that disturbances can sit along a spectrum of conduct – from the trivial through to the extreme – and that there may be a theoretical constructional choice open here about the meaning of the term 'disturbs' in s 21, ultimately I do not think the Charter impacts upon the outcome of this appeal.

25 This is because, on the absolute narrowest available construction of s 21, conduct of the order alleged in this case (and which I have found proved) must fall within the ambit of this section. I repeat what I have said about the significant level of the alleged disturbance here, and which I have ultimately found to be proved. It is of high order. To read s 21 as not capturing such an intentional and impactful disturbance of the running of a lawful religious gathering would be tantamount to a fundamental rewriting of the provision. As referred to above, s 32(1) cannot allow the reading down of words so as to change the plainly intended meaning of a provision.

26 It is also difficult to conceive that a wilful disturbance of a lawfully assembled religious gathering (at least where the disturbance is of a relatively high order) would fall outside of the reach of s 21 by reason of the Charter, even if carried out in purported protest:

- If such conduct amounted to a form of 'expression', it would likely be excluded from the concept of freedom of expression protected by s 15 of the Charter. Section 15 does not cover every form of expression.[12]

- Legislation, like s 21 of the Act, positively enhances and promotes the rights of people of different religions to participate in public life and discourse, free from interruption.[13] Disturbance of lawfully assembled religious services (at least beyond the trivial or minor) would be 'antithetical to the fundamental principles of equality, democratic pluralism and respect for individual dignity

11 Alastair Pound and Kylie Evans, *Annotated Victorian Charter of Rights* (Thomson Reuters, 2nd ed, 2019), [32.40]; *Momcilovic v The Queen* (2010) 25 VR 436 [102], [107].
12 *Magee v Delaney* (2012) 29 VR 50, [89].
13 *Sunol v Collier (No 2)* (2012) 289 ALR 128, [89]; *Durston v Anti-Discrimination Tribunal* (No 2) [2018] TASSC 48, [36]-[46], [49]; *Owen v Menzies* (2012) 293 ALR 571, [72].

which lie at the heart of the protection of human rights'.[14]

- If s 21 did occasion limits or restrictions on the Charter right of freedom of expression, those limits (at least insofar as they related to disruptions of high order) would likely be reasonably necessary under s 15(3)(a) to respect the rights of others including the Charter right to freedom of religion and freedom to demonstrate one's religion in worship (s 14). They would likely also be reasonably necessary under s 15(3)(b), for the protection of public order,[15] and would likely also be reasonable and necessary under the general limitation of s 7(2) of the Charter.

- I have referred to the freedom of expression by way of example only. For similar reasons, I can't see other Charter rights operating in a manner which would result in the conduct in question being excluded from the field of operation of s 21.

27 Ultimately, however, on the facts of this case (which involves alleged and ultimately proven disruption of a high order) there is no work for the Charter to do – none which would assist the appellant anyway. I reiterate that it has not been suggested by the appellant that he receives any assistance from the Charter.

Causation

28 For the appellant's conduct to have 'caused' the meeting of persons to be disturbed at law, it must have 'contributed significantly' to that result, or have been a 'substantial and operating cause' of it. The mere fact that the appellant's conduct may have contributed causally to the disturbance, or was a necessary cause of the disturbance, is not sufficient. However, the appellant may be liable for 'causing' the disturbance even if his conduct was not the direct or immediate cause of that result, and even if his conduct was not the sole cause of that result.[16]

Fundamental principles applicable to this case

---

14 Alastair Pound and Kylie Evans, *Annotated Victorian Charter of Rights* (Thomson Reuters, 2nd ed, 2019), 145-146.

15 *Magee v Delaney* (2012) 29 VR 50, [150]-[151].

16 *Royall v The Queen* (1991) 172 CLR 378.

29 I remind myself that before I may find the appellant guilty, the respondent must satisfy me beyond reasonable doubt that the appellant is guilty of the charge in question. It is for the respondent to prove the charges; the appellant does not have to prove anything.

30 I remind myself that I must take care when drawing conclusions from evidence. I must consider all of the evidence and only draw reasonable conclusions based on the evidence that I accept. In determining whether a conclusion is reasonable, I must look at all of the evidence together.

31 I may only convict the appellant if I am satisfied that his guilt is the only reasonable conclusion to be drawn from the whole of the evidence.

32 In this case, the appellant has raised a hypothesis which is said to be consistent with innocence, namely that if there was a disturbance, it was not caused by the appellant. It was said that the appellant merely intended to participate in the service in an amicable or civil way, without causing any disturbance. On this hypothesis, the appellant merely joined in the discussion during the assembly, and any disturbance or disruption was caused by Ms Townsend and other members of the congregation. I am conscious that before I could find the charge proved I would have to exclude this hypothesis, beyond reasonable doubt.

33 The appellant did not lead any evidence, as is his right. I draw no adverse inference against him from his decision to not give or call evidence.

Without lawful justification or excuse

34 Section 21 of the Act creates an exception whereby a person may have a lawful justification or excuse for disturbing a meeting of persons lawfully assembled for religious worship. During the running of the appeal, counsel for the appellant explicitly eschewed any reliance on any such lawful justification or excuse. It was made clear that the appellant's case was that he did not cause any disturbance; not that he created a disturbance whilst having some lawful justification or excuse for doing so.

Summary of the evidence

The Dunbar room interactions

35 Ms Susan Townsend was the minister of the Community Church in May 2019. By way of background, in her evidence, Ms Townsend explained that the Community Church rented space in the West Hawthorn Uniting Church to conduct their services every Sunday at 7:00 pm. She explained that one service each month would be held in the Dunbar room, a room within the broader Church building, with the other services being held in the Church proper.

36 All services, whether held in the church proper or the Dunbar room, involved singing, Bible readings, prayers and communion. Ms Townsend or another person would generally preach during the services held in the church proper, whilst the services in the Dunbar room would generally involve discussion instead of preaching.

37 Ms Townsend explained that the Community Church was different from many other churches in that people who are same-sex attracted were allowed to participate in every aspect of the Community Church services.

38 Ms Townsend gave evidence about the events of 12 May 2019. She explained that on that particular Sunday, a service was held in the Dunbar room. The service had a particular emphasis on Mother's Day and honouring mothers.

39 Before summarising the evidence of the witnesses, it is convenient at this point to first summarise what is depicted on a video which was tendered as part of the respondent's case. It is common ground that this video was filmed by the appellant and by associates of the appellant. It shows the events at the Community Church on that day. The video was later published on the internet.

40 The video begins with the camera pointed at the appellant, presumably held by one of the appellant's associates. They are standing on a footpath next to a road. The appellant speaks to the camera and says:

> *What's going on guys? Um, I'm outside a church. A secret church with, ah, Dia… alright, I'm gonna go in, and ah, apparently they marry, ah, transgenders, homosexuals and lesbians, so bear with me, it might be a bit boring at the start but hopefully Erikson can say something.*

41 The appellant and his associates then start to walk along the footpath towards the Community Church. A short time later, the appellant and his two associates enter the Dunbar room. It appears the Community Church service had just begun, or was about to begin. They are welcomed into the service and take seats within the Dunbar room.

42 The video then depicts Mr Matthew Pepall addressing the parishioners in the Dunbar room. He is standing behind a lectern, positioned in front of the parishioners who are seated in the audience. He says that:

> …tonight, there are three areas that I want to look at. The first is the visual images [indistinct] God. The second is looking at woman in the bible and the third is basically sharing our own experiences of our mothers, of basically any female character that has inspired you in your life, and it doesn't necessarily have to be your mother…

43 Mr Pepall then begins to address the parishioners on these topics. He speaks for about six and a half minutes before one of the appellant's associates asks a question, or seeks clarification, about an image that Mr Pepall was speaking about. Mr Pepall clarifies the point raised and then continues to address the audience.

44 Moments later, the appellant stands up from his seat and asks, 'can I add? Can I add to this? Is that ok?' Mr Pepall responds, 'sure', and the appellant then moves to stand next to Mr Pepall, and the following exchange occurs:

Appellant:	I heard that you guys are marrying, ah, sodomites in this church. Is that true?
Pepall:	As in, do we believe in same sex marriage?
Appellant:	Yes.
Pepall:	Yes.
Appellant:	Youse do, you call yourselves Christians?
Pepall:	Yes.
Appellant:	You know, ah, it's against, ah, Christian theology to marry two homosexual sodomites.

45 At this point – about 20 seconds after the appellant first spoke during the service – Ms Townsend stands up from her seat in the audience and walks towards Mr Pepall and the appellant. The following exchange then occurs between Ms Townsend and the appellant:

Townsend: We don't want to debate that now.

Appellant: Youse aren't Christians.

Townsend: We don't want to debate that now.

Appellant: Youse aren't Christians.

Townsend: You're obviously not going to change your mind, you're not going to change our minds. We want to worship [indistinct].

Appellant: But youse are claiming to be Christians and you marry sodomites, faggots…

Townsend: Could you please leave?

Appellant: …poofters.

Townsend: Could you please leave?

46 At this point, a number of parishioners stood up from their seats in the audience and walked towards the appellant, Mr Pepall and Ms Townsend. Ms Townsend again asks the appellant to leave. As he was repeatedly asked to leave by Ms Townsend, the appellant said, 'I'm just saying, youse aren't Christians if you support sodomy.' Ms Townsend then told the appellant, 'you are violating our space.' The exchange (which included a further parishioner, Mr Roland Pike) continued:

Appellant: You are marrying homosexuals, lesbians and degenerates. Youse aren't a Christian church. Don't claim to be Christians.'

Pike: Let God be our judge.

Appellant: No, no, no, no, no, no, you're not following the Bible.

Townsend: Oh, c'mon.

Appellant: You're not following the Bible. OK. You're marrying homosexuals in this church. That's against, that's against the Bible. 100 percent.

Townsend: We are not going to debate this now.

Appellant: I don't care, youse are a disgrace to the bible.

Townsend: That's the point, isn't it?

Appellant: I don't care.

Townsend: That's the point.

Appellant: I don't care.

Townsend: You are not interested in any other viewpoint, so what's the point of debating? There's no point in debating.

47 At this point, one of the appellant's associates pleads with the appellant to leave them alone. Having either not heard or ignored his associate's request, the appellant then points to members of the congregation and says to them, 'you're not a Christian'.

48 Moments later, the appellant leaves the Dunbar room for the first time.

49 I pause here to note that approximately two minutes and twenty seconds passed between the appellant first asking if he could 'add to this', and him leaving the Dunbar room for the first time.

50 I now return to the evidence of the witnesses called by the respondent about these events.

51 Consistent with what is seen and heard on the video, Ms Townsend gave evidence that the appellant attended the service with two female associates. She said that they were welcomed in and took seats in the Dunbar room.

52 Ms Townsend said the appellant attended the service roughly on time. He sat down and listened to Mr Matthew Pepall preach for some time, almost seven minutes in fact. Further, the appellant asked for permission to participate in the service. He did not unilaterally interrupt Mr Pepall or forcefully prevent him from addressing the parishioners. Ostensibly, the appellant sought permission to participate, and was granted permission by Mr Pepall to do so.

53 Ms Townsend said that she felt offended upon hearing the word 'sodomite'. She also said that the term 'faggot' is very offensive. She said that when the appellant first addressed the parishioners and used that term, it was 'disgusting' and 'totally uncalled for'. She said that she sensed a couple of the congregants wanted to leave - she heard people gasping and noticed people fidgeting in their seats.

54 Mr Pepall was the 'lay delegate' for the Community Church in May 2019. This role involved lay preaching, as he was doing on the evening of 12 May 2019. In cross-examination of Mr Pepall, the appellant's counsel put to him that it wasn't the appellant's conduct in standing up and asking a question about marrying sodomites that was disruptive or upsetting, but rather that it was the later physical

altercation, the raised voices and the appellant getting upset and refusing to leave, which caused the disturbance. Mr Pepall did not accept this proposition; in fact he contradicted it. He said that the appellant's conduct became disruptive and offensive as soon as the appellant said, 'you're not Christians'. Mr Pepall explained that he perceived the appellant to be saying that their whole faith system was 'null and void' because of their sexuality.

55 Mr Pepall said that he tried to recommence the service and 'get things back on track', but after two or three minutes he realised that the parishioners were too 'agitated' and 'disturbed', so he stopped. He said that he invited people to have a glass of water or cup of coffee to try to 'calm things back down again'.

56 Another parishioner, Ms Louise Noorbergen, said that she could not recall the exact words that the appellant used but that the 'tone' of the conversation immediately made it an 'offensive conservation'. She said that she was immediately offended when she heard the word 'sodomite'.

57 Mr Pike gave evidence about how he felt when the appellant walked forwards and asked if they married sodomites. He said, suddenly there seemed to be this 'aggression' and 'homophobia' that made him feel 'uncomfortable straight away'. He said that he thought that the appellant was using the word 'sodomite' as a profanity, but that even if he had removed the word 'sodomite', it still would have been offensive because 'the whole tone of the question was offensive'.

58 Mr Pike said that the appellant 'wasn't there to join our service and worship with us'. He described the appellant's tone was 'accusatory'. Mr Pike said that he felt like the service had been interrupted in a way that he had never experienced before. He said that he felt 'ill inside' and 'anxious'.

Interactions outside the Dunbar room

59 Immediately after exiting the Dunbar room, the appellant is in the hallway between the Dunbar room and the exit to the building when voices are raised. The video does not capture much of what takes place outside the Dunbar room. It is somewhat confusing. The appellant can be heard yelling, 'don't touch me'. The appellant then exits the whole building and is outside momentarily before taking the camera from his associate and walking back to the building's entrance.

60 As he approaches the entrance to the building, he films himself and says to the camera, ‘here we’ve got these Christians touching… don’t touch me.’ There is then a minor physical altercation in the doorway between the appellant and one of the parishioners and voices are again raised. The appellant is again repeatedly asked to leave.

61 About one minute after that altercation, all of the parishioners except for Ms Townsend and Mr Roland Pike leave the hallway and go back inside the Dunbar room. Ms Townsend and Mr Pike continue to engage with the appellant for about two and a half minutes in the hallway before they themselves return to the Dunbar room and close the door behind them.

Returning to the Dunbar room

62 The appellant stands in the corridor for about 15 seconds before opening the door to the Dunbar room and re-entering.

63 Upon re-entering the Dunbar room, the appellant asks for the parishioner’s name who he claims assaulted him. When again asked to leave multiple times, the appellant says that ‘I want to make sure that the man who assaulted me doesn’t get away with assault.’

64 During the continuing quarrel in the Dunbar room, the appellant says, ‘marrying gays, yeah that’s insane, that’s insane, you’re a sodomite’ and ‘youse aren’t a house of God, you’re a house of sodomy. You’re enablers.’

65 About two minutes and forty seconds after the appellant re-enters the Dunbar room, Mr Pepall says to him, ‘ok if you’re going to stay in the room, can you at least be quiet so we can continue, please?’

66 Mr Pepall then continues the service, with the parishioners returning to their seats. Mr Pepall begins addressing the congregation. Moments later, one of the appellant’s associates can again be heard asking the appellant to ‘leave them alone’.

Departure again from the Dunbar room

67 Finally, about three and a half minutes after re-entering the Dunbar room, and about nine minutes after first asking if he could 'add to this', the appellant then leaves the Dunbar room once again for the final time, and exits the building.

Police interview

68 The respondent also tendered the appellant's police interview, which was conducted on 1 August 2019. For the most part, the appellant provided a 'no comment' record of interview. I will come to the police interview later in my ruling.

The respondent's case

69 Counsel for the respondent submitted that the appellant was 'on a mission' on 12 May 2019 and that he was going 'into battle for his cause'. Counsel noted that the appellant documented the incident 'from the word go' and said that he was determined to 'put on a show'.

70 Counsel acknowledged that the appellant was welcomed into the service, but said that he then could not 'help himself' and that he 'transgresses and goes back to the real person we're dealing with'.

71 The respondent said that it can't be said that the appellant was going there to have a sensible debate about the true meaning of sodomites in the Bible. Rather, he was going there as the 'vengeful, intolerant, ugly face of some people'. Counsel relied on the appellant's use of the term 'degenerates' in particular, and said that the use of that word does not lead to calm and reflective discussion.

72 Counsel said that the parishioners would have completed the normal course of their service, but that they were instead curtailed by the appellant's actions and utterances. It was submitted that the video footage speaks for itself and that there was a clearly a 'significant effect' on most of the parishioners present.

The appellant's case

73 Broadly, I understand the appellant's case to be that he did not disturb the meeting of persons, and that if there was any disturbance caused, it was not a product of his conduct.

74 I think it is implicit that, if I were to find that the meeting of persons was disturbed by the appellant's conduct, the appellant would say that he did not have the

necessary intention to disturb. To be clear though, the appellant did not concede that his conduct disturbed the meeting of persons; quite the opposite.

The appellant's initial participation in first 10 to 20 seconds

75 Counsel for the appellant submitted that the first 10 or 20 seconds of the appellant's active participation in the service, prior to Ms Townsend's involvement, did not involve any disturbance.

76 Counsel spent some time addressing me on the nature of the particular service on 12 May 2019. Whilst conceding that the service in question involved a meeting of persons lawfully assembled for religious worship, counsel submitted that it was not a 'formal church service'. I take this submission to be that, on the spectrum of meetings of persons assembled for religious worship, this particular meeting was at the lower end of formality. Counsel relied on the following matters in this regard:

- The Dunbar room was designated as the more informal setting for discussion services.
- Ms Townsend gave evidence that discussion would sometimes go off track and that she would, on occasion, guide it back to the relevant designated topic.
- There was no evidence of any set rules of behaviour or engagement advertised anywhere by the Community Church or communicated at the beginning of the service.

77 It was within this context that the appellant's actions need to be assessed according to his counsel:

- The appellant's associate's willingness to ask a question in the middle of the service is evidence of it being a forum that invited participation.
- Permission was sought and given for the appellant to participate.
- It was therefore said that these initial moments prior to Ms Townsend's involvement constituted a discussion between the appellant and Mr Pepall.

- The appellant asked a question about marrying sodomites, Mr Pepall sought clarification about the nature of the question and the appellant provided that clarification. Counsel submitted that the appellant's tone was inquisitive, not aggressive or confrontational, and that his body language was not threatening or intimidating.

- It was said that his conduct at that stage was therefore properly seen as mere participation in the service, not a disturbance. Counsel submitted that, prior to Ms Townsend's involvement, the matter was 'under control'. It was a discussion that, whilst maybe not 'everyone's cup of tea', was not a criminal offence.

Ms Townsend escalated the situation not the appellant

78 Counsel submitted that the mood in the room then changed when Ms Townsend responded by getting to her feet and moving to the front of the room in close proximity to the appellant to 'confront' him. It was said that Ms Townsend ends what was up until that point, a civil discussion, in which the appellant was engaged by invitation. Ms Townsend then escalated the interactions.

79 In support of this hypothesis, the appellant noted that within seconds of Ms Townsend asking the appellant to leave, multiple other members of the congregation stood alongside her.

80 It was submitted that, if there was a disturbance to the service, Ms Townsend was the person who effectively created it. She changed the tone of the discussion when she intervened. The subsequent quarrelling between the appellant and the parishioners said to make out the disturbance was attributable to Ms Townsend, not to the appellant.

81 Counsel said that the appellant did not seek to escalate matters, but rather Ms Townsend and the other members of congregation escalated matters by confronting him.

82 Counsel said that I should not find the appellant guilty based on the first twenty seconds of his participation in the service.

83 Counsel said that I need to consider the 90 seconds that the appellant was in the Dunbar room after Ms Townsend first asked him to leave when determining whether this offence is made out. It was said that I needed to consider whether he had sufficient opportunity to leave, or whether he was in fact trying to leave when he was corralled by members of the congregation.

84 Counsel said that what occurred in those 90 seconds in the Dunbar room did not rise to the level of disturbance required by s 21.

Events outside the Dunbar room

85 Counsel said that I should not find the appellant guilty based on any of his conduct from when he leaves the Dunbar room for the first time. It was submitted that the dispute really lies in the ninety seconds or so inside the Dunbar room after he has been requested to leave.

86 Counsel submitted that from the time the appellant re-enters the Dunbar room, his sole focus is related to the fact that he has been assaulted and he was trying to identify the person who he believed assaulted him. Counsel said that the dispute from that point had nothing to do with theology or religion, but that his purpose of going back into the room was solely related to the alleged assault: finding the man who he believed assaulted him and waiting for the police to arrive.

Analysis

Was the meeting of persons disturbed?

87 The video tendered by the respondent provides cogent evidence of the disturbance caused to the service when the appellant was first in the Dunbar room. This is confirmed by the witness testimony.

88 I consider that it was a combination of his physical imposition, and the words which he uttered, which caused the disturbance.

89 In my view, and I have found that:

- The disturbance began with his utterances about whether the church married ‘sodomites’ and ‘homosexual sodomites’.

- The disturbance continued over the ensuing one to two minutes until the appellant left the Dunbar room for the first time (having been shepherded or corralled out of the room by the congregants).

- It was a continuing disturbance throughout this period.

- The element of disturbance had certainly been made out prior to the appellant's departure from the Dunbar room for the first time.

90 The change in mood brought about by the appellant's physical presence and words was palpable.

91 It was the appellant's conduct which resulted in Ms Townsend's response, followed shortly thereafter by the congregants standing up from their seats and approaching the appellant.

92 The members of the congregation were immediately agitated and distressed by the appellant's intervention, including his abusive and demeaning language. This is further evidence of disturbance.

93 The appellant was asked repeatedly to leave, mainly by Ms Townsend. Rather than depart immediately when asked, the appellant persisted with his confrontational and degrading verbal abuse, and in so doing furthered disturbed the religious service.

94 I have said that the appellant commenced the disturbance when he uttered the phrases about whether the church married 'sodomites', and 'homosexual sodomites'. I want to deal with the appellant's argument that these moments (and these words) should be considered separately and in isolation from what happened after Ms Townsend's intervention. Arguments were made that the language is more moderate, and open to legitimate theological debate, and that the appellant's demeanour and tone was calm when he uttered these words (prior to Ms Townsend's response). This, it is said, supports the hypothesis that this was not a disruption (and raises other issues which I deal with later). I make the following points:

- Within its full context his initial words about whether the church married 'sodomites' and 'homosexual sodomites' were plainly confrontational and

debasing. They were laced with bigotry and hostility. The were designed to rile and insult the congregation. They had this impact, provoking Ms Townsend's intervention.

- Those words are further coloured by what the appellant said immediately thereafter when he referred to the congregants as 'faggots', 'poofters', and 'degenerates'.

- Considered as a whole, this was nothing short of a wholesale attack upon the religious beliefs and practices of the gathering. His language, from the very beginning, was calculated to denigrate the religious legitimacy of the gathering, and to disturb their service.

- In every sense, the appellant's intervention in the Dunbar room was a single course of conduct, connected in time, place and objective.

- His calmer demeanour and tone in the first 10 to 20 seconds when he stood up simply reflects the fact that at this early point his unwelcome intrusion had not yet been challenged by the congregants. Upon being challenged he became more animated and openly confrontational, even hostile. That is what he wanted. The appellant was, in my view, 'spoiling for a fight' from the get-go.

95 Overall, it was a physical and emotional interruption of a high order with the right of the congregation to practise their religious beliefs, lawfully, and in peace and quiet, on this occasion.

96 The meeting was not tangentially or momentarily interrupted. It was not a matter of Ms Townsend or someone else pausing, or guiding the discussion back to the relevant topic. The service was wholly derailed by the appellant's uncivil intrusion, making it impossible for the meeting to continue in the ordinary course of the service.

97 The spontaneous and concerned response of Ms Townsend, followed by that of the other congregants, to stop the appellant's intrusion and to shepherd the appellant out of the Dunbar room, demonstrates the degree to which the service was disrupted.

98 The rights of congregants to gather and to practise their views through religious worship on this occasion were comprehensively impeded by the appellant's unwelcome invasion.

99 This was plainly a disturbance within the meaning of s 21, even if the concept of 'disturb' in s 21 is construed narrowly.

Defence hypothesis that Ms Townsend caused any disturbance

100 I conclude, beyond reasonable doubt, that it was the appellant's conduct that caused the meeting to be disturbed during the initial Dunbar room event. He was the sole cause.

101 I reject as perverse the defence hypothesis that it was – or might have been – Ms Townsend's conduct (or that of the other the parishioners) which caused the disturbance. I exclude this hypothesis beyond reasonable doubt. There is no such reasonable possibility.

102 Rather, I consider they were merely reacting or responding – in a measured and proportionate manner – to the appellant's confrontational and hostile incursion into their service. Indeed, I consider their reactions to the appellant's conduct to be evidence of the disturbance which the appellant caused. By the time that Ms Townsend stood up to the appellant, the appellant had already thrown the first stone so to speak. Indeed, the response to this was to ask the appellant to leave. Far from a desire to escalate the situation, I consider that Ms Townsend's intervention was designed to de-escalate the situation. This is exemplified by her refusal to engage in debate with the appellant and her repeated requests for the appellant to leave.

103 It is not the case that Ms Townsend's intervention changed the tone of the room. It was the appellant's conduct which caused the upset and distress amongst the congregants. This was not caused by Ms Townsend's intervention. Her intervention was concerned with shielding the gathering from the appellant's unwanted and uncivil intrusion.

104 In my view, it is not the case that Ms Townsend overreacted to a situation that was an innocent, amicable or civil discussion between two people. In his evidence, Mr

Pepall said that if Ms Townsend had not done what she did, he would have done the same thing.

105 Further, the appellant's conduct and behaviour remained the same from his first utterance relating to 'sodomites' until he left the Dunbar room. It was confrontational and abusive throughout the entire episode. The true character of his conduct, and his objective to disrupt, remained unaltered by Ms Townsend's response.

106 The conduct of Ms Townsend, and the other congregants, was wholly responsive to the continuing disturbance caused by the appellant.

Did the appellant intend to disturb the meeting of persons?

107 I draw the inference that the appellant willed or intended the disturbance caused and I do so beyond reasonable doubt.

108 I have reached that conclusion for a number of reasons.

109 First and foremost, the obvious order of the interruption caused (it derailed the service), its highly confrontational nature (abusive and debasing tone), and its duration (minutes, not a fleeting moment), compels me to draw the inference that the appellant willed or intended the disturbance caused. There is no other reasonable inference available. The video alone convicts him.

110 Second, I am satisfied that the appellant's conduct on 12 May 2019 was performative, from the outset. As the respondent submitted, he was there to impose himself and to 'put on a show'. The fact that the appellant chose in advance to film and publish the incident tells against any intention to participate in any meaningful or civil way in the religious worship.

111 Third, I also conclude from the appellant's words and demeanour that he intended for the filming to be covert. As the appellant walks along the footpath toward the church, he says, 'shh', 'be quiet', 'hold it down' and 'don't make it obvious'. This enabled him to join the service ostensibly as an innocent congregant. This was part of his ruse. It ensured that the members of the congregation did not know that the incident was being filmed and retained the appellant's element of surprise. This

then enabled the appellant to achieve his objective, which was to suddenly confront and disrupt the congregation.

112 Fourth, I reject the defence argument that the video reveals that the appellant was lacking in any premeditation to interrupt. At the beginning of the video, the appellant says, 'bear with me, it might be a bit boring at the start but hopefully Erikson can say something'. Counsel for the appellant said that these words show that whilst the appellant intended to say something, he was aware that he may in fact not be able to. I do not accept this interpretation of the appellant's conduct. As he says the words, 'but hopefully Erikson can say something', he can be seen clapping his hands together and grinning, exhibiting a juvenile like excitement. Viewed as a whole, and having regard to his demeanour, the words do not suggest that he was there to passively film an ordinary church service. He fully intended to actively impose himself upon the gathering.

113 Fifth, the evidence revealed that this particular service had a focus on Mother's Day. For the seven or so minutes that Mr Pepall was addressing the audience prior to the appellant's intervention, he was speaking about honouring mothers and the feminine aspects of God that are referenced in the Bible. The issue that the appellant raised, namely whether the church married 'sodomites', was completely unrelated to the topic that Mr Pepall was discussing. The appellant's comments suggest that he had pre-determined that he would confront the congregation with this very topic. It will be remembered that, at the beginning of the video and before he entered the building, the appellant says, 'alright, I'm gonna go in, and ah, apparently they marry, ah, transgenders, homosexuals and lesbians.' Further, it shows that as the appellant approaches the entrance of the church, he points to a rainbow flag on display at the front of building and says, 'look at that shit. Look at that shit. Faggots. Let's go.' This shows that the appellant had set himself upon a course to publicly admonish the congregation for their practices and beliefs. These are additional contra-indications of the existence of any intention on his part to respectfully participate in the gathering.

114 Sixth, the appellant's exchange with his associates after the incident is damning. Whilst smoking a cigarette out the front of the church, the appellant has the following exchange with his associates:

Appellant: Are words violent? I didn't touch anyone until they touched me.

Associate 2: They shouldn't have hit you I said.

Associate 1: Like, I love what you do personally and I think that you have something to say. But at the same time…

Associate 2: There's a way to do it and there's an approach.

Appellant: Yeah and how's that working out for youse? How's that working out? Yeah, it's not working. The conservatives have failed to conserve anything in the past 30 years. I think we should, ah, change tactics a little bit.

Associate 2: But did you not notice how kind I was being… I was like oh but that photo doesn't mean… and then you kind of mocked them?

Appellant: **Yeah, of course I mocked them**.[17] They are marrying homosexuals in their church and they claim to be Christian. I don't hate them either but I voiced my opinion whether you think it was aggressive or not…

115 Right at the end of the video, the appellant speaks to the camera and says:

> Yeah look, I'm here at this church… they are marrying homosexuals in this church. They're claiming to be Christians. I come into, ah, **protest**, **protest** their irregular Christian attitudes and I was punched, I was assaulted and I defended myself. [18]

116 The appellant made damning admissions when he said, 'yeah of course I mocked them' and that he was there to 'protest'. These admissions provide contemporaneous evidence of the appellant's state of mind. To a similar effect, at the end of his police interview the appellant said that 'I'm a political activist and I do stuff like this'. His very reason for being there was to *rail against* the worshipping service, not to participate in it.

Defence hypothesis that appellant only intended to participate

117 To be clear, I reject the appellant's hypothesis, beyond a reasonable doubt, that the appellant merely intended to participate in the service in an amicable or civil way, without any intention to disturb the gathering.

118 It is true there was an informality to the Community Church services held in the Dunbar room, and they were conducted so as to allow people to share their 'faith journey' and 'beliefs'. As Mr Pepall explained, many different people from different

---

17 Emphasis added.
18 Emphasis added.

denominations attended the Community Church services and they had different beliefs and different 'practices'. He said that the services in the Dunbar room were a chance for everyone to share what they believed. He said, 'within reason', it was an 'open forum' for disagreement or difference of opinion.

119 I also allow for the fact that before speaking, the appellant asked permission from Mr Pepall to speak and was granted permission.

120 But at this point the appellant revealed his true colours and objective. At the risk of repeating some of my findings, the appellant's insertion into the meeting and his language – including the use of the term 'sodomite' – was disparaging and instantly calculated to antagonize, rebuke and upset the congregation.

121 The way that the appellant conducted himself in the Dunbar room indicates that he was not there to debate or engage in a civil discussion. He did not listen to what was being said to him, but was instead intent on forcing his views on those present, and accusing them of not being Christian and not following the Bible. He did not immediately leave when asked to do so. He ignored Ms Townsend's entreaties that they did not 'want to debate that now', saying 'I don't care'.

122 He was there to confront and inflame conflict, not to engage. His objective was not to participate with the congregation in worship, rather it was to wreck it. In this the appellant succeeded, as the video so clearly proves. The defence hypothesis of civil participation is patently absurd, and I reject it.

123 To effectively adopt the words used by Ms Townsend at the time (and captured on the video), the appellant 'violated [their] space'.

Conduct subsequent to Dunbar room disturbance and shift in focus

124 The appellant made a number of arguments to the effect that subsequent to that Dunbar room episode, the appellant's focus seemed to shift from his views about the Community Church's religious practices, to his claimed grievance that he had been assaulted.

125 I accept that there appears to have been a shift of this kind in the appellant's focus, although it goes too far to say that the question of him being assaulted was his

sole focus. For example, in the video footage he is recorded as still engaging in denigrating language towards the congregation.

126 In any event, even allowing for the fact that there was shift in his focus to the question of the alleged assault (and allowing for the possibility that by then he may have had mixed motivations or intentions), this affords no defence to proof of the charge.

127 This is because I have found the charge is made out upon the basis of what occurred in the Dunbar room prior to the appellant leaving for the first time. Anything that occurred subsequent to this occurs after the completion of the offence. His subsequent shift in focus is irrelevant to those findings.

128 I have found the initial Dunbar room interaction to be the disturbance. I have also found that the appellant's then single-minded intention unambiguously and contemporaneously aligned with that conduct.

129 In the circumstances, it is unnecessary for me to further consider what might flow from the appellant's later shift in focus in his attention.

Conclusion

130 For all the above reasons, I am satisfied beyond reasonable doubt that the appellant is guilty of the offence charged and that the charge is proved.

SENTENCE

131 I now turn to the question of sentence and will address the appellant in the first person.

132 Mr Erikson, you are now 37 years of age. You were 34 years old at the time of committing the offending that brings you before this Court today.

133 I do not intend to recount the circumstances of your offending. Suffice to say that I have found that your offending involved an intentional, significant and impactful disruption to the Community Church service.

134 Your offending was not fleeting. It continued for nearly two minutes while in the Dunbar room on the first occasion. Your offending involved your physical imposition and was confrontational. Rather than depart immediately when asked

to do so, you persisted with your confrontational and degrading verbal abuse. Your behaviour was calculated from the very beginning to denigrate and interrupt. I am satisfied that there was premeditation involved.

135 The two victim impact statements tendered by the respondent demonstrate the significant and lasting impact that your offending had on those present at the Community Church on 12 May 2019. I take this victim impact into account in sentencing you.

136 I am satisfied this is a very serious example of the offence of disturbing a religious worship. It is certainly not at the lower end of the range.

137 Your counsel relied on a number of what were described as 'protective factors'. You are currently in a relationship. You are self-employed and work as a builder's labourer. You have stable employment, and I was told that you can undertake this work anywhere in Australia. You intend to make the most of this flexibility; you intend to move interstate in the near future to 'restart' your life and to get away from some of the negative influences that exist in Victoria. Your counsel reported that you describe yourself as a retired activist.

138 You have not re-offended since 2019 – you have used the delay in this matter to assist in your reform, and that stands in your credit. I acknowledge that this has also been hanging over your head for that period.

139 I should say – as I did at the plea hearing – I am unpersuaded that the so-called physical assault you say you sustained at the event in question has caused you to re-consider your ways. Even accepting that you were physically assaulted, your response to it – as revealed by the video – indicated it was trifling and had no significant impact upon you. My assessment of your reaction on the video, when you were insisting on remaining at the Church to identify the perpetrators, was that you were largely grandstanding. You did not appear distressed, threatened or concerned for your welfare. Undeterred, you continued to berate the congregation for their beliefs. I note that any reliance on extra-curial punishment was eschewed by your counsel. Nevertheless, I allow for some possibility that, upon reflection, the confrontation – which you caused – has shaken you. I hope so.

140 I accept, however, that the other matters your counsel raised are protective, in the sense that they go some way to reducing your risk of reoffending. They give me some comfort in relation to your prospects for rehabilitation.

141 You do however have a relevant criminal history that I must consider. Your prior conviction for inciting serious contempt for, or revulsion or severe ridicule of, another person or class of persons, on the ground of their religious belief or activity, is particularly troubling. You were convicted of this charge in the Magistrates' Court on 5 September 2017 and received a $2,000 fine. Whilst I was not told about the details of your involvement in this offending, I was told that this prior conviction related to the incident for which I convicted and sentenced your co-offender in December 2019.[19] This conviction and fine did not deter you from committing the instant offending for which you fall to be sentenced today.

142 You have a number of other prior convictions dating back to 2002, some involving violence. I was not informed about the details of these matters. It does however go in your favour, as your counsel pointed out, that you have complied with a number of different community-based dispositions over the years. You received a 6 month Community Based Order in June 2003, a wholly suspended sentence in January 2006 and a 12 month Community Correction Order in February 2014. You did not commit any offending during the periods of these community-based dispositions. On the other hand, these sentences did not deter you from committing further offending into the future.

143 I will also mention your subsequent conviction in the Melbourne Magistrates' Court on 11 May 2021 for disturbing a religious worship. This is not a prior matter; you were convicted of this offence well after committing the instant offending. In fact, you were not even charged in relation to this subsequent matter at the time of committing the instant offending. This offending involved you attending an Islamic festival being held at Federation Square with a megaphone. You said things including that Muhammed was a terrorist and a fake prophet. You were interrupted by police and directed to move on. You received a term of one month of imprisonment in relation to this subsequent matter, and you served that sentence. I allow for the fact that this sentence of imprisonment would have had a deterrent effect upon you. I am also conscious that this subsequent matter related to similar

[19] *Cottrell v Ross* [2019] VCC 2142.

offending which brings you before me, and that they were each committed in the same period. For totality purposes, I take into account the sentence you served for this subsequent matter.

144 You have not demonstrated any remorse for your offending and you have shown no acceptance of responsibility, or understanding of the impact your offending has had upon others. I also am not satisfied that you have any insight. I note, however, that it was your right to contest the charge, and you will not be punished for doing so. But you do not receive the mitigatory benefits of these factors. Further, they cast some light upon my assessment of your risk of re-offending. Overall, I am satisfied that your prospects for rehabilitation are fair. I do still hold some uncertainty however about your prospects. There remains some need to specifically deter you from repeating such wrongdoing in the future. The community needs some corresponding protection from you.

145 I also consider general deterrence and public denunciation to be important sentencing purposes in this matter. Other members of the community who may be minded to undertake similar behaviour must be deterred from doing so. Everyone is entitled to hold and express their views, even controversial ones, however it should be clear to members of the public that there are consequences for stepping over the line, and intruding, in a gross way, into the lawful and peaceful religious gatherings of others.

146 There are many activists who never cross the line and who never embark on criminal behaviour. What you, Mr Erikson, need to desist from is engaging in behaviour that is both repugnant and criminal.

147 Your counsel submitted that a non-custodial disposition was appropriate. As your counsel put it, you pitched towards a conviction and fine. I was told that you would not be willing to undertake or consent to a Community Correction Order ('CCO') of any length beyond three months. At the time of the hearing, I had not determined whether a CCO would suffice in this case. I did however indicate that if I did conclude that a CCO were open, it would have to be of some real length, and certainly well beyond the short period mentioned by your counsel.[20]

---

20 *Sentencing Act 1991* (Vic) s 37(c).

148 Certainly, a CCO of short length could not possibly address all of the sentencing purposes in this case, in particular denunciation and general deterrence, and indeed specific deterrence. I would make the same observations in relation to a conviction and fine. Having regard to the gravity of the offending and to your prior criminal history, including a highly relevant prior conviction, these sentences would simply not satisfy the sentencing purposes in this case.

149 In the circumstances, I am satisfied that imprisonment is the only realistic option here. Your counsel submitted that if I were to conclude that imprisonment was required, which I have, the duration should be less than that imposed in the Magistrates' Court – it being submitted that a sentence of 70 days represented 80% of the maximum penalty. In considering this matter afresh, I have concluded that I agree with that submission.

150 Mr Erikson, please stand.

151 On charge 1, disturbing a religious worship, I sentence you to 40 days imprisonment.