SUPREME COURT OF QUEENSLAND

CITATION:	*Gallagher v McClintock & Ors* [2014] QCA 224
PARTIES:	**RONALD JAMES GALLAGHER** (appellant) **v** **RON McCLINTOCK** (first respondent) **GRAHAM SMITH** (second respondent) **TANIA WATSON** (third respondent) **RICHARD CROSLAND** (fourth respondent) **MYRTLE TILSE** (fifth respondent) **ZELLAH WENITONG** (sixth respondent) **PAUL AFFLICK** (seventh respondent)
FILE NO/S:	Appeal No 474 of 2014 SC No 551 of 2013
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Rockhampton
DELIVERED ON:	5 September 2014
DELIVERED AT:	Brisbane
HEARING DATE:	19 August 2014
JUDGE/S:	Holmes JA and Ann Lyons and Flanagan JJ Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Appeal dismissed.** **2. Appellant to pay the respondents' costs of the appeal.**
CATCHWORDS:	REAL PROPERTY – LICENCES – BARE LICENCE – where the appellant had been a regular attendee at, but non-member of, the Yeppoon Wesleyan Methodist Church ("the Church") – where the respondents are members of the Church Board – where the appellant distributed pamphlets in congregational pigeon holes at the Church that made unfavourable comments about religious ideologies alleged to have been adopted by the respondents – where the appellant was asked to leave Church property and was then subsequently

informed by letter that he was no longer welcome to attend the Church – where the appellant contends he has the right to enter the Church property and distribute pamphlets as a consequence of an alleged freedom of speech – whether the appellant has a licence to enter the Church property – whether the licence was subject to any express or implied conditions – whether any licence was revoked and was able to be revoked by the respondents

TORTS – TRESPASS – TRESPASS TO LAND AND RIGHTS – WHAT CONSTITUTES TRESPASS AND DEFENCES THERETO – DEFENCES – JUSTIFICATION – LEAVE AND LICENCE – where the appellant had been a regular attendee at, but non-member of, the Yeppoon Wesleyan Methodist Church ("the Church") – where the respondents are members of the Church Board – where the appellant distributed pamphlets in congregational pigeon holes at the Church that made unfavourable comments about religious ideologies alleged to have been adopted by the respondents – where the appellant was asked to leave the Church property and was then subsequently informed by letter that he was no longer welcome to attend the Church – where the appellant contends he has the right to enter Church property and distribute pamphlets as a consequence of an alleged freedom of speech – whether the appellant has a licence to enter the Church property – whether the licence was subject to any express or implied conditions – whether any licence was revoked and was able to be revoked by the respondents – whether the appellant was a trespasser on revocation of the licence

CONSTITUTIONAL LAW – THE NON-JUDICIAL ORGANS OF GOVERNMENT – THE LEGISLATURE – GENERAL MATTERS – PRIVILEGES – PRIVILEGE OF PARLIAMENTARY DEBATES AND PROCEEDINGS – STATES – where the appellant had been a regular attendee at, but non-member of, the Yeppoon Wesleyan Methodist Church ("the Church") – where the respondents are members of the Church Board – where the appellant distributed pamphlets in congregational pigeon holes at the Church that made unfavourable comments about religious ideologies alleged to have been adopted by the respondents – where the appellant was asked to leave the Church property and was then subsequently informed by letter that he was no longer welcome to attend the Church – where the appellant contends he has the right to enter the Church property and distribute pamphlets as a consequence of an alleged freedom of speech – where the alleged freedom of speech is argued to be sourced in art 9 of the *Bill of Rights* 1688, preserved by s 5 of the *Imperial Acts Application Act* 1984 (Qld) – where art 9 of the *Bill of Rights* 1688 is generally cited as the source of 'parliamentary privilege' – whether art 9 of the *Bill of Rights*

1688 extends to provide a freedom of speech to all citizens in the State of Queensland

CONSTITUTIONAL LAW – IMPERIAL, COLONIAL, STATE AND COMMONWEALTH CONSTITUTIONAL RELATIONSHIPS – IMPERIAL LAW – ADOPTED LAW – where the appellant had been a regular attendee at, but non-member of, the Yeppoon Wesleyan Methodist Church ("the Church") – where the respondents are members of the Church Board – where the appellant distributed pamphlets in congregational pigeon holes at the Church that made unfavourable comments about religious ideologies alleged to have been adopted by the respondents – where the appellant was asked to leave the Church property and was then subsequently informed by letter that he was no longer welcome to attend the Church – where the appellant contends he has the right to enter the Church property and distribute pamphlets as a consequence of an alleged freedom of speech – where the alleged freedom of speech is argued to be sourced in art 9 of the *Bill of Rights* 1688, preserved by s 5 of the *Imperial Acts Application Act* 1984 (Qld) – where art 9 of the *Bill of Rights* 1688 is generally cited as the source of 'parliamentary privilege' – whether art 9 of the *Bill of Rights* 1688 extends to provide a freedom of speech to all citizens in the State of Queensland

CONSTITUTIONAL LAW – OPERATION AND EFFECT OF THE COMMONWEALTH CONSTITUTION – RESTRICTIONS ON COMMONWEALTH AND STATE LEGISLATION – RIGHTS AND FREEDOMS IMPLIED IN COMMONWEALTH CONSTITUTION – FREEDOM OF POLITICAL COMMUNICATION – where the appellant had been a regular attendee at, but non-member of, the Yeppoon Wesleyan Methodist Church ("the Church") – where the respondents are members of the Church Board – where the appellant distributed pamphlets in congregational pigeon holes at the Church that made unfavourable comments about religious ideologies alleged to have been adopted by the respondents – where the appellant was asked to leave the Church property and was then subsequently informed by letter that he was no longer welcome to attend the Church – where the appellant contends he has the right to enter the Church property and distribute pamphlets as a consequence of an alleged freedom of speech – where the appellant refers to the implied freedom of communication on government and political matters as a source of his alleged freedom of speech – whether the respondents' conduct affected the appellant's implied freedom of communication on government and political matters

Bill of Rights 1688, art 9
Criminal Code 1899 (Qld), s 207
Imperial Acts Application Act 1984 (Qld), s 5

Barker v The Queen (1983) 153 CLR 338; [1983] HCA 18, applied
Church of Jesus Christ of Latter-Day Saints v Henning (Valuation Officer) [1964] AC 420, considered
Commissioner of Stamp Duties (NSW) v Yeend (1929) 43 CLR 235; [1929] HCA 39, cited
Cowell v Rosehill Racecourse Co Ltd (1937) 56 CLR 605; [1937] HCA 17, cited
Egan v Willis (1998) 195 CLR 424; [1998] HCA 71, applied
Halliday v Nevill (1984) 155 CLR 1; [1984] HCA 80, cited
Jensen v Brisbane City Council [2006] 2 Qd R 20; [2005] QCA 469, considered
Kuru v New South Wales (2008) 236 CLR 1; [2008] HCA 26, applied
Monis v The Queen (2013) 249 CLR 92; [2013] HCA 4, considered
Nationwide News Pty Ltd v Wills (1992) 177 CLR 1; [1992] HCA 46, considered
Pepper v Hart [1993] AC 593; [1993] 1 All ER 42; [1992] UKHL 3, applied
R v Toohey; Ex parte Meneling Station Pty Ltd (1982) 158 CLR 327; [1982] HCA 69, cited

COUNSEL: The appellant appeared on his own behalf
B Heath (*sol*) for the respondents

SOLICITORS: The appellant appeared on his own behalf
Carter Newell for the respondents

[1] **HOLMES JA:** I agree with the reasons of Flanagan J and the orders he proposes.

[2] **ANN LYONS J:** I agree with the reasons of Flanagan J and the orders he proposes.

[3] **FLANAGAN J**: This is an appeal from orders made by McMeekin J in the Supreme Court of Queensland, Rockhampton dismissing the appellant's originating application filed 26 September 2013 and a subsequent application filed 13 November 2013.

Background

[4] The appellant, who represented himself both on appeal and at first instance, has since 2007 been a regular attendee at the Sunday services of the Yeppoon Wesleyan Methodist Church ("the Church").

[5] He is not, and has never been, a member of the Church. To become a member of the Church one must submit an application for membership. That application must then be considered and approved by the Church's Membership Committee, and a successful applicant for membership must swear adherence to the Church's doctrines and beliefs. Whilst the appellant has applied several times to become a member of the Church his applications have been rejected.

[6] The land upon which the Church is located is owned by, and registered in the name of, the Wesleyan Methodist Church of Australia in Queensland,[1] which is a corporate entity. The respondents are members of the Church Board which includes the pastor of the Church, Pastor Ron McClintock.

[7] Pastor McClintock became the pastor of the Church in or about 2008. The appellant has been concerned for some time that Pastor McClintock is unqualified for his position and is implementing what the appellant describes as "Hybels/Warren style weirdo 'Christian' theology".

[8] On 1 September 2013 Mr Crosland, the fourth respondent and treasurer of the Church Board, observed the appellant in the course of the Sunday service placing pamphlets into congregational pigeon holes which are used to deposit correspondence for members of the Church and attendees at the services. The pamphlets were entitled "The Rothschild Satanic Illuminati Reptilian Bloodline Connection For The Creation Of The NEW WORLD ORDER, GLOBAL, HARLOT CHURCH".[2] As McMeekin J noted the pamphlet consisted: "of seven A4 sized pages and makes several unfavourable comments concerning the religious ideologies alleged to have been adopted by the respondents. Reference is made to the 9/11 terrorist attacks, President Vladmir [sic] Putin as an exemplar of a Christian leader, and the evils of 'mega churches' in America."[3]

[9] Mr Crosland confronted the appellant and told him that he was not welcome on Church property and, if he did not leave straight away, that he would be trespassing and Mr Crosland would ring the police.

[10] Other members of the congregation also confronted the appellant but he refused to leave. The police were called and the appellant eventually left the Church land, having stated to Mr Crosland and other members of the congregation that he had a "right" to distribute the materials to members of the congregation.

[11] On 2 September 2013 the Church Board wrote to the appellant in the following terms:[4]

> "As you will recall, on a number of occasions over an extended period of time you have been requested not to hand out or distribute any material without the approval of the Senior Pastor or Church Board in his absence.
>
> …
>
> We have continued to encourage you in your fellowship despite your continued non-compliance with our request. Your decision to ignore that repeated request has led us to regretfully pursue the following action.
>
> While we respect your right to hold personal opinions, your opinions expressed, and the literature you have distributed are blatantly contrary to the church doctrine and beliefs, and furthermore, they have not been approved by the Church Board and pastors to be passed out to the congregation. Until such time as the Board can be

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1 Exhibit 'RC1' to the Affidavit of Richard Bryan Crosland sworn 11 December 2013.
2 Exhibit "D" to the Affidavit of Ronald James Gallagher sworn 25 September 2013.
3 *Gallagher v McClintock & Ors* [2013] QSC 292, [7], footnote 1.
4 Exhibit "A" to the Affidavit of Ronald James Gallagher sworn 25 September 2013.

> satisfied that you are willing to respect the church and its leadership, we are unable to allow you to enter onto the property or take part in our church ministries which include our Sunday church worship services and all our ministries such as small groups and prayer groups throughout the week without the permission of the Senior Pastor and the Church Board.
>
> This action is [sic] not been one that we have taken lightly and it is our desire that you should seek help to prevent similar outbursts and behaviour in the future. The leadership of the District and National Church have been notified of yesterday's incident and will not tolerate the slander and defamation of the church name or the pastors and leaders of this church."

[12] In spite of receiving this letter the appellant returned to the Church on the following Sunday, 8 September 2013. Mr Crosland immediately telephoned the police and informed the appellant that he was trespassing and requested him to leave. He refused and did not leave until the police arrived and informed him that if he did not leave he would be arrested.

The originating application

[13] By originating application filed 26 September 2013 the appellant sought final relief in terms of the following orders:

> "(ii) Allow the applicant, the said Ronald James Gallagher, to pass freely without let or hindrance into the Sanctuary of the Yeppoon Wesleyan Methodist Church.
>
> (iii) Disallow and quash the Church Board 'Edict of Suppression' of the applicant's spoken and written word, a blatant disregard of the God-given privilege of FREEDOM OF SPEECH …
>
> (iv) Afford the applicant every assistance and protection of which he may stand in need."

[14] In oral submissions before this Court the appellant clarified that the reference to the "Edict of Suppression" was a reference to the letter from the Church Board to the appellant dated 2 September 2013, extracts of which have been quoted above and that the reference to "the applicant's spoken and written word" was a reference to the pamphlet which the appellant was seeking to distribute at the Church on 1 September 2013.

[15] The originating application came on before McMeekin J on 25 October 2013. His Honour dealt with the matter as an application for interlocutory injunctive relief rather than final relief. This was because of the shortness of notice given to the respondents and also because there was an absence of any material before his Honour which identified the rights of the parties inter se.[5] His Honour gave the appellant an opportunity to file further affidavit material and submissions to support the appellant's purported right to enter upon Church property.

[16] His Honour, however, refused any interlocutory injunctive relief. His Honour correctly identified that the appellant was unable to demonstrate that there was

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5 *Gallagher v McClintock & Ors* [2013] QSC 292, [2], [44].

a serious question to be tried in terms of establishing his right to go on to the Church's land:

> "… it was at the respondents' discretion to allow or refuse any person licence to enter their property. It is not necessary that they first demonstrate that their exercise of their rights was a reasonable one.
>
> Conversely Mr Gallagher had no 'right' as such to be on the land. He had the permission of the respondents to be there, as presumably do all those in the congregation. His permission was revoked by the letter of 2 September 2013."[6]

[17] The appellant at first instance and on appeal asserted his right to freedom of speech based on article 9 of the *Bill of Rights* 1688. His Honour dealt with this submission as follows:[7]

> "There is no section within the *Australian Constitution* which entitles a person to freedom of speech, nor is it enforced by the *Bill of Rights* of 1688. The specific section referred to by the applicant applies to the proceedings of parliament. It is commonly known as 'parliamentary privilege'. It is a protection afforded to politicians to allow for open debate. The protection has now been codified in the *Parliamentary Privileges Act 1987* and does not extend to the general public.
>
> That is not to say that there is no freedom of speech in our community or that the Constitution does not have a part to play in the preservation, at least, of freedom of political communication. What Mr Gallagher asserts is a right to enter someone else's property and distribute pamphlets there. Freedom of speech has nothing to do with it." (Footnotes omitted)

[18] In response to his Honour adjourning the originating application for seven days, the appellant filed a further application dated 13 November 2013 together with further submissions. None of the material filed identified a legal or equitable right for the appellant to enter upon the Church land. The respondents filed affidavit material including the affidavit of Mr Crosland to which reference has already been made. In that affidavit Mr Crosland swore that he was authorised to swear the affidavit not only on behalf of the respondents, but also for and on behalf of the Wesleyan Methodist Church of Australia.

[19] The matter came before his Honour again on 13 December 2013. In dismissing both the originating application and the application filed 13 December 2013 his Honour stated:[8]

> "… Mr Gallagher has not advanced any material to show that he has a proprietary right or a right of an equitable nature or an equity that could be protected by the grant of an injunction and to justify the court's intervention …
>
> Mr Gallagher has repeated the arguments that he made on the first occasion in the material before me today and he has again stressed that, fundamentally, his application is based on section 9 of the Bill of Rights of 1688. I have expressed the view in my reasons that

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6 *Gallagher v McClintock & Ors* [2013] QSC 292, [20] - [21].
7 *Gallagher v McClintock & Ors* [2013] QSC 292, [32] - [33].
8 Transcript of 3.03 pm, Friday, 13 December 2013, 3, 28 - 45.

> Mr Gallagher misunderstands the effect of that provision. Having heard him again, I have no reason to change my view. Effectively, and it seems apparent to me, that Mr Gallagher is misreading the provision in his view that it provides a right of free speech to all peoples anywhere. The provision reads, 'That the freedom of speech and debates or proceedings in parliament ought not to be impeached or questioned in any court or place out of parliament'.
>
> Mr Gallagher's error, in my view, is that he does not appreciate that the reference to the freedom of speech should be read as the freedom of speech in parliament and the reference to debates or proceedings should be read as debates or proceedings in parliament."

Notice of Appeal

[20] By the Notice of Appeal the appellant seeks to challenge his Honour's construction of article 9 of the *Bill of Rights* 1688.

[21] The Notice of Appeal also asserts that His Honour should have ordered that the appellant have "free access into the sanctuary of the Yeppoon Wesleyan Methodist Church".

[22] For reasons which follow, the appellant has not demonstrated any error in his Honour's decision to dismiss the originating application and the application, nor in his Honour's construction of article 9 of the *Bill of Rights* 1688.

Nature of the appellant's right to be upon Church land

[23] Prior to the events of 1 September 2013 and the letter of 2 September 2013 the appellant's right to be upon Church land was that of a licensee. As he was not a member of the Church, he had no contractual right to be upon the land. He was not a member of the Church but had been permitted by the Wesleyan Methodist Church of Australia in Queensland, as owner of the land, to be upon the land.

[24] A licence is personal to the licensee[9] and simply confers a personal right on the licensee to enter the land. It does not confer any proprietary interest in the land.[10] The licence can be granted on both explicit and/or implied terms and conditions. The licence only authorises entry in accordance with those terms.[11] These terms and conditions can limit or regulate, inter alia, the purpose for which entry to land is granted.

[25] Any right that the appellant had to be upon Church land prior to 1 September 2013 was subject to implied limitations. The first was that the appellant's licence was revokable at will by the owner of the land without prior notice or reason.[12] The appellant's licence to be upon Church land would also be subject to him complying with all statutory requirements touching upon religious worship. This would include section 207 of the *Criminal Code* (Qld) which provides:

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9 *R v Toohey; Ex parte Meneling Station Pty Ltd* (1982) 158 CLR 327, 352.

10 *Commissioner of Stamp Duties (NSW) v Yeend* (1929) 43 CLR 235; *Cowell v Rosehill Racecourse Co Ltd* (1937) 56 CLR 605.

11 *Barker v The Queen* (1983) 153 CLR 338, 357.

12 *Kuru v New South Wales* (2008) 236 CLR 1, 14 - 15 [43]; *Lambert v Roberts* [1981] 2 All ER 15, 19; *Halliday v Nevill* (1984) 155 CLR 1; *Mackay v Abrahams* [1916] VLR 681, 684.

> "Any person who wilfully and without lawful justification or excuse, the proof of which lies on the person, disquiets or disturbs any meeting of persons lawfully assembled for religious worship, or assaults any person lawfully officiating at any such meeting, or any of the persons there assembled, is guilty of an offence, and is liable on summary conviction to imprisonment for 2 months, or to a fine of $10."

[26] A further implied limitation on the appellant's licence to be upon Church land was that he was prepared to behave in reasonable conformity with the requirements of the religion in which he was participating. In this respect the respondent referred the Court to the decision of the Queensland Court of Appeal in *Jensen v Brisbane City Council*.[13] The question in that case was whether land within the city of Brisbane "having a building thereon and used entirely for public worship" was exempt from general rating. The Court of Appeal referred to the decision of the House of Lords in *Church of Jesus Christ of Latter-Day Saints v Henning (Valuation Officer)*[14] where it was observed that:

> "the conception of public religious worship involves the coming together for corporate worship of a congregation or meeting or assembly of people, but I think that it further involves that the worship is in a place which is open to all properly disposed persons who wish to be present"[15]

> "the admission of the public means … the admission of those members of the public who are reasonably suitable, who come in reverence, not mockery, and who are prepared to behave in reasonable conformity with the requirements of the religion which they are visiting"[16]

[27] Having considered a number of authorities the Court of Appeal stated:[17]

> "Both on the authorities, and by reference to the context in which the term 'public worship' is used in the appellant's resolution, the issue is whether the Brethren can be said to have issued an invitation to the public making it clear that all well-disposed and respectful persons are welcome to seek the solace, edification, instruction or other benefits to be gained from services in the meeting room."

[28] Irrespective of the precise nature of the appellant's licence to enter and be upon Church land, the contents of the letter of 2 September 2013 and the directions given by Mr Crosland to the appellant on 1 and 8 September 2013 constitute a clear revocation of that licence.

[29] The Church Board's authority to revoke the appellant's licence to be on Church land on behalf of the owner of the land may be readily implied, both from the contents of the letter of 2 September 2013 and from Mr Crosland's affidavit. The letter of 2 September 2013 specifically referred to the District and National Church having been notified of the events of 1 September 2013. Further, as already observed, Mr Crosland who instructed the appellant both on 1 September 2013 and 8 September 2013 to leave Church property swore his affidavit not only on behalf of the respondents but also on behalf of the Wesleyan Methodist Church of Australia.

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13 [2006] 2 Qd R 20.
14 [1964] AC 420.
15 [1964] AC 420, 435.
16 [1964] AC 420, 437.
17 *Jensen v Brisbane City Council* [2006] 2 Qd R 20, 37 [35].

[30] It follows that his Honour was correct in finding that the appellant had not established any proprietary right or a right of an equitable nature or an equity that could be protected by the grant of an injunction.

The appellant's asserted statutory right to freedom of speech

[31] The appellant's asserted right to freedom of speech in the context of the present case is misconceived. What the appellant seeks to assert is the right to freedom of speech in a particular place. That place is identified in the originating application as "the sanctuary of the Yeppoon Wesleyan Methodist Church". That is, the appellant seeks to exercise the asserted right at a particular location. Given that the appellant has no legal or equitable right to be upon Church land, no question of his right to exercise freedom of speech on Church land arises.

[32] Further, as observed by his Honour, it is not necessary for the appellant to be upon Church land for him to exercise his asserted right to freedom of speech:[18]

> "I should observe that the respondents' actions do not, as Mr Gallagher asserts, interfere with any right of his to speak freely. Subject to the laws of defamation and confidentiality Mr Gallagher is perfectly entitled to express his views. All that the respondents insist on is that he not exercise his 'rights' on their property."

[33] It is clear from the material that the appellant, whilst not on Church property, exercised his asserted right to freedom of speech by speaking to a journalist about his concerns and having an article published in a local newspaper on 4 September 2013.[19]

[34] The fact that the appellant does not have a legal or equitable right to be upon Church property is sufficient to dispose of his appeal in respect to any asserted right to freedom of speech. The appellant however, sought to identify an error of law in his Honour's construction of article 9 of the *Bill of Rights* 1688.

[35] The *Imperial Acts Application Act* 1984 by section 5 preserved certain imperial enactments identified in Schedule 1. Schedule 1 includes the *Bill of Rights* 1688. Article 9 reads:

> "That the Freedome of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament."

[36] The appellant submitted that his Honour erred in construing article 9 by overlooking the words "or" or "out of" so that the section should be construed as bestowing a right of freedom of speech not just in relation to proceedings in Parliament but to places outside Parliament such as a church. In his written submissions of 18 August 2014 the appellant sought to construe article 9 as follows:[20]

> "In other words, '<u>Freedom of Speech</u> and debates '<u>OR</u>' <u>(apart from) proceedings in Parliament</u>, ie. <u>A Public Place such as a Church</u> – ought not be impeached or questioned ('<u>Suppressed</u>') in any Court or place, (<u>Such as a Church, again</u>.) '<u>OUT</u> (side) <u>OF</u>' Parliament."

[37] The appellant's construction should be rejected. Not only is it inconsistent with the ordinary and natural meaning of the words of article 9 it is also inconsistent with

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18 *Gallagher v McClintock & Ors* [2013] QSC 292, [27].

19 Exhibit "C" to the Affidavit of Ronald James Gallagher sworn 25 September 2013.

20 Appellant's amended outline dated 19 August 2014, 8.

decided authority in respect to the proper construction of article 9. The respondent referred the Court to the decision of Kirby J, in obiter, in *Egan v Willis*:[21]

> "Like every such provision, Art 9 of the Bill of Rights, in its application to New South Wales, has a purpose. It is to defend, relevantly against legal inquiry or sanction in a court, the freedoms belonging to a House of Parliament. Those freedoms include its right to conduct its affairs, answerable, on matters of truth, motive, intention or good faith, only to the House concerned and through it to the electors."

[38] To similar effect is the decision of the House of Lords in respect to article 9 in *Pepper v Hart*,[22] where Lord Browne-Wilkinson stated:[23]

> "In my judgment, the plain meaning of article 9, viewed against the historical background in which it was enacted, was to ensure that members of Parliament were not subjected to any penalty, civil or criminal for what they said and were able, contrary to the previous assertion of the Stuart monarchy, to discuss what they, as opposed to the monarch, chose to have discussed. Relaxation of the rule will not involve the courts in criticising what is said in Parliament. The purpose of looking at Hansard will not be to construe the words used by the Minister but to give effect to the words used so long as they are clear. Far from questioning the independence of Parliament and its debates, the courts would be giving effect to what is said and done there."

[39] It follows that the appellant has not demonstrated any error in his Honour's construction of article 9 of the *Bill of Rights* 1688.

[40] The appellant in his written submissions also made reference to the implied freedom of communication on government and political matters with specific reference to *Lange v Australian Broadcasting Corporation*.[24]

[41] The implied freedom was recently discussed by the High Court in *Monis v The Queen*.[25] French CJ explained the implied freedom as follows:[26]

> "The *Australian Constitution* limits the power of parliaments to impose burdens on freedom of communication on government and political matters. No Australian parliament can validly enact a law which effectively burdens freedom of communication about those matters unless the law is reasonably appropriate and adapted to serve a legitimate end in a manner compatible with the maintenance of a constitutionally prescribed system of government in Australia."

[42] Crennan, Kiefel and Bell JJ observed that the implied freedom was not absolute:[27]

> "The implied freedom was recognised in *Australian Capital Television Pty Ltd v The Commonwealth* (*ACTV*) and in *Nationwide News Pty Ltd v Wills*. In *ACTV*, the freedom was identified as essential to

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21 (1998) 195 CLR 424, 490 - 491 [133].
22 [1993] 1 All ER 42.
23 [1993] 1 All ER 42, 68. See also Davies JA in *Criminal Justice Commission v Nationwide News Pty Ltd* [1996] 2 Qd R 444, 460.
24 (1997) 189 CLR 520.
25 (2013) 249 CLR 92.
26 *Monis v The Queen* (2013) 249 CLR 92, 105 [2].
27 *Monis v The Queen* (2013) 249 CLR 92, 189 - 190 [267].

> the maintenance of representative government for which the *Constitution* makes provision. Neither those decisions, nor *Cunliffe v The Commonwealth* and *Leask v The Commonwealth*, which followed, explained how it might be determined whether a law which denied or restricted the implied freedom was invalid. The question necessarily arose because it was accepted that the implied freedom was not absolute." (footnotes omitted)

[43] The limitations on the Constitution's implication of freedom of communication was discussed by Deane and Toohey JJ in *Nationwide News Pty Ltd v Wills*:[28]

> "The Constitution's implication of freedom of communication with and about the government of the Commonwealth is not an implication of an absolute and uncontrolled licence to say or write anything at all about matters relating to the government or the Commonwealth. It is an implication of freedom under the law of an ordered society. It would be unwise and impracticable to seek to identify in advance the precise categories of prohibition or control which are consistent with the implication. Clearly, much will depend upon the character of the law whose validity is in question. In particular, a law whose character is that of a law with respect to the prohibition or control of some or all communications relating to government or governmental instrumentalities will be much more difficult to justify as consistent with the implication than will a law whose character is that of a law with respect to some other subject and whose effect on such communications is unrelated to their nature as communications of the relevant kind. Thus, a law prohibiting conduct that has traditionally been seen as criminal (e.g. conspiring to commit, or inciting or procuring, the commission of, a serious crime) will readily be seen not to infringe an implication of freedom of political discussion notwithstanding that its effect may be to prohibit a class of communications regardless of whether they do or do not relate to political matters."

[44] Even if one were to assume that the pamphlet, which the appellant wishes to distribute on Church property, constituted a communication that fell within the implied freedom, he simply has no legal or equitable right to be upon the land for the purpose of such distribution. Nor can it be said that the revocation of his licence to be upon Church land interferes with any asserted implied freedom. The Court is not dealing here with any proposed law which seeks to curtail the appellant's right to express his opinions but simply with his rights (or lack thereof) to express those opinions on land from which he has been lawfully excluded.

Conclusion

[45] The appellant has failed to establish that his Honour committed any error of law in making the orders of 13 December 2013.

[46] The appellant's appeal should be dismissed. The appellant should be ordered to pay the respondents' costs of the appeal.

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28 (1992) 177 CLR 1, 76 - 77.