

# The 'Path to Bliss' is not always a smooth one

*Ananda Marga Pracaraka Samgha Ltd and Ors vs Tomar & Ors (No 4) [2012] FCA 385*

## Introduction

In this edition of Expert Matters, Sally Davitt, a Director in our Sydney office, considers a recent case involving a religious organisation. The admissibility and independence of two experts was called into question as their claimed area of expertise was not related to their profession, and they were both apparently "devotees" of the organisation in question.

## Background

Ananda Marga Pracaraka Samgha Limited (the 'Ananda corporate entity') is the corporate entity which operates as a vehicle for the activities of the Ananda Marga religion, an organisation which focusses on the teachings of its founder, P.R. Sarkar, particularly in the area of tantra meditation and yoga<sup>1</sup>.

This case relates to certain members and directors of the Ananda corporate entity (the plaintiffs) who allegedly disobeyed orders of the senior members of the religion. As a result, they were no longer allowed to be members/directors of the Ananda corporate entity. The defendants claimed that it would breach the objects of the Ananda corporate entity if people who were not members of good standing of the religion were allowed to remain members/directors of the Ananda corporate entity. The plaintiffs disputed this argument and asserted their right to remain as members/directors.

The defendants supported their position by stating that Ananda Marga is a hierarchical religion where absolute obedience is owed to higher office holders, whose authority was set down in the writings of the founder. The plaintiffs disputed this and also disputed that the defendants were validly appointed authorities within the organisation<sup>2</sup>.

Each party sought to rely on expert evidence on the nature of the Ananda Marga religion, including the founder's writings and practice, which her Honour agreed was a relevant issue in this case. The plaintiffs relied upon the evidence of two experts, Ms T and Professor I, each of whom the defendants submitted did not have relevant expertise and were not independent.

## Ms T

Ms T is an engineer in the Australian military. She prepared a report providing opinions on the views and positions taken by Ananda Marga's founder, P.R. Sarkar. The defendants asserted that Ms T's area of expertise (engineering) was not a relevant field of expertise and that she was no more than a well-read lay person in relation to the Ananda Marga. However, Ms T had practiced and taught tantra yoga for several years, and had undertaken formal study in Ananda Marga to a post-graduate equivalent level. She had also run workshops and authored an article on the subject.

Her Honour referred to Blackburn J's statements in *Milirroum v Nabalco* that "there can be no precise rules" in relation to whether witnesses are sufficiently qualified to give expert evidence<sup>3</sup> and that it is unnecessary for the expertise of a witness to be gained in the course of his or her business or profession<sup>4</sup>. Her Honour also noted that the defendants' own expert witness (about whose expertise no objections were apparently raised) conceded that Ms T's study of Ananda Marga greatly exceeded his own.

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Her Honour was satisfied that Ms T's lengthy study, teaching and practice in the field, together with her demonstration of how her opinions were based on her specialist study, qualified her to give expert opinions.

However, the defendants also contended that Ms T was not sufficiently independent, because:

- she was a "devotee" of Ananda Marga, and
- her father was also a witness for the plaintiff.

Her Honour referred to Ormiston J's statement in *R v Silverlock*<sup>5</sup> that "expert evidence was not and had never been excluded, or expert witnesses disqualified, by reason of an interest in the nature of perceived bias." Rather, any perceived bias should go to the weight of the expert evidence. Her Honour therefore concluded that the evidence of Ms T was admissible, and that any lack of independence, partiality or interest in the outcome would not preclude Ms T from giving evidence.

## Professor I

Professor I had also prepared a report at the request of the plaintiffs providing opinions on the views and positions taken by P.R. Sarka. Professor I is a political scientist and a "futures expert"<sup>6</sup>. Again, the defendants claimed that these were not relevant fields of expertise and that he, too, was no more than a well-read lay person.

Professor I's claim to specialised knowledge on the subject was based on the fact that he had authored four books and a doctoral dissertation directly on P.R. Sarkar, together with several other books and encyclopaedia entries on the topic. Her Honour was satisfied that this qualified Professor I to give expert evidence. Again, the defendant's expert witness conceded that Professor I's study of Ananda Marga exceeded his own study, and that Professor I was "undoubtedly well informed and knowledgeable" on the topic.

The defendants also contended that Professor I was not sufficiently independent, for reasons including that:

- he had authored a number of books published by the Ananda Marga printing house
- he was apparently a "devotee" of Ananda Marga
- he was clearly opposed to the current central administration of Ananda Marga.

However, as with Ms T, her Honour concluded that the evidence of Professor I was admissible, and that any lack of independence, partiality or interest in the outcome would not preclude him from giving evidence.

## Significance

It is the Court's decision as to whether an expert has sufficient expertise to give expert opinion evidence. This need not be based on the expert's current profession or area of employment. Further, this case confirms that a perceived lack of independence of the expert (even to the extent of being a "devotee" to one party in the proceedings) would not preclude him or her from giving expert evidence.

This position is consistent with the earlier decision by the Full Court of the Victorian Supreme Court in *Fagenblat*<sup>7</sup> in which the Court held that an expert accountant with a financial interest in the outcome of the case could nonetheless give expert opinion evidence. It does, however, conflict with the views expressed in the *Ikarian Reefer*<sup>8</sup> case in which the Court listed independence as one essential quality of an expert.

These apparently divergent views may perhaps be resolved by observing that, under the view expressed in this matter and in *Fagenblat*, while the expert's evidence may be admissible, it may nonetheless be given no weight if the Court perceives that the lack of independence had unduly affected the objectivity of the evidence given. In that sense, at least, 'independence' or 'objectivity' may be a practical pre-requisite for the acceptance of expert evidence.

## Endnotes

1. Ananda Marga means 'path to bliss'. The organisation believes in an all-embracing outlook, recognising God as the one limitless supreme consciousness, with all beings of the universe part of the one cosmic family (<http://www.anandamarga.org.au/index.php/about-us/>).
2. There are apparently two rival camps who each claim authority in the organisation.
3. *Milirroum v Nabalco Pty Ltd* (1971) 17 FLR 141.
4. See *R v Silverlock* [1894] 2 QB 766).
5. In *FGT Custodians Pty Limited v Fagenblat* [2003] VSCA 33.
6. In Futures Studies, rather than in financial instruments. Futures Studies is the study of postulating possible, probable, and preferable futures and the worldviews and myths that underlie them ([www.wikipedia.com](http://www.wikipedia.com)).
7. *Fagenblat v FGT Custodians Pty Ltd* [2004] VSC 196 (3 June 2004).
8. *National Justice Compania Navience SA v Prudential Insurance Co Ltd "Ikarian Reefer"* Commercial Court of the Queens Bench, Cresswell J 1993 CILL 838.

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