or similar statements that breached section 8. Catch the Fire Ministries, and Pastors Nalliah and Scot were granted leave to appeal to the Court of Appeal, which delivered its judgment on 14 December 2006. Each of the judges held that the tribunal made two errors of law in the construction of section 8. First, it regarded the words 'on the grounds of religious belief' as requiring reference to the ground actuating the alleged inciter, rather than to the ground on which the audience was incited to 'hatred or other relevant emotion'. Second, it considered the effect of the words used at the seminar on an ordinary reasonable reader, rather than on the audience to which the words were actually directed.

Nettle JA in considering section 11(1)(b) said that, assuming no lack of honesty, one should ordinarily start with the identification of the purpose for which the defendant is said to have engaged in the conduct, and determine whether it answers the description of an academic, artistic, religious or scientific purpose. A religious purpose included both comparative religion and proselytism. One should next inquire as to whether the respondent's alleged purpose was a '*genuine* religious purpose'. One should move next to the question of whether the defendant had engaged in the conduct *reasonably* and *in good faith* for the genuine religious purpose. That then left the question of whether the conduct was engaged in *reasonably* for the genuine religious purpose, which involved an objective analysis of what is reasonable and called for a determination according to the standards of an open and just, multicultural society.

Nettle JA accepted that the tribunal had power to order corrective advertising but held that the orders made by the tribunal on 9 August 2005 were too wide, unqualified and uncertain to be allowed to stand. The Court of Appeal allowed the appeal, set aside the orders of the tribunal and remitted the proceedings to the tribunal, to be constituted by a different member, to be heard and decided again without the hearing of further evidence.

The judgment is available at <http://www.austlii.edu.au/au/cases/vic/VSCA/2006/284.html> *[2006] VSCA 284, accessed 20 June 2007. Case note supplied by Garth Blake SC.*

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R (on the application of London Borough of Hackney) v Rottenberg
Divisional Court: Scott Baker LJ, Clarke J, January 2007
Statutory nuisance – freedom of religion

The claimants appealed by way of case stated against the decision of the Crown Court to allow an appeal against conviction for six offences of breach of an enforcement notice served on the respondent. The informations charged the respondent (who was an Orthodox Rabbi occupying one half of a semi-detached house in north London as a school and synagogue) with failure to comply with an

abatement notice, which required him to 'immediately cease shouting, chanting and jumping on the internal floors to the property so as not to cause a nuisance to the occupiers of neighbouring properties'. The Crown Court had rejected the evidence of the environmental health officers that the noise that they heard constituted a statutory nuisance and were satisfied that Article 9 of the ECHR was not a bar to criminal proceedings. The Administrative Court was not persuaded that the Crown Court had not been entitled to reach the decision that they had. The Court agreed with the Crown Court's provisional view that, if the service was conducted in such a way that the court found that a statutory nuisance existed, the fact that the nuisance was created in the course of religious worship, in premises registered and with planning permission for that use, would be unlikely to amount to a defence of reasonable excuse nor would a prosecution be disproportionate. [JG]

doi: 10.1017/S0956618X07000816

Re St Mary, Sledmere
York Consistory Court: Collier Ch, January 2007
Exhumation – scientific research – public benefit

The deceased had died in 1919 in the second wave of the Spanish 'flu pandemic and was buried in a lead-lined coffin. The petitioner, a leading influenza virologist, sought leave to exhume the remains of the deceased to obtain a tissue sample for the purposes of scientific research into the avian influenza virus. The family of the deceased consented to such exhumation. Tissue samples obtained from other sources had proved to be of inadequate quality for research purposes. The chancellor considered and applied the guidelines in *Re Holy Trinity, Bosham* [2004] Fam 125, per Hill Ch; and the decision of the Court of Arches in *Re St Nicholas, Sevenoaks* [2005] 1 WLR 1011. In granting the faculty, he considered the speculative nature of the proposal and applied the principles of proportionality, concluding that the greater the public benefit that might ensue from the proposal, the less weighty the ground required to tip the balance in favour of exhumation. [RA]

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Parochial Church Council of Aston Cantlow and Wilmcote with Billesley v Wallbank
High Court, Chancery Division: Lewison J, February 2007
Chancel repairs – quantum

The defendants argued that their liability was limited to keeping the chancel 'wind and watertight', relying on a statement on a website, www.churchlaw.co.