



Ecclesiastical
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NEWSLETTER
of
THE ECCLESIASTICAL LAW SOCIETY

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EDITORIAL

On 7 June, the Supreme Court handed down judgment in *Human Rights Commission for Judicial Review (Northern Ireland: Abortion)* [2018] UKSC 27, on the compatibility of abortion law in Northern Ireland with Articles 3 and 8 of the European Convention on Human Rights. In a complex series of judgments, a majority – Lady Hale PSC, Lord Mance, Lord Kerr and Lord Wilson – held that the current law was incompatible with the right to respect for private and family life guaranteed by Article 8 insofar as it prohibits abortion in cases of rape, incest and fatal foetal abnormality. However, a different majority – Lord Mance, Lord Reed, Lady Black and Lord Lloyd-Jones – also held that the Northern Ireland Human Rights Commission did not have standing to bring the proceedings. The Court did not, therefore, have jurisdiction to make a declaration of incompatibility to reflect the majority view on the compatibility issues.

Readers may also have noticed that, on 4 June, the US Supreme Court **ruled** in favour of the proprietor of Masterpiece Cakeshop Ltd, who had refused to bake a cake for a same sex couple's wedding celebration. Comparisons will inevitably be made with the forthcoming judgment by our own Supreme Court in the *Ashers Baking* case – but the First Amendment to the US Constitution is a very different proposition from the relevant Northern Ireland legislation and the Equality Act 2010. Interesting, but in no way definitive. [FC]

DATES FOR THE DIARY

Tuesday 3 July: Inter-Inn Moot Competition – full details below.

Tuesday 3 July: London lecture – Baroness (Elizabeth) Berridge, co-chair of the All Party Parliamentary Group on International Freedom of Religion or Belief on *Freedom of Religion or Belief*. Book [here](#).

Thursday 12 July: Northern Province lecture – Mark Hill QC, Chairman of the ELS (and Chancellor of the Diocese of Leeds), on *The Ecclesiastical Jurisdiction and Care of Churches Measure 2018*. Book [here](#).

Wednesday 10 October: London lecture – Dr Peter Smith, barrister of Lincoln's Inn and formerly Dean of Law at Exeter University, on *Visitations*. Book [here](#).

Thursday 11 October: Northern Province lecture – Sir Philip Mawer (lately the Independent Reviewer under the Declaration on the Ministry of Bishops and Priests (Resolution of Disputes Procedure) Regulations 2014). Book [here](#).

Wednesday 7 November: Lyndwood Lecture 2018 – Professor Diarmaid MacCulloch Kt DD FBA on *Richard Hooker (1554-1600): Invention and Reinvention*. Book [here](#).

Wednesday 6 February 2019: Northern Province lecture – Bishop Colin Buchanan on *The transferable vote: a hundred years of Anglican experience*

5 to 7 April 2019: ELS Residential Conference – to be held at **Cumberland Lodge, Windsor: Church and State in the Twenty-first Century: Re-imagining Establishment for the post-Elizabethan age**. Speakers will include Prof Robert Blackburn, Prof Norman Doe, The Revd Paul Goodliff, The Rt Revd Graham James, Dr Colin Podmore and Lord Singh of Wimbledon. Book [here](#).

Please note: booking for the Residential Conference for non-members of the Society opens on 1 July. Single rooms may be snapped up fairly quickly after that date.

Tuesday 16 July 2019: Northern Province lecture – Bishop Nick Baines on *The Function of Ecclesiastical Law in Effective Parochial Ministry*.

Wednesday 6 November 2019: Northern Province lecture – Charles George QC, Auditor of the Chancery Court of York, on *Do we still need the Faculty System?*

*London Lectures are held at Winckworth Sherwood, Minerva House, 5 Montague Close,
London SE1 9BB.*

*Northern Province Lectures are held at the offices of the Diocese of Leeds, 17-19 York Place,
Leeds, LS1 2EX*

DATA PRIVACY

The **Data Protection Act 2018** was given Royal Assent on 23 May and the EU General Data Protection Regulation came into effect on 25 May. In preparation, the Society's committee undertook an audit of the data that we hold and we have published new data privacy policy in line with the provisions of the Regulation and the Act. It can be found on our website [here](#).

INTER-INN MOOT COMPETITION – 3 JULY

For the past four years, the Ecclesiastical Law Society has generously sponsored the Inter-Inn Moot Competition by providing a prize of £500 to the winning team. This year the final will be held on Tuesday 3 July at 6:30 pm in the Old Hall of Lincoln's Inn. The finalists are Lincoln's Inn (Gillian Hughes and Paul Erdunast) and Gray's Inn (Thomas Phillips and Gemma McNeil-Walsh), who will address an ecclesiastical law problem set by David Harte, book review editor of the *Ecclesiastical Law Journal*. Lincoln's Inn is kindly providing drinks and canapés for the audience.

Members of the Society are particularly welcome to be present and support the teams as a panel of distinguished judges, drawn from each of the four Inns, puts them through their paces. The prize will be presented by Mark Hill QC, Chairman of the Society. There is no charge for attendance, but it would assist the hosts in catering for the event if you would signify your intention to be there: <https://interinnmoot2018.eventbrite.co.uk>. [MH]

FACULTY JURISDICTION RULES: CONSULTATION

The Faculty Jurisdiction Rule Committee has made the following announcement, which will be of interest to many members of the Society:

'The 2015 Faculty Jurisdiction Rules were introduced with the intention of simplifying faculty procedures and reducing the burden of administration in areas where it was not serving a useful purpose. We did this by introducing lists of matters that could be done either without a faculty or, in some cases, following approval by the Archdeacon. These lists, known as List A and List B, can be found [here](#).

Now we have over two years' experience of working with the 2015 Rules, the Rule Committee is ready to consider revisions to them. The main interest of the revision will be to increase simplification by adding items to List A and List B. There is also scope for simplification of the Rules more generally. Links to the Rules and the associated statutory guidance can be found [here](#). We are now seeking your views on the current Rules and those items on List A and List B. To help you plan your answers we have provided a PDF of all the questions, which is available [here](#).

Click on this link to complete the survey <https://www.surveymonkey.co.uk/r/RJKCJN7> .
The consultation will end on **Monday 6 August**.

What happens next?

After the consultation closes, all the responses will be carefully considered and summarized for consideration by Rule Committee between November 2018 and February 2019. Following this, amended Faculty Rules will be go to General Synod for consideration in July 2019.

The consultation invitation is on the [ChurchCare website](#).' [David Knight]

18th COLLOQUIUM OF ANGLICAN AND ROMAN CATHOLIC CANON LAWYERS

The 18th Colloquium of Anglican and Roman Catholic Canon Lawyers met 27–28 May 2018 at Jesus College, Oxford, to discuss the topic 'Canon Law in Action.' The Colloquium was established in Rome in 1999 as an initiative of the Pontifical University of St Thomas Aquinas (the Angelicum), the Centre for Law and Religion at Cardiff University and Duquesne Law School, Pittsburgh, USA. Since then, its aim has been to contribute to greater ecumenical understanding between Anglicans and Roman Catholics from the perspective of canon law as a form of applied ecclesiology. The Colloquium explores ways in which the respective laws of each communion either facilitate or inhibit unity.



On the Anglican side, papers were contributed by Sion Hughes Carew (Church of England Legal Office), the Revd Russell Dewhurst (Church of England), the Revd Stephen Farrell (Church of Ireland), Charlotte Wright (Cardiff Law School, Church in Wales), and the Ven Dr Jane Steen (Church of England), whose paper was presented in her absence by Professor Norman Doe (Cardiff Law School, Church in Wales). The Roman Catholic papers were contributed by the Revd Dr Luke Beckett OSB (Ampleforth Abbey), the Revd Dr James Campbell SJ (Campion Hall, Oxford University), the Revd Andrew Cole (Diocese of Nottingham), Dr Helen Costigane SHCJ (St Mary's University, London) and the Revd Dr Robert Ombres OP (Blackfriars, Oxford University). Also in attendance were the ELS Chairman, Professor the Worshipful Mark Hill QC, and the Revd Stephen Coleman (Church of England). The papers compared the sources, structures, purposes, subjects, enforcement, and relaxation of canon law in the two communions. Lively and interesting discussion ensued after each pair of papers and, as always, the Colloquium papers will be edited and published by Professor Doe.

The members of the Colloquium are most grateful to Jesus College for its hospitality. [Russell Dewhurst]

THE DIOCESE OF CANTERBURY AND THE CONFESSIONAL

On 30 May, the Diocese of Canterbury issued a **statement** on *Confession & Safeguarding*. The accompanying *Guidelines* include the following:

'Any priest hearing a confession, regularly or otherwise, must say prior to hearing that confession the following statement of confidentiality and safeguarding: "If you touch on any matter in your confession that raises a concern about the wellbeing or safeguarding of another person or yourself, I am duty bound to pass that information on to the relevant agencies, which means that I am unable to keep such information confidential." ' [FC]

PCCS AND 'FRIENDS' CHARITIES

A number of churches have 'friends' groups, registered as charities, that support the church financially but are separate entities from the PCC. The General Synod Legal Advisory Commission has recently issued a Legal Opinion, *Friends Charities: Conflicts of Interest*, following the publication in 2014 of the Charity Commission's Guidance, *Conflicts of interest: a guide for charity trustees" (CC29)*, which has raised concerns about the propriety of an incumbent and churchwardens acting as trustees of a friends' charity and whether they should merely attend and speak at meetings but not participate otherwise. A further concern has been whether a trustee of a friends' charity may also properly serve on the relevant PCC.

The Commission's Opinion notes that charity trustees must take decisions solely in the interests of the charity and that 'when an incumbent of a church or members of a PCC act as

trustees of a related friends' charity, they have to make sure that they act solely in the interests of that charity and not of the PCC'. However, because a friends' charity will have similar, if not identical, charitable objectives to those of the PCC, the duties to each body should coincide. Therefore:

'In our view, it is sufficient, in order to address any conceivable conflict of loyalty, for a PCC member to declare that membership to the friends' charity and to disclose the nature of any decision that the PCC may already have arrived at relevant to the decision which is being considered by the friends' charity'.

The Commission suggests that the governing documents of a friends' charity to could usefully include some express recognition of the inherently close relationship between the charity and the relevant PCC. As an alternative to a friends' charity, a PCC may consider using a restricted fabric repair fund within its control to promote the church building and its fabric as a heritage and community asset [*David Pocklington and FC*].

MEMBERSHIP RENEWAL

The renewal deadline for the Ecclesiastical Law Society expires on **30 June**. The fee has been held at £40 for a further year (£25 for students). To ensure you continue to enjoy the benefits of membership (including receipt of this excellent newsletter) go to the webpage which includes facilities for direct debit and credit card renewal.

<https://ecclawsoc.org.uk/membership/> [MH]
