



Corporate Services Scrutiny Panel

Draft Marriage and Civil Status (Jersey) Law Review

Witness: The Dean of Jersey

TUESDAY, 9th JANUARY 2018

Panel:

Deputy J.A.N. Le Fondré of St. Lawrence (Chairman)

Deputy S.M. Brée of St. Clement

Deputy K.C. Lewis of St. Saviour

Senator S.C. Ferguson

Witnesses:

The Very Reverend M.R. Keirle, B.A., The Dean of Jersey

[11:38]

Deputy J.A.N. Le Fondré of St. Lawrence (Chairman):

Right, there is no pressure here at all. Welcome, everybody, to the further hearing of the Corporate Services Scrutiny Panel on the Marriage and Civil Status Law amendments. I am assuming, Dean, it is your first time in front of a scrutiny panel officially.

The Very Reverend M.R. Keirle, B.A., The Dean of Jersey:

It is indeed.

Deputy J.A.N. Le Fondré:

So there is a slight process we go through before we get to the questions. So before we start, can I draw your attention to the notice in front of you which sets out that you are covered in the hearing by parliamentary privilege and just to make it easier I will read it out for you. "The proceedings of

the panel are covered by parliamentary privilege through Article 34 of the States of Jersey Law 2005 and the States of Jersey Powers, Privileges and Immunity Scrutiny Panels, P.A.C. (Public Accounts Committee) and P.P.C. (Privileges and Procedures Committee) (Jersey) Regulations 2006. Witnesses are protected from being sued or prosecuted for anything said during the hearing unless they say something they know to be untrue. This protection is given to witnesses to ensure they can speak freely and openly to the panel when giving evidence without fear of legal action, although the immunity should obviously not be abused by making unsubstantiated statements about third parties who have no right of reply. The Panel would like you to bear this in mind when answering questions.” We also expect members of the public and the media in public seating to remain quiet at all time while the hearing carries on. Now, as we proceed through questions we may stop you if you have answered the question sufficiently - in an ideal world we would like everyone to be as concise as possible - and I will do that by raising my hand. I would like to make it clear at the start of the hearing, which we say at every hearing, that by undertaking this review we are fulfilling a well established and important parliamentary process in legislative scrutiny. Our review is focused on the detailed Articles of the draft Marriage Law and our questions will hopefully reflect this. This review is not about the policy decision to implement same sex marriage and the States has already agreed to introduce same sex marriage and our review does not seek to reopen that debate. The legislative scrutiny we are carrying out is to ensure the law is fit for purpose and it effectively implements the decisions made by the Assembly and extends beyond the proposals for same sex marriage to cover open air marriage, obtaining a licence to marry, the role of the Parish Registrar, protections against sham and enforced marriages and the ability of the States to increase the age of marriage by regulations. So any comment that may be made may be because we are exploring an argument that has been put to us rather than expressing any view and should not therefore be interpreted as expressing either a personal view or a view of the panel at this stage. So for the benefit of the tape if I start going around, Deputy John Le Fondré, Chairman of the Panel.

Deputy S.M. Brée of St. Clement:

Deputy Simon Brée, Vice Chairman of the Panel.

Senator S.C. Ferguson:

Senator Sarah Ferguson, member of the Panel.

Deputy K.C. Lewis of St. Saviour:

Deputy Kevin Lewis, Panel member.

The Dean of Jersey:

The Very Reverend Michael Keirle of Jersey.

Deputy J.A.N. Le Fondré:

Thank you very much. To open the hearing, perhaps if you want to take 5 minutes - it is up to you - you could briefly outline the written submission you made and perhaps any key points you wish to draw out of it. Also we are trying to focus on the draft law as relevant.

The Dean of Jersey:

Thank you very much, Deputy. I think my submission really covers a number of areas of concern and of clarity, and possibly correction with regard to some of the idiosyncrasies of the Church of England being the established church. I think I made 4 or 5 comments. My first one is with regard to some clarification which is asking that all religious officials should be required to consent to all matters relating to same sex marriage law. I just have a question over the clarity of that sentence. Perhaps we can explore that a little bit later. On page 5, section B, paragraph (4), my second comment was just a correction really. The amended law provides that while a religious organisation or official cannot be compelled to take any action the law does not prevent them from doing so in the event that they choose to. That is actually inaccurate with regard to Anglican clergy as Canon B31 defines marriage in a way that would not allow any Anglican clergy to opt in to conducting marriages of same sex. So that just needs a little bit of clarity, I think. I then make comments regarding some of the spiritual, moral and ethical issues that surround the Marriage Law. I think that has commonly been called a conscience clause. It is not a phrase I find particularly helpful. Maybe a tolerance clause or perhaps a balancing of rights clause might be a better phraseology but anyway in the whole area of protection of those who out of religious conviction or conscience feel that they cannot contribute in any way to the provision of same sex marriage. I am sure we will come on to that in due course. I have one small question with regard to the marriage of minors. Again, that is simply just a little bit of language that perhaps needs some clarification with regard to the urgency with which that might be undertaken. I am happy to point to the time and place in the document when that time comes. Then my final comments, one of which I think needs no further point really is with regard to marriage in special circumstances and in other places, the Dean's licence already allows provision for that. I do not think that needs any more clarity. Perhaps more importantly the schedule amendment of other acts, the solemnisation of marriage in paragraphs (8) and (9) where civil celebrants and humanist marriages are able to take place. I have some questions and concerns regarding the content of those marriages that perhaps we might like to explore. So it is really those key issues.

Deputy J.A.N. Le Fondré:

Okay. This may sound like a slightly silly question but it might help for the record, could you clarify who you represent?

The Dean of Jersey:

That is a very interesting question. I would quite like to know the answer myself really. I represent the Anglican Church in Jersey, that is my official role. However, the role of the Dean of course in the States is a wider brief really, representing faith groups - people of all faith and no faith - in the Island. I guess officially I am here on behalf of the Anglican Church, the Church of England in Jersey but there is a sense in which I share with my colleagues that we all work together and we are all a common purpose here in the mission of the Church of God. I represent a sort of wider brief of faith groups.

[11:45]

Deputy S.M. Brée:

Could I just seek a point of clarity? It is probably my lack of knowledge on this case, what is the difference between the Anglican Church and the Church of England?

The Dean of Jersey:

For all intents and purposes, none. The Anglican Church is the worldwide communion and the Church of England is the Anglican Church in the Church of England and in these Islands.

Deputy J.A.N. Le Fondré:

Perhaps I will ask, is there a difference between the Church of England and is there any expression of the Church of England in Jersey? If that makes sense?

The Dean of Jersey:

Sorry, could you clarify that?

Deputy J.A.N. Le Fondré:

Is there a distinction between the Church of England and the Church of England in Jersey in legal terms?

The Dean of Jersey:

Right, okay. Yes, in that the Canons of the Church of England in Jersey are slightly amended to take into account local differences. However, we are currently under alternative episcopal oversight but we do relate to the mainland church under the episcopal authority of a bishop.

Deputy J.A.N. Le Fondré:

We had a discussion, I think ... in the law there is reference to the rights of the Church of England as it is presently written - I will have to go and check that - and there was a discussion as to whether it should be the rights of the Church of England in Jersey.

The Dean of Jersey:

Yes, but the Church of England in Jersey is covered by the Canons of the Church of England in Jersey which stupidly I have not brought with me but they are available in the public domain.

Deputy J.A.N. Le Fondré:

I just want to check that. Okay, just sort of to pick up on general matters at the moment. There was a ... you might wish to comment on this. There was a comment made at an earlier public hearing, we were informed: "There is no such thing as a Christian view of marriage." We wondered if you might have a view on that statement?

The Dean of Jersey:

It is very interesting because if you chart the history of marriage, of course, marriage often took place at a public place like a Lychgate or a doorway or a church porch and the sort of romantic view is that the church then opened its door grabbed the couple, came in, and that is how the marriage came to be in the purview of the church. In terms of the legal position, there is a very clear understanding of marriage because it is stated, from an Anglican perspective, it is the union of man and woman for life. That is stated ... sorry, I do not have the Canons in front of me, which is irritating, but it is stated very clearly in there. Legally, as far as the Church of England is concerned, marriage is the union of one man and one woman in a lifelong union.

Deputy J.A.N. Le Fondré:

Thank you very much. Just touching on certain areas. On what is referred to as the quadruple lock, are you satisfied that the draft law as presently drafted contains adequate protections in the form of the quadruple lock for religious officials and organisations?

The Dean of Jersey:

Yes. One of the reasons that the quadruple lock originally came into being was when this was being discussed on the English mainland. Because, of course, the Anglican Church - or Church of England, same thing - is the established church, the Canons, which is the law of the Church of England are in fact the law of the land, as indeed they are here in Jersey. Because Canon Law states that marriage is between a man and a woman, when the legislation was produced to allow same sex marriage there were clearly some legal ramifications to that so the quadruple lock was put in place in order to ensure that the 2 competing systems there were able to co-exist and also to provide the opportunity for other Ministers from other denominations to opt in. So I ought to clarify that Church of England clergy cannot opt in because if we were to do so we would be breaking Canon Law and we would immediately be under the clergy discipline measure and would be suspended.

Deputy J.A.N. Le Fondré:

Do you have a view, and if so what is it, on the withdrawal of the Roman Catholic Church from providing civil marriage ceremonies apparently?

The Dean of Jersey:

I understand in my conversations with Monsignor Nick France that there is some discussion going on there. I do not know if they have formed a final view but I did understand after his meeting here that they would be seeking that. Going the route of what we might call a union civile, like the French system, a state marriage and then there would be a full Christian marriage, the sacrament of marriage as the Roman Catholics would call it. I do have a view. I am surprised, I think, I am saddened but I understand from the limited conversations I have had, mindful that we have all had flu so those conversations have been croaky phone calls. But I am mindful that the Roman Catholic Church is not the established church so they do not have the rights and privileges that the Church of England does but also that they wish to preserve the integrity of the sacrament of marriage as they see it. From my limited conversations I understand that that is the reason for that. Whether or not it comes to that, and they do go down that route, I would be interested to see. I am looking forward to a conversation with the Catholic Dean surrounding that, which we are due to have in 10 days' time.

Deputy J.A.N. Le Fondré:

Thank you very much.

Deputy S.M. Brée:

Dean, you have previously just stated that under Canon Law marriage is between, I believe you said, one man and one woman. Now, one of the areas we are looking at is the fact that under the amendments that have been lodged, part of the quadruple lock, so to speak, the no compulsion to solemnise marriage refers to gender or acquired gender under the Gender Recognition Act in Jersey. Legally speaking, when somebody goes through gender reassignment at the end of it they are provided a certificate by the court which legally states they are ... we will use the example a male to a female, so they are legally a female. So were a couple to come to the Church of England, they are legally a man and a woman and yet what is the church's view on that, because legally speaking they fulfil the criteria of Canon Law and yet it is specifically excluded within this no compulsion clause. What is the view of churches?

The Dean of Jersey:

The answer to that, Deputy, is I do not know the answer. The answer that I would give you is that I would need to take advice on that. I have not brushed up on gender assignment in terms of the

legal position and the legal position and the biological position in terms of birth, I am not entirely sure what the church's view is on that yet or whether there is a view on that. You will have to forgive me, I have not been able to do my homework on that.

Deputy S.M. Brée:

Part of the quadruple lock is to ensure that no religious official or organisation is forced to do something - and we will use the Church of England here - against Canon Law. But if Canon Law is silent on the matter as to legally speaking if someone is a man or a woman?

The Dean of Jersey:

There would probably be a legal precedent or a conversation that has taken place with ecclesiastical lawyers with regard to that but I cannot point to that.

Deputy S.M. Brée:

Would it be possible for you to clarify that?

The Dean of Jersey:

I would be more than happy to clarify that. Probably with 10 minutes on the internet I probably could but I would be very, very happy to clarify that situation.

Deputy J.A.N. Le Fondré:

Okay, moving on to ... maybe it is the definition of a tolerance clause in that area. So in your written submission you signalled that you supported implementing a tolerance clause, shall we say, which extend beyond religious officials and organisations to people to object to same sex marriage on the basis of their religious conviction. In general, do you still hold that view?

The Dean of Jersey:

In general. One of the complications of course is that we have had to make a submission very quickly and it was very shortly after my arrival so I was kind of finding my feet. It has been an interesting journey discussing this with colleagues and reflecting upon it. I think in my maiden speech in the Assembly I drew quite heavily on the report. I think I have given a copy to you.

Deputy J.A.N. Le Fondré:

For the record that is the ...

The Dean of Jersey:

Dr. James Orr, *Defending Religious Liberty*. I drew quite heavily on his work because I felt that his comments regarding that were quite helpful. But my feeling really is that it is the task of legislation

to accommodate contested loyalties surrounding religion and conscience and not to give public endorsement to one group while silencing another. In other words, in a democratic liberal society we should ensure that the freedom of speech and expression of one group should not happen at the expense of another and I touched upon that in my speech in the Assembly and in my written submission to you. How we do that is a very difficult road to navigate. I honestly do not know a single person with whom I have had a conversation who wants to block this legislation, in any form or shape or prevent individuals from exercising their personal freedoms. But I think we have to recognise that recent history has clearly shown that when provisions like this kick in, that we are talking about today, it is nearly always the faith voice that is silenced. Sometimes it is silenced quite brutally and I must say I have deep concerns about that. I think as I said in my speech that the democratic liberal society that we so value sometimes becomes a parody of that and, as I think I said, it becomes a "like me" liberal society which insists that we all share the same world view or suffer the consequences really. So when Christians express - just express - a voice that is different and express it from a faith perspective, they often find themselves in hot water. The illustration that I used in the Assembly, and I think it is still quite a helpful one really, was the case of Mr. Felix Ngole who made a comment on social media regarding a traditional conservative view of human sexuality. If you go and look at that up you might not like what he said but we have freedom of speech. I did not particularly like the way in which he said it to be honest but he made that comment on social media following an American clerk who was jailed because she refused to conduct same sex marriages. There was some discussion, as there often is on social media. He made a comment with regard to that and then was kicked off his university course at Sheffield University for expressing a view on social media that was nothing to do with the university whatsoever. Now, to my mind, a university is the one place a place where freedom of speech should be explored but I just felt that was fantastically unjust and really quite unreasonable. I think that is just one case. I would refer you to Dr. James Orr's article where he gives numerous cases in the judicial, the education, the healthcare sector, the childcare sector, the social work sectors in society where Christians have been disciplined, demoted, sacked and worse for expressing a view or living in accordance within a religious, spiritual, moral, ethical framework. Now, some would say, and I suspect some of my colleagues sitting here - and I know the J.E.A. (Jersey Evangelical Alliance) made a submission to you earlier - because of those cases that is the very reason that we ought to have a conscience clause. We did not need to travel very far to see the backlash that happened when people expressed freedom of speech on this subject matter and the vitriol that followed. In fact I was verbally abused on my way down here this morning, en route. So that tells you something of the nature of freedom of speech. But I think the point I am trying to say really is that with regard to a tolerance clause, a conscience clause, it really is about a matter of balancing rights. That the rights of freedom of speech and freedom of expression of one group are not given totally at the expense of another. Now, how we navigate that and get to that point I honestly do not know. I think that is a very difficult thing to do, I am very glad I am not a drafter of the law and are looking in your direction for that.

Interesting, one expression of a conversation that was made to me was by someone who said: "Well, the simplest thing really is to say that nobody should be compelled to sanction, promote or take part in any marriage regardless of the genders of the people getting married." That is a blanket clause. I thought that was an interesting, rather blunt, instrument.

[12:00]

It avoids the discrimination but how you would sort of weave that into law, I really do not know. But I have to say, on balance, that in terms of the balancing of rights it is often the Christian voice that is silenced when they express a view that is a traditional Christian view of marriage, which creates a counter reaction in popular culture or in society as a whole.

Deputy J.A.N. Le Fondré:

Okay, thank you. Just in terms of the various groups you represent, shall we say, is that view broadly speaking shared across everybody that you represent?

The Dean of Jersey:

That is a very interesting question because while I sit here as the Anglican Dean I have had a lot of conversation with people from various denominations and other faith groups. I would say that the vast majority of the conversations I have had have been those seeking some kind of conscience clause. One of the difficulties with the tolerance conscience clause balancing of rights is that the collateral damage is often the perception of discrimination. I think that is where this issue becomes really quite difficult. When a group of people who are seen to live in the framework of a spiritual, moral and ethical system, the collateral damage of trying to live within that system is that there is a perception of discrimination. I think that is where the point of challenge is, how we navigate that. However, I would also say that there has been correspondence with me, mostly verbal, where people have said to me: "We are delighted that this legislation is going through, it is about time. We are so pleased that there is now a mechanism where people who live in faithful loving relationships, regardless of their gender, are able to celebrate." There is a wide brief on that.

Deputy J.A.N. Le Fondré:

Just probing a little further around the tolerance clause area, it has also been suggested that such a clause could potentially be used in reversed, in other words to enable people to legitimately challenge people's religious beliefs. Is that a concern to you? How might that occur?

The Dean of Jersey:

That is something I may have brought up in the past. I think it really depends on how a conscience clause is worded. My understanding of those who are very specifically seeking a conscience clause,

it is a very narrow conscience clause with regard to marriage. So I suspect that in that case that turning this on its head will not happen. I think if there is a wider conscience clause that does have the potential to come back and bite people in faith groups. I am trying to think of an example and failing rapidly here. But I think there are potential situations, perhaps in the public arena, where ... I do not know, I am just trying to think of a stupid example really, the singing of carols at Christmas, for instance. If you have a conscience clause in place where you have no impact on others' beliefs that singing carols in public could offend people. So, you know, there are probably endless examples really where that might happen. I suspect in a small island like Jersey that that is not something that is going come to the fore, but there are always people who like to test cases, as we know, from the judicial examples that have happened.

Deputy J.A.N. Le Fondré:

Probably as an aside, I know in France, on the basis it is a secular state, there are traces where effectively the local council, the Mayor or whoever, Maire, has been taken or challenged by allowing a crib or Christmas decorations or something on public ground. I believe it has now been defined as not religious, but they are matters of culture or something?

The Dean of Jersey:

Yes, it is amazing they write it to fit the ... that is a good example, thank you, for helping me out of the hole there. I think that is a good example. The key to me in all of this is the balancing of rights and when that does not happen it is often the Christian voice that suffers.

Deputy J.A.N. Le Fondré:

Probing slightly deeper, I suppose, it is has also been suggested that, you know, conversely a conscience clause or a tolerance clause might enable people to discriminate on the grounds of sexuality. How would you think on that?

The Dean of Jersey:

I think that is what I touched on earlier about the interface where people are trying to live within a particular spiritual, more ethical framework, the collateral damage ... that is not an ideal phrase but the end result of that can be discrimination. I have some issues with that. I think if you have a business and you offer goods and services, I think if Christians are in that arena and they do not wish to promote same sex marriage, they maybe need to find more creative ways of saying no if they feel strongly about that. I have issues about discrimination against people and to my mind if you offer goods and services and you say to someone: "Because you are black I am not going to serve you", that is clearly discrimination. It is an absolute minefield.

Deputy J.A.N. Le Fondré:

Do you think it is possible then to ensure that any refusal is made on the basis of religious belief as opposed to prejudice?

The Dean of Jersey:

Well, I think that is where, if a tolerance clause can be found, which is a blanket clause, which is why I liked “no one can be prosecuted for refusing to be involved in any marriage whether it is between a man and a woman, a man and a man, a woman and woman”, rather solves that rather neatly. It is a little clumsy but it is an interesting idea. The Christian concept of love does not allow for prejudice and I would not support that.

Deputy J.A.N. Le Fondré:

I just wanted to pick up 2 or 3 points from as you have been talking, looking to my left and right to see if anyone has a question to come in on this area. Just some clarification, you made some reference to a “like me” culture, I think it was. I presume you mean like me, as in similar to me, not like me as in you are a nice person.

The Dean of Jersey:

No, I mean “like me” as in similar to me, as in you need to share my royal view in order for society to be liberal.

Deputy J.A.N. Le Fondré:

Okay. You made reference as well - in fact a lot of the examples - for example, the student ... you talked about somebody in the U.S. (United States) who had been jailed seemed to tie into issues around employment law; is that a fair comment?

The Dean of Jersey:

Yes, I think ... that is a very interesting question really, and that goes ... if you have read the Dr. James Orr article, he speaks of a phrase regarding reasonable accommodation. Now how we define that is a very interesting question. I am not sure I feel qualified to sort of put the parameters on that. But I think there are areas where reasonable accommodation can be made to take people out of the firing part, if you like, for reasons where they are trying to live within that framework that I mentioned, they find themselves at that interface of faith and conflict.

Deputy J.A.N. Le Fondré:

You can decline to comment on the next one because it is just something you mentioned. But you said you had a slight incident on the way into town today.

The Dean of Jersey:

Yes.

Deputy J.A.N. Le Fondré:

Would you like to clarify a little bit?

The Dean of Jersey:

No, because the language used is not repeatable here.

Deputy J.A.N. Le Fondré:

Okay.

The Dean of Jersey:

I was walking past and someone said to me: "Effing church, you are all hypocrites" as I walked by with my collar on.

Deputy J.A.N. Le Fondré:

It just helps sometimes to put something on it.

The Dean of Jersey:

Of course, that is true, we are all hypocrites, we are all human beings. No different to anybody else really.

Deputy S.M. Brée:

Dean, the problem we have, if you like, with any form of conscience clause or tolerance clause, as you prefer to call it, is that we already have discrimination laws in place, which you are not allowed to discriminate against somebody solely on the basis of their sexuality, gender, whether that be gender or acquired gender. Any conscience clause which would allow somebody to discriminate against somebody on the basis solely of their sexuality, i.e. a provider of goods and services, refuses to provide goods or services to a same sex marriage, that is discrimination, as defined under our current law. If one were to allow a conscience clause based on one's religious beliefs or religious convictions, you are therefore permitting discrimination to take place; would you not agree?

The Dean of Jersey:

I think I would go back to the comment I made earlier about part of the collateral damage of holding to a spiritual, ethical, moral framework is that you may be at odds with society. That is not necessarily something I would support in all areas but I think if you are basing it solely on their sexuality then there is a very clear legal definition that that is discrimination. Very interestingly, if you have seen the article by Peter Tatchell ...

Deputy J.A.N. Le Fondré:

My next question actually.

The Dean of Jersey:

Okay, I did print the thing out. Can I just have a moment to see if I can just ...

Deputy J.A.N. Le Fondré:

Shall I put the question and then once you find it ...

The Dean of Jersey:

I am keen to answer Deputy Brée's ... it must still be in here. Anyway, the point that Peter Tatchell is making is that an implied discrimination is not necessarily based upon their sexuality but on the political idea behind it, and I very reluctantly come to the cake bakers in Northern Ireland, because I am frankly rather tired of having that conversation. But I thought Peter Tatchell, which was a surprising voice, to be honest, rather bravely and courageously stepped back from the argument that he had made with regard to the Ashers, the cake which had "Support Gay Marriage" printed on it. He made a very clear distinction there - I wish I had it in front of me - between people's religious point of view and being compelled to support somebody else's political standpoint because one could argue that the nature of the text on the cake was political rather than with regard to human sexuality. I guess that depends how therefore you define political. But he suggested that it was an infringement of freedom to require a business to aid the promotion of an idea to which they conscientiously objected, which I thought was a very interesting point. Again, how you navigate that into a tolerance clause is not my job. His comment I think was: "Discrimination against people should be unlawful but not against an idea." That is quite a nuanced point really.

Deputy S.M. Brée:

The problem that lies with any tolerance clause or conscience clause is, if you like, the definition of what a religious belief or conviction is. Were one to be introduced then it could see occasions where people are taken to court to prove.

The Dean of Jersey:

It already has of course in other jurisdictions.

Deputy S.M. Brée:

I am referring in Jersey here rather than other jurisdictions. Because discrimination is discrimination, full stop, irrespective of your religious beliefs or your moral convictions; would you agree?

The Dean of Jersey:

In terms of an act against another person, I would agree with that. In terms of freedom of speech, I think people have the freedom to express their view.

Deputy S.M. Brée:

So would if, using the example of a baker who is perfectly prepared to provide wedding cakes to heterosexual couples, be right by saying: "It is against my convictions or beliefs to provide services to same sex couples." Is that not discrimination against an individual?

The Dean of Jersey:

Yes, I think that is discrimination against an individual and a cake baker might have a bit more wisdom to say: "I am really sorry, I am terribly busy at the moment. I have so many cakes to bake that I am unable to fulfil your order."

Deputy S.M. Brée:

But if you write into the law a conscience clause or a tolerance clause, as you are suggesting, then you are providing that particular baker with the legal right to refuse to provide goods or services purely on the basis of their beliefs or convictions.

The Dean of Jersey:

That is a wider conversation, moving away from marriage law really, is it not?

[12:15]

I think this really depends on if a tolerance clause was to be included where would it be lodged? Would it be lodged within the Marriage Law or would it be lodged within an equality or the Discrimination Law? But I think again this is about the balancing of rights of people to have a viewpoint. It all boils down to that, to my mind, that freedom of expression of speech should not be given to one at the expense of another, and you talked of this being tested in the courts. It has been tested in the courts time and time again in other jurisdictions, and time and time again a Christian voice is silenced. Now please do not hear me saying that that therefore means that I support discrimination, because I do not support discrimination against people. I have a considerable number of friends who are gay, who have been on the receiving end of the kind of verbal abuse that I was this morning. It is unpleasant and it is unkind. But equally there are a number of Christians, some of who are present in this room, who have also been on the receiving end of discrimination because of their religious viewpoint on a particular subject matter.

Deputy J.A.N. Le Fondré:

Probing a bit further but raising, I suppose, a point that has been made to us during the course of our work, is: why should at the moment churches and their officials be exempt from discrimination of these matters when their followers are not; apologies for the terminology there?

The Dean of Jersey:

I can only speak on behalf of the Church of England here and the reason that clergy are exempt is that were they not to be exempt it would be unlawful.

Deputy J.A.N. Le Fondré:

It is straight back to Canon Law.

The Dean of Jersey:

It is straight back to Canon Law that the law does not allow us, even those clergy who might be desirous to do weddings of people of the same sex. The law does not allow it.

Deputy J.A.N. Le Fondré:

Because one could argue, I imagine, that it is a commercial service because it is the use of a building and you provide a service in there for which you charge a fee. That is probably a very simplistic view.

The Dean of Jersey:

A very simplistic view and Canon Law would counter that by saying that any service taking place in ... sorry, I do not have the Canon in front of me. I can point you to the Canon. I might even be able to point you to the exact Canon ... let me see if I can just find it here.

Deputy J.A.N. Le Fondré:

Do not worry.

The Dean of Jersey:

There are so many notes.

Deputy J.A.N. Le Fondré:

I am sure we will track it down at some point.

The Dean of Jersey:

Here it is. I can provide you with it. Canon E14: "The church wardens and their assistants shall not suffer the church or chapel to be [and this is not a helpful word, it is an archaic word] profaned by any meeting therein for temporal objects inconsistent with the sanctity of the place." By law, Canon

Law would not allow that. I am happy to provide you with the references to Canon Law that impinge upon this.

Deputy J.A.N. Le Fondré:

The references would be interesting. Obviously a copy of the Canon Law is also in the Jersey Law.

The Dean of Jersey:

Indeed, yes. Stupidly not in the hands of the Dean.

Deputy J.A.N. Le Fondré:

That is fine.

Deputy K.C. Lewis:

As part of the quadruple lock, the draft law makes a provision to protect religious buildings and places which are routinely used for religious worship. Are you satisfied that the law, as presently drafted, provides adequate protection for these buildings?

The Dean of Jersey:

Yes, I think they are ... certainly in terms of the places of worship. I think there are some grey areas with regard to that and whether that is going to boil down to looking at the curtilage of the premises or not, I do not know. There may be some denominations who have halls that are occasionally rented out to the public. My understanding is that they would not be afforded protection if, for instance, a same sex couple sought to have their wedding reception in one of those halls; that would be an act of discrimination. Am I right in saying that, I think?

Deputy J.A.N. Le Fondré:

We have identified some anomalies, which I think we may discuss through ...

The Dean of Jersey:

So the answer to that question really is: "No, I am not satisfied" because I think there are some grey areas. In fact, I think the Hougue Bie may be one of those grey areas where I would need to seek some legal advice as to the nature of that chapel.

Deputy K.C. Lewis:

Yes, a supplementary question regarding places of worship which are not used routinely, like Hougue Bie or private chapels: would you be concerned if these places were not covered by the law?

The Dean of Jersey:

I would need to take some legal advice on that.

Deputy K.C. Lewis:

Do you think there is adequate protection for buildings owned by a religious organisation, which is not the usual place where villagers worship and sited outside the curtilage of a church, for instance, church halls?

The Dean of Jersey:

I think I might have answered that question already by saying I think there are some concerns that those who own buildings may find themselves at the receiving end of perceived discrimination if they refused to use it. There is more than one way to skin a cat here. There are various ways. For instance, in my last Parish I had a very, very large community centre and we made a blanket ruling that no parties would be allowed there. It might have had something to do with the fact that I lived about 15 yards from the windows where those parties took place. There are ways of covering yourself that you can use if you feel that out of conscience that that is not something that you could support. But I think that is down to the individual integrity of those concerned. I am not quite sure how the law would apply to that.

Deputy K.C. Lewis:

So can you comment as to how that can be resolved?

The Dean of Jersey:

Not an immediate comment, no, because I do not think there is a simple solution. Certainly, in terms of the Hougue Bie, the chapel in one of the castles, I think we just need to take some legal advice on that.

Senator S.C. Ferguson:

In St. Brelade's the church hall is across the road from the church.

The Dean of Jersey:

It is indeed, yes.

Senator S.C. Ferguson:

That is another one where perhaps you would want ...

The Dean of Jersey:

Well, I think we just need some clarification. I do not think this is a question of saying: "No, we are not going to do this or that." I just think we need some very clear clarification if the law is going to go forward as to what that means. What protection - it is such a terrible word "protection" - but what protection is offered to those organisations that hold religious buildings.

Senator S.C. Ferguson:

We really cannot do with all the rectors being hauled up before the church.

The Dean of Jersey:

No, and in fact they would immediately put into conflict, I think, with the Canon Law, so there does need to be a little bit of work done here to ensure that the law, as you have currently stated there, just encompasses ... again, I am speaking purely on behalf of the Church of England here. Other denominations, I think, would need to make their own comments on that. But frankly there is a point in saying if they own the building - and that is different for the Church of England, of course - then really it is up to them how that building is used, unless it is purely a commercial affair. In which case you are back to the whole goods and services thing.

Deputy S.M. Brée:

The use of spiritual and religious content in civil ceremonies is something that you raised in your written submission. Under Article 17, clauses (8) and (9), there seems to be a contradiction in there, which on the one hand does not permit prayers or any other religious worship or service be conducted and yet on the other hand, will permit some things be conducted. Just to confirm: you still believe that the law, as currently drafted, is not clear enough and does immediately present a contradiction?

The Dean of Jersey:

Yes, I think it is clumsy, if you do not mind me saying. Paragraphs (8) and (9) there on page 82 are really unhelpful. What it is boiling down to there, is that civil marriage celebrants are being asked to decide what is or is not religious content. That to my mind seemed a rather contradictory thing in itself really. If you are a civil celebrant, a non-religious celebration, but you are being asked to put ... you are being put in a position to decide what is and is not religious content. I have some issues with that.

Deputy S.M. Brée:

We have been told that the guidelines on what does constitute acceptable religious or references to hymn songs or chants, as they are called, is going to be determined by the Superintendent Registrar. Do you think that is the right person to determine what is religious content?

The Dean of Jersey:

I would hope that she would consult a wider group of people with regard to that. I have had an informal conversation with her already chatting over some of these things. It is a difficult one this because a hymn literally means “in praise of God”, so that is automatically of religious nature. If you include a reading from the Bible it is kind of hard to get away from the fact that that is the holy scriptures for Christians, the word of God, however you want to describe it. To my mind, I think we need a very simple distinction here. If you have opted for a civil ceremony the ceremony should be civil and should contain no content that may be deemed to be religious; even if it is slightly different. In terms of the vows, there is a rather unhelpful phrase there, I think: “Vows or statements of commitment by the persons to each other that make any reference to a religious nature, provided that any such vow or statement does not replicate any made in any religious marriage ceremony.” That is a very grey area and I think what this opens the door to is the possibility of quasi-religious ceremonies. I know the civil celebrants here, or I believe they are, self-employed or they work independently. I think there is an inevitable temptation that may come their way where they have a client who would like a little bit of this and a little bit of that and before you know it ... the Superintendent Registrar cannot go and monitor every single civil marriage that takes place, where a civil marriage can slip into a sort of quasi-religious ceremony. I think we need to keep the lines clear on that really.

Deputy S.M. Brée:

So you would prefer to see the law state that no religious content ...

The Dean of Jersey:

I would prefer paragraph (9) to be removed because I think it is extremely unhelpful. I think it is clumsy. I would prefer to keep the lines clear and simple. There are, as always, some exceptions to that. Some people have said to me: “Then well, would you therefore not allow a hymn tune to be played?” They may not sing the hymn but they have the hymn tune. Well, of course a lot of hymn tunes are to popular music anyway and indeed a lot of Christian hymns ... I mean we sang one in my last Parish that was to the tune of *Land of Hope and Glory*, so there is a sort of crossover here.

Deputy S.M. Brée:

I would use the example of the hymn *Jerusalem*.

The Dean of Jersey:

Yes, I thought you might. It is a very good example of the problem of what is religious and what is not. For many people *Jerusalem* is the unofficial anthem of England. It is sung quite raucously on many sort of sporting events and yet you would seek that to be excluded from use within a civil ceremony; is that correct? Because it is a hymn.

The Dean of Jersey:

I think *Jerusalem*, which of course is a poem written then produced ... I think the tune is better than the words. I think what people love about that hymn is the tune because it is magnificent. But William Blake was a fairly interesting character and the religious content of *Jerusalem* is ...

Deputy S.M. Brée:

Questionable.

The Dean of Jersey:

... slim to non-existent and you will know of course that some clergy have banned it entirely at weddings. So I find myself painted into a little bit of a corner here by ... there are popular songs, which perhaps have some origin in a bygone age that may reflect some religious content. I think *Jerusalem* is unique. There have been a lot of papers written about what does it all mean. I am still yet to discover what that is. Would I ban *Jerusalem*? Probably not, no.

Deputy S.M. Brée:

But you would seek further clarity within the law but also you would like to see statutory consultation by the Superintendent Registrar with yourself and other religious groups in the Island as to what may be permissible and what may not?

The Dean of Jersey:

Whether it is a statutory conversation or an informal conversation, I do not think really matters.

[12:30]

What I am asking for are clear lines between a civil ceremony and a religious ceremony. I think what the current draft law provides are grey areas that can be then expanded upon to produce a quasi-religious ceremony. One has to say that one only has to look at how funerals have developed as an example of how this could ... I have been to several civil or humanist funerals - sorry, that is not a dig at humanists - that have included the Lord's Prayer, that included hymns and I sit there thinking: "Hang on a minute. This is supposed to be a civil funeral here." So there is always going to be a temptation when you are sitting in front of a family at a vulnerable time or a couple at a joyous time to slip in content that they seek but they do not really want a religious ceremony but they want something to reflect upon that really. I think couples should have a clear choice. You choose a civil ceremony or you choose a religious spiritual ceremony.

Deputy J.A.N. Le Fondré:

I have got one question, just following up from that, and it is something we do have to check, we understand the reason that 17(9) has come in was because of an original decision by the States, possibly back in 2001, brought by the then - and I think it was the Tourism Committee - which was to widen up the contents presumably from the point of view of having people coming here to marry: "We are going to widen up the content."

The Dean of Jersey:

I think that answers the question itself really, does it not?

Deputy J.A.N. Le Fondré:

I think the question is, is that apparently the original drafting ... this was a submission we had in the previous hearing today, so that is why I am sounding slightly hesitant. The comment apparently is that the present law and the way it was drafted, in other words the law that is in existence now, not the one we are discussing, did not implement that decision properly. That is where apparently this was identified during the process of putting this law together and this is where this has come from.

The Dean of Jersey:

The (8) or (9)?

Deputy J.A.N. Le Fondré:

The (9), I think. I believe the basis of (8) is consistent with previous law. I have not checked that back yet. But I think (9) is some decision by the States made some time ago, well before any of our time, and that is what they are bringing in. I think one note we will have to do is just follow up on that and see exactly what was intended at the time. That is just really to clarify where we think it has come from.

The Dean of Jersey:

I just think some conversation needs to take place there, that there is not an opportunity for it to slip into something other than what it is.

Deputy S.M. Brée:

Could I just ask a question though? If you have 2 people of the same sex who wish to get married, they both hold religious beliefs, they obviously cannot get married within, at the moment, a religious building or officiate, so they cannot go through the religious ceremony ...

The Dean of Jersey:

Unless a Minister opts in.

Deputy S.M. Brée:

We will look at sort of the Church of England, which they cannot.

The Dean of Jersey:

Yes.

Deputy S.M. Brée:

But they have religious beliefs. Should they not be afforded the opportunity to reflect their religious beliefs in their civil ceremony?

The Dean of Jersey:

That is a very interesting question. I think in terms of clarity, no, I do not think so because it is a civil ceremony. That is not denying them the opportunity to express their love for each other in any way. It is just a civil ceremony. I think that is a real grey area.

Deputy S.M. Brée:

But they are not afforded the opportunity to have a religious ceremony by the Church of England therefore the only option they have available to them is a civil ceremony and yet the Church of England would seek to deny them the rights to express their religious beliefs in that ceremony.

The Dean of Jersey:

Sorry, Deputy, that is incorrect. That is not their only opportunity. They could choose to go to another denomination that does opt in. So if a Methodist Minister, for instance, was happy to opt in and take marriage of same sex couples there would be nothing to stand in the way of that couple going to a Methodist Minister to say: "Please will you take our wedding?"

Deputy S.M. Brée:

At the moment, as far as we are aware, the Methodist Church, certainly in Jersey, has not decided to opt in.

The Dean of Jersey:

Sorry, that was ... I was not pointing the finger at the Methodist Church. What I am saying is that ...

Deputy S.M. Brée:

By way of example, if there were.

The Dean of Jersey:

... if there is a denomination that opts in, whatever that denomination is, that they would be afforded the right to be married in that church.

Deputy S.M. Brée:

Are you aware of any denominations in Jersey that have elected to opt in?

The Dean of Jersey:

No, because it is not law yet.

Deputy S.M. Brée:

Once it becomes law?

The Dean of Jersey:

Well, unfortunately I am not a prophet. I cannot say ...

Deputy S.M. Brée:

Just in discussions.

The Dean of Jersey:

I cannot speak on behalf of other denominations. I am aware that there are individuals who are looking to opt in, yes.

Deputy S.M. Brée:

Right, thank you.

Deputy J.A.N. Le Fondré:

Any questions?

Deputy K.C. Lewis:

Just one. Obviously we have discussed the principles of marriage within the Church of England. What about if somebody or a same sex couple or somebody of transgender were married elsewhere, would that also exclude any kind of blessing?

The Dean of Jersey:

Do you mean blessing in the Anglican Church following that?

Deputy K.C. Lewis:

Yes.

The Dean of Jersey:

At the moment the law does not allow that. The Bishop's guidelines do not allow that and if clergy were to do that they would be subject to the clergy discipline measure.

Deputy J.A.N. Le Fondré:

Final question from me is just to understand, I think, accepting you are relatively new to the role, there is ... I do not know if you can speak for your predecessor or not, but what consultation have you, and if you can identify on your predecessor that would be helpful, participated over the last ... I am going to say 2 years, obviously the 2 years is not applicable to you directly - as the law has evolved?

The Dean of Jersey:

I cannot speak, I am afraid, for my predecessor at all. What I can say is that I know that he, Monsignor France and Reverend Graeme Halls ... has met with them regularly, as do I now with them, and that informal conversations took place there. I believe there was a consultation with the Chief Minister 2 years ago or so. I have a recollection of Monsignor France mentioning that. Since my arrival, 3 months ago, I have had a meeting in Cyril Le Marquand House where the law was explained to us. I have had an informal conversation in this room. I have had consultations with the J.E.A. prior to their submission ...

Deputy J.A.N. Le Fondré:

What I am talking about is the consultation between yourself and the Chief Minister's Department as being the people responsible, or the Chief Minister ...

The Dean of Jersey:

The only thing that I have attended in the last 3 months, I am afraid, was the meeting where Ruth Johnson was outlining the content of the draft law.

Deputy J.A.N. Le Fondré:

It was just prior to lodging, I assume.

The Dean of Jersey:

That was just prior to lodging, and that was only about 3 weeks after my arrival or something. So it has been a swift learning curve.

Deputy J.A.N. Le Fondré:

That concludes, you will be delighted to know, so thank you very much for your time. That concludes the hearing.

The Dean of Jersey:

Can I just say one thing?

Deputy J.A.N. Le Fondré:

Sorry, I was going to say: did you have anything else to add?

The Dean of Jersey:

What I want to say to you is thank you for including us in your consultations. In a different jurisdiction where I served the church was not formally consulted so it is very good that a voice is heard, however different those views are. I do not think they are that different. We are all seeking the right thing here in terms of within our own framework. I am just grateful that you have invited us to consult with you, and thank you for that.

Deputy J.A.N. Le Fondré:

No problem. That is what we are here for. Thank you very much. That concludes the hearing so therefore we will adjourn.

[12:38]