

STATES OF JERSEY

Education and Home Affairs Panel Draft Civil Partnership (Jersey) Law 201-

WEDNESDAY, 15th JUNE 2011

Panel:

Deputy R.G. Le Hérissier of St. Saviour (Chairman)

Deputy M. Tadier of St. Brelade

Deputy J.M. Maçon of St. Saviour

Witnesses:

The Very Reverend R.F. Key (The Dean of Jersey)

In attendance

Mr. M. Haden, Scrutiny Officer

[11:36]

Deputy R.G. Le Hérissier:

Okay, thank you and apologies from Deputy Pitman who unfortunately has been delayed by a family issue but he may be with us a little later. Thank you, Mr. Dean, for coming. As you know we did not quite observe this distinction, the in-principle has gone through the States, it did go some time ago so there have been developments in the European Court and places like that, but in regard to your good self we are obviously looking at the provisions or the non-provisions for the use of religious premises to solemnise partnerships. So, in order to kick it off and then my colleague Deputy Tadier who is leading on the content ... but could you tell us your position? I am sure you will distinguish between the position you reflect in your official role and how you reflect other ecclesiastical opinion on the Island.

The Dean of Jersey:

Goodness, I will have a go. Obviously I have spoken to the leaders of other denominations before coming here today and I think, with the exception of the Unitarian Church in the U.K. (United Kingdom), some liberal Jewish Synagogues and the Quaker Society of Friends, the position of the mainstream Christian denominations, and I think too the positions of other great world faiths, is that marriage is by definition between male and female. Most would say between one man and one woman though clearly some allow for more than one, and that therefore for us civil partnerships are exactly that. I can see there is a ... as a matter of social justice and I rather I think I said about this in the in-principle debate, it seems entirely right that people should be able to have privileges of particular relationships, should be able to leave things free of taxation and all of that, allow somebody to be their next of kin in many ways for perhaps medical decisions or what have you. I know you have not gone down this route in the legislation. I think what a number of folks hoped would happen, unlike the United Kingdom, is to differentiate and maintain the differentiation between civil partnerships and marriage. The prohibited degrees as they are called, the 2 sisters, 2 brothers, that kind of stuff would not be followed into civil partnerships. I think the general position would be we do not see any reason why you should not have a civil partnership between 2 sisters or what have you particularly ... I mean maybe the taxation is different here, but particularly in the U.K. I think our big thing would be to maintain the distinction between this as a civil and justice issue, and marriage as a central building block of society, and, as we would say, as a Christian

sacrament.

Deputy M. Tadier:

Can I ask about the ... you said something that I found slightly surprising, that you do not see a problem with civil partnerships between 2 sisters or 2 brothers. Can you go into more detail?

The Dean of Jersey:

Well, I think that so often the presuppositions - although often unspoken but certainly the presupposition in the English tabloids - is that civil partnership is about a relationship between gay people either male or female, and that has as part of that, its own sexual fulfilment. I think what a number of Christian denominations have said is that if this is about civil partnership, this is about nominating somebody as your next of kin, it is about being able to pass property without taxation, in other words, if it is definitely not gay marriage, which certainly was where the arguments started, at least in the U.K., then why should it not be? If it is not marriage what have the prohibited degrees got to do with it?

Deputy M. Tadier:

Yes, okay. But I would say that seems to trivialise for me what I would think most of those entering into civil partnerships would see civil partnerships as, because certainly if it was simply about passing on property to a next of kin that can be easily done with wills and with the engagement of lawyers but the reality of it is most civil partnership relationships will be presumably of a sexual nature, certainly of that kind of nature. I could ask the question for example, there is a presumption that marriage is also of a sexual nature in that is with 2 people who are amorously engaged, so why should 2 sisters and 2 brothers not be able to engage in marriage if they are, you know, in the church, a brother and a sister?

The Dean of Jersey:

Well, I think the difference is precisely... no, you have put your finger on it exactly, which is that as I hear you, Deputy, I cannot see the difference in what you are saying, between civil partnership and gay marriage, apart from different use of a couple of English words because in Christian tradition, Jewish tradition, Islamic tradition, Hindu tradition, marriage is used for lifelong commitment of a man and a woman, and therefore it says nothing about should whatever people's different positions on sexuality and its expression may be. This is saying, if you like, a civil partnership might be an apple and apples may or may not be thoroughly good things and we ought to legislate for them but they are not oranges. For the Christian church, marriage would be male and female and therefore if it is a marriage then the question has been asked: "So why are there prohibited degrees?" because the prohibited degrees legislation, which as you know goes back into church law to the Middle Ages, arose precisely out of the male female then. You are exactly right, the way in which our culture takes civil partnerships gives it exactly the meaning that you said, I would not disagree with you for a moment.

Deputy M. Tadier:

But if we stick with the fruit analogy, the way I look at it, certainly we have to look at things from the point of view of the States and as politicians, and I would argue the States would rather than saying an apple and an orange, would say we have got the Golden Delicious and a Cox's Pippin. They are both apples and in terms of the States we are looking at 2 apples. The problem is the church does not recognise one of these apples and says that we are going to recognise that apple but not the other apple.

The Dean of Jersey:

I think, yes, again you have put your finger on the fundamental divide, which would be that the traditional Christian churches and the other great world faiths, would say that unless it is a man and a woman whatever else it is - not making a comment about whatever the other is, is good, bad or indifferent - it is not marriage. That, I think is how we would across the board see it; that would not be a contentious thing within the churches.

Deputy M. Tadier:

We will move forward because I think that is established because I think we appreciate that is what the churches think, although it is not universal.

[11:45]

The next question is we are looking in particular at a couple of Articles here, which prevents the religious aspect taking part with the civil partnerships. So we are not saying civil partnerships are marriage. We recognise that the view of the church and religious community is diverse when it comes to civil partnerships, and that some denominations already recognise, or certainly want to endorse civil partnerships with a religious ceremony, whether that is a blessing.

The Dean of Jersey:

That would be different even within a denomination depending on which part of the world you are in.

Deputy M. Tadier:

Yes but can you give us any input on those views? Which denominations are there in Jersey which would currently be happy to perform a blessing of a civil partnership in church?

The Dean of Jersey:

The only ones that I am aware of, and I am very happy to realise my knowledge may not be correct, but the Society of Friends I understand would be happy for that to happen. If we had a Unitarian Church they might well be. That the Unitarians, just to be absolutely clear, is not same as United Reform. I know you know that but just for the benefit of any press coverage or anything. There might well be some individual ministers who in theory would be happy to do what you suggest but the denomination would prevent that. So, whatever the Church of England in Jersey might think, and I think the vast majority would take the traditional line, unless and until the general synod changed its mind then we could not anyway. Exactly the same in the Roman Catholic church, whatever Monsignor France might think or whatever, until the Pope and the College of Cardinals change their mind ... because that is part of the thing we are getting part of a larger worldwide community is that you do not necessarily make all your own decisions. I am not aware of any others who would be but I think I do want to say that, do Christian ministers minister pastorally to folks irrespective of sexual orientation and of relationships in which they are committed, and the answer is yes. If you are in hospital you are visited, if you are dying you get anointed and last rites or whatever is appropriate. So that it is not that, it is about ... Monsignor France put it to me like this, that it is about making sure that Christian marriage is preserved as the fundamental building block of society. That is pretty much verbatim.

Deputy R.G. Le Hérissier:

So the logic of that then is in a sense, which I know was causing difficulty to Monty earlier in the session, there has to be a distinction between a civil partnership and marriage in your opinion?

The Dean of Jersey:

Yes, it is. I think Jersey is a funny place with civil ... it is probably a bit off point in which case, Deputy, please shut me up but our law does not make sense on civil weddings and church weddings. The registrar told me the other day that if you are a hotel and the whatever it is room is licensed as an appropriate place, then you are not meant ever to have any prayers in that. Okay? Nobody has noticed that for centuries the Dean can issue a *Dispense Extraordinaire*, a special licence, which allows the priest to marry the couple at any time and in any place he judges to be convenient, whether that is the beach or a hotel room or sadly sometimes a hospice bed or anything else. So, we do not have ... even our laws on marriage, I think we just do not ask the question but, are they lined up exactly? No, they are not.

Deputy M. Tadier:

Well, let us go to the question in hand, really what I think we are trying to establish is that currently as the law is drafted with the inclusion of Article 3(5), which explicitly prohibits the use of any religious location or of any religious content. What we would argue is that this is binding the hands of the churches, saying that under no circumstances must any religious content or any religious association be performed. If it were to be taken out, it seems to us that there is still no obligation for any of the churches to perform any kind of religious ceremony with regard to civil partnerships but what it would do, it would permit those churches first of all, which would like to acknowledge civil partnerships insofar as carrying them out, it would allow them to do that. It would also allow for any subsequent changes in doctrine or in approach, which would come in the next few years, to be incorporated. So, our question is, would there be any objection from the churches to simply not have these clauses in there, to make it permissive rather than proscriptive.

Deputy J.M. Maçon:

Well, just to liberalise it, is it not, and then if there is any problem with it then it allows for the religious authority to say: "No."

The Dean of Jersey:

As I flew back from Southampton an hour or so ago I was trying to mull over my answer to this question, which was clearly coming in my mind. The honest practical answer, would there be objections if those clauses were removed, is that there would be and the strength of objection might vary depending on the priest or the denomination that you asked. My guess is that the strongest objections would be from my Roman Catholic colleagues. If I put all the priests on the Island, there would be a kind of sliding scale in the Church of England. There would not be absolutely one voice in that list because we disagree sometimes on things that ... that is just life.

Deputy M. Tadier:

On what would the objections be based? Let us take the Catholic one.

The Dean of Jersey:

The objection would be it is absolutely analogous, and I do not want to open this can of worms either, to the euthanasia debate. It is the slippery slope ethic. Should you make it possible? If you make it possible, at what stage does it become family pressure? At what stage down the line does it become the doctor's decision not the patients or whatever? Now, if you do not mind the parallel, and this is not an ethics seminar, there would be the thought that if you allow it then there will be pressure on churches and ministers to do it, therefore better to hold the line by not allowing it. So I am just relaying ...

Deputy M. Tadier:

Yes, but my question to the Roman Catholic in that sense would be, what business is it of theirs or what the concern is if there is what takes place let us say at the Circle of Friends?

The Dean of Jersey:

The Society of Friends.

Deputy M. Tadier:

The Society of Friends or at the Methodist church, why would they ... Let us use another example, let us say, for example, circumcision in Jersey probably only takes place within the Jewish community and if there is a Muslim community it would take place there. Now, let us say of course the Church of England, Catholics, do not practice circumcision so we would build into law that circumcision must not take place on any religious location because it is not something that is recognised by the Church of England. Now that would seem like a sledgehammer to crack a nut, it would seem like there was no nut to crack, if we excuse the clumsy analogy.

The Dean of Jersey:

No, Deputy, of course I accept the force of that argument. I think all I would say is that for most folks in and outside the churches there would be a huge difference between how the good covenant right of circumcision going back to Abraham, how that fits into society, and something as fundamental as marriage as a building block of society. So the argument would be entirely about protecting marriage. That would be ... we have had discussions, that is exactly where that is coming from. If you ask me personally as a general principle, I would probably line up with my Roman Catholic friends but it would not be the greatest hill to die on. Now, that is me as Bob the theologian as opposed to the Head of the Church of England or anything else, and that is nothing to do with my belief in marriage, which is absolutely this is a foundational thing, and if you were to ask me would I ever officiate at a civil partnership or whatever, the answer is no, for those reasons. It is that old thing about, you know, I might not agree with you but I defend your right to say it or think it or what have you. Now, what I would not want to be heard to be saying in any capacity, personal or professional, is that I see civil partnership as identical to marriage, equivalent to marriage or whatever because I do not and the churches do not, and the single biggest thing that we would all want you to hear is that whatever you put into legislation should not be seen in any way to diminish marriage.

Deputy M. Tadier:

Yes, okay, but could I put it lastly, simply I take that on board and I do not think this would diminish marriage because we are not dealing with marriage here but the bottom line is we have a clear choice here. We can either pass a law, which specifically prohibits those churches who would want to perform a civil partnership ceremony to do so without forcing those denominations who do not want to change their particular line on it. Or we can pass a law, which says to, let us say the liberal Jews, the Unitarians, possibly some Methodists but certainly the Quakers, you cannot perform civil partnerships, even if you want to, you cannot make an application to register such an event because there are certain individuals who may be in the minority within the religious community, which is in a minority in the Island possibly. That seems not logical. It seems that the former would be the correct step to take it politically.

The Dean of Jersey:

I think if you were to think about doing that my only response to that is I think you would be creating another illogicality unless you get the ecclesiastical and the civil law in one thing on civil marriages because what we are talking about is civil events and whether there can be any religious overtones. Now, I think were you to do as you suggest and remove the prohibition from religious parts of civil partnership, then to say that you cannot say prayers in the middle of a L'Horizon hotel civil wedding would look even more ridiculous, it seems to me.

Deputy M. Tadier:

We have touched on this earlier but it could well be that the State has to provide a carve out for same sex couple engaging in civil partnerships to allow religious content because the church will not allow their own religious content, they cannot have a church ceremony, and because marriage and civil partnerships are not the same it might appear on the surface discriminatory. It would be quite okay to allow religious content for civil partnerships where the State does not allow them for marriage because they do not have the option of going to a church for their official marriage.

The Dean of Jersey:

If you will allow me, I do not think that would quite work because the reasons that many couples decide to go for the hotel is nothing to do with declaring their agnosticism or anything else. It is about a very nice package in a very nice place with a lovely white ribbon round it and that is the deal. Perhaps in their desire to have the most fantastic day, which I thoroughly applaud and work very hard to make sure they have when I am ever involved in weddings. I agree it is absolutely true that there are couples who have that and then think: "Well, the registrar did their best but I could have done with a bit more and it was a shame we could not have had other things." Now, of course if they knew, and here I think the church has been very backward, if they knew that there is provision in the law of this land through the ecclesiastical court to allow marriages in certain

circumstances wheresoever the Dean decides is a fit and proper place, things might be a bit different. I am sorry, I do not want to give you another headache when you are just trying to sort this one out.

Deputy R.G. Le Hérissier:

We are going to wrap up.

The Dean of Jersey:

I am sorry I am putting ...

Deputy R.G. Le Hérissier:

No, not at all, Dean, sorry, that was not a criticism of you; it was a criticism of us I believe.

The Dean of Jersey:

It is entirely justified.

Deputy R.G. Le Hérissier:

Because we appreciate the fact that you have rushed here from the airport via David Place no doubt, so we thank you for that but it strikes me that you have moved the issue saying should there be an element of a religious ceremony within the context of a civil ceremony but of course another way of looking at it is that for those who wish to solemnise their union there should indeed be a separate religious ceremony, it is possible to do it that way. Is that something you would agree with?

The Dean of Jersey:

This is the sort of continental system, everybody goes to the Mairie first and then ...

[12:00]

Deputy R.G. Le Hérissier:

Yes.

The Dean of Jersey:

No, it would be a denial of our history where the church was conducting marriages long before the State thought about it and ministers, certainly Anglican ministers and I think others, when authorised are registrars in our right. So the registers I fill in are my registers. Sorry, it is not meant to be proprietorial I know it is very simply taking the history with it, no I do not, I think that is kind of doubling up. I have taken part in weddings like that in Holland, it just seems somewhat cumbersome, you were not really sure when the real marriage was. The State thought it was what happened in the town hall and everybody else including the couple thought it was what happened in the church.

Deputy R.G. Le Hérissier:

But do you think to save face and almost to get this ... we know the French operate this very logical distinction in their society that sometimes leads them into interesting dilemmas around the whole thing and so forth but do you think, in order to sort of preserve face for each of the institutions involved, in other words the secular state and the religious body, do you think that could be made workable?

The Dean of Jersey:

No, I think I would far sooner live with a little messy untidiness than the incredibly inflexible French model that you outline. I think the tradition of how we got our marriage laws and our marriage rights are just wonderfully tangled and that is how they are. I do not hear any great public clamour that: "Please can we go to a town hall first and then go to church afterwards?" I think you would be trying to do something that so far as I am aware nobody out there is asking for.

Deputy R.G. Le Hérissier:

Okay.

The Dean of Jersey:

In fact we could all drive on the right hand side of the road but why?

Deputy M. Tadier:

I think the conclusion is that certainly if civil partners wanted to have that religious connotation they would have to do exactly that. They would have to have their civil partnership conducted by the registrar then they would go to a willing church. So they have already got the inconvenience of having 2 services and 2 sets of expense.

The Dean of Jersey:

I think that is exactly where we have come full circle and it is probably a good place to end my input. For the faith communities, marriage is seen as different and that that is seen as ... well for the Roman Catholics for instance, it is seen as one of the 7 sacraments, and that whatever civil partnership is, it would not be thought of as that. Therefore, whatever you might do for a civil partnership is a matter for the State to decide, and as I say I think as a matter of social justice I do not have any problem with that at all. It is the protection of marriage as marriage. Would you forgive me, Deputy, I have to run to Government House?

Deputy R.G. Le Hérissier:

Okay, any further questions?

The Dean of Jersey:

You are very gracious.

Deputy R.G. Le Hérissier:

You do not wish to make any ... I am asking you at the right time, do you want to make any final point at all?

The Dean of Jersey:

You have allowed me to say everything I would have wanted to say and I am very grateful for that.

Deputy R.G. Le Hérissier:

Yes, thank you very much indeed it was very kind of you.