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# LANDMARK RULINGS IN JUDICIAL REVIEW OF THE SEXUAL ORIENTATION REGULATIONS

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In a landmark judgement which even Stonewall's *Pinknews* described as 'a victory for evangelical Christian activists,' the High Court has confirmed that the view that the practice of homosexuality is sinful is 'orthodox Christian belief' and 'worthy of recognition.'

Giving judgement at the High Court of Belfast in September 2007, following a judicial review of the Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006, Mr Justice Weatherup ruled that the manifestation of the orthodox Christian belief in question was entitled to protection under Article 9 of the European Convention on Human Rights, which governs freedom of thought, conscience and religion.

'Whether the belief is to be accepted or rejected is not the issue. The belief is a long-established part of the belief system of the world's major religions. This is not a belief that is unworthy of recognition. I am satisfied that Article 9 is engaged in the present case. The extent to which the manifestation of the belief may be limited is a different issue,' said Mr Justice Weatherup.

The judicial review had been sought by The Christian Institute and six other Christian organisations following the government's hasty imposition of SORs in Northern Ireland with effect from 1 January 2007.

At the High Court hearing in June, the Northern Ireland Human Rights Commission had acknowledged in evidence to the Court that a democratic society must accord protection to religious belief, but argued against the protection of any manifestation of a belief which involved discrimination against others. The judgement rejects this view.

The judge, in his 42-page judgement, also ruled that individuals who operate a commercial business, but who do not wish to supply their services in a homosexual conflict for conscience' sake, should have their cases judged on the basis of the Brockie case, from Canada. Brockie was a printer who refused to print notepaper for a gay rights organisation. The Ontario Superior Court of Justice said that a printer must not be required to 'print material of a nature that could reasonably

be considered to be in direct conflict with the core elements of his religious beliefs or creed.’ This was clarified in the Canadian court to mean that Mr Brockie would not be obliged to undertake a printing project containing material that conveyed a message proselytising and promoting the gay and lesbian lifestyle. If, on the other hand, the item to be printed was a directory of goods and services that might be of interest to the gay and lesbian community, that material might reasonably be held not to be in direct conflict with the core elements of Mr Brockie’s religious beliefs.

Although the Belfast judgement still leaves individual cases open to interpretation, the strong lead it gives will provide considerable protection for printers, photographers, confectioners and other service providers who might wish not to undertake commercial assignments in connection with civil partnership ceremonies in view of the conflict this would represent with their core religious beliefs.

In his judgement Mr Justice Weatherup has also clarified the extent to which churches will lose their exemption from the provisions of the Regulations if they contract with local authorities or other public agencies to provide services at public expense. There had been concern that the Regulations did not make it clear whether a contract with the State disqualified a religious body from all exemptions under the Regulations, or merely in connection with those activities which were specifically the subject of the public service contract. The judge has ruled that the Regulations only disqualify the religious body from exemption in respect of the contracted activity. The body will still benefit from exemption in respect of all its other functions.

It has also been established by Mr Justice Weatherup that a school curriculum is exempt from the scope of the Regulations, which means that there will be no legal requirement to include teaching about ‘homosexual families’ in the classroom.

Mr Justice Weatherup has quashed the harassment provisions in the Regulations. These provisions could have led to the mere declaration of the biblical teaching on homosexuality being regarded by a gay hearer as ‘violating his dignity’ or ‘creating a hostile environment’ and could have provided grounds for complaint and action.

The judge has, however, ruled that agencies providing services on behalf of the State, such as adoption or nursing home places, may have to choose between complying with the requirements of the State or realigning the manner in which their services can be provided.

The judge has left unresolved the issue of commercially-provided accommodation in hotels and guest-houses. Seeing the issues involved as needing to be judged on the basis of ‘proper balance between the respective interests,’ he declined to give a general verdict on whether it was permissible for a proprietor to insist on ‘married couples only,’ thus discriminating against both same-sex couples and unmarried heterosexual couples. This means that the implications of the Regulations will only be discovered in the light of individual cases coming before the civil court.

Although this judgement was based on a judicial review of the Northern Ireland Regulations, it will have significant implications for the way in which the similar Regulations in the rest of the UK are interpreted by the courts.

Rod Badams

Note:

*Article 9 of the European Convention on Human Rights, judged by Mr Justice Weatherup to be material to the judicial review sought by The Christian Institute, states as follows:*

#### **Article 9 – Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

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