



# Lawyers' Christian Fellowship Newsletter

www.lawyerschristianfellowship.org

JUNE 2010

## conscience and the christian lawyer

### ADVANCE NOTICE

**29 October 2010** we will have a dinner function with the St Thomas Moore Society. Professor Patrick Parkinson has agreed to be our speaker.

**4 December 2010** will be our annual end of year function.

### OUR NEW CHAIR

Dr Lindsay Stoddart is the new chair of the LCF.

Lindsay was a lawyer before training to be ordained as an Anglican minister and obtaining a Doctorate in Ministry from Fuller Theological Seminary and a Masters of Philosophy from the University of Sheffield.

He has served as the chair of two schools and on the boards of various organisations including as chair of Youthworks. He has served as Archdeacon to the Bishop of Wollongong and as Dean of St Davids Cathedral Hobart. He has now returned to Kells Lawyers as special counsel.

We welcome Lindsay to his new role.

In the UK there have been two very public cases concerning Christian employees who have acted in accordance with their conscience and refused to perform their duties as an employee. In one case the employee refused to process an application by a same sex couple for adoption. In the other a registrar refused to preside over a civil partnership under the law that recognises same sex relationships in the UK. The end result of both cases, after appeal, was the dismissal of the employee.

In this context Dr Michael Ovey a former barrister and presently principal of Oak Hill Theological College in the United Kingdom (and previously a speaker to the LCF) was invited to address the UK LCF on the topic of conscience and the Christian Lawyer. What follows is a report of that talk followed by a short postscript by the Chair of the LCF UK John Scriven.

Recent issues in the public eye should prompt Christian lawyers to consider what and whom they choose to obey. Increasingly, the system of law in the UK is moving away from its Christian foundations to adopt a secular post-modern creed where Christians are marginalised and persecuted. Dr Mike Ovey, principal of Oakhill Theological College in north London, recently gave a perceptive analysis of how Christian lawyers should approach questions of conscience and how they can avoid the paralysis and inertia that can stop any action at all.

### RENEWAL

**Membership  
renewals for 2010 are now due.**

**Please complete the attached form and  
return it with your  
payment.**

We need to be alert to the shift within the law which now means that many, both doctors and lawyers, are facing challenges in the area of conscience more so in this generation than previously.

Dr Ovey analysed this issue in three ways:

- Comparing law with another profession where significant changes had occurred;
- Considering the division between public/ private lives; and
- Assessing the argument that the ends justify the means.

### **Comparison with the Church of England**

As an Anglican priest in the tradition of Cranmer, Latimer and Ridley, Dr Ovey himself struggles with the current difficulties within the Church of England on issues such as same sex relationships and the ordination of bishops. Some could argue that those who disagreed with the direction taken by the Church of England could always leave.

By way of comparison, Dr Ovey suggested that Christian lawyers may face the same dilemma when feeling they can no longer uphold and practice the law of the land when it requires them to act against their conscience.

In these situations, Dr Ovey suggested three points of reference all of which must be informed by the gospel of Jesus Christ. These are compromise, contention and charity.

### **Compromise, contention and charity**

There are issues upon which it may be appropriate to compromise on when they are not gospel issues. In contrast, gospel issues should not be compromised so that there are times when a Christian must contend for the gospel since not to do so would be a betrayal of the Lord Jesus.

Additionally, there are occasions when we should be more charitable towards fellow Christians where we disagree with their views. Dr Ovey reminded us that the apostle Paul himself was charitable towards those who disagreed with him about matters such as diet. Meditating on these three points may help an Anglican priest who believed in the gospel of Jesus Christ as Lord as revealed in the Bible to remain within the Church of England denomination.

### **Avoiding paralysis**

However, Dr Ovey cautioned that there are hard lessons to learn from remaining within the Church of England. Christians should not expect unanimity amongst evangelicals. If Christians require unity before acting, then it is probable, Dr Ovey warned, that they would never act. Furthermore, Christians must be aware of becoming the well known frog in the kettle who doesn't notice the water in the kettle heating up because it

happens so gradually. The frog becomes acclimatised to the shifting change of temperature so is unable to discern the significant cultural changes that are actually happening to him until it is too late. The fear is that Christian lawyers will not identify the cultural shift and, like the frog, will leave it too late.

### **Public or private?**

In moving to the second main issue in his analysis, Dr Ovey critiqued the false distinction between an individual's private and public life. This apparent sharp divide is accentuated by the lives of many in London who commute to work thus putting physical distance between their roles at home and at work. Moreover, lawyers like other professionals are required to be objective and dispassionate at work in order to comply with their ethical code of behaviour. Having different social circles and different roles helps to create the fiction that Christian lawyers have a private or personal existence away from work but a professional public existence at work.

These two lives mix infrequently if at all. Dr Ovey emphasised that, as Christians, there must be shared values between both these lives – the private and public. We can find ourselves in all sorts of contradictions when we operate in reliance on different codes of conscience, obedience and ethics across the private and public lives we lead.

Furthermore, the distinction between public and private breaks down because God made individuals as whole people and not as fragments. We should behave consistently whether at home or work.

### **Collectivised civics**

The public space has expanded in recent years to include more and more areas traditionally seen as private. The state now has the legal right to interfere in a person's expression of opinion such as how they provide goods and services due to the recently passed Sexual Orientation Regulations. Such a change would have been unthinkable 40 years ago. Changes such as this install anti-Christian values and are part of the ideological dimension now shaping our social arrangements in private and public.

Dr Ovey identified the system we now live under as one based on collectivised civics, the advent of which has pushed conscience questions to the fore because collectivised civics is anti-Christian.

### **The model of Daniel**

The model the Bible gives us of a person operating in these circumstances can be found in Daniel, a civil servant. He had to consider whom to obey and when. Dr Ovey explained that Daniel and his friends had been carried off to Babylon by King Nebuchadnezzar and forcibly enrolled into the king's service. Daniel had been given a new name, new clothes and been re-

*(Continued on page 3)*

quired to study Babylonian myths rather than the Jewish Torah.

One by one, each area of Daniel's life was controlled by Nebuchadnezzar including being provided with food to eat from the king's table. This type of control over every area of someone's life is similar to the total submission people exhibit when enchanted.

Dr Ovey pointed to the power of enchantment that the children Jill and Eustace experience in CS Lewis' 'The Silver Chair' when the Witch of the Underworld seeks to persuade them that there is no such thing as Narnia, nor any other world but hers. However, for Jill and Eustace, as for Daniel, this is not reality. Daniel courageously refuses to assimilate and resolves not to eat King Nebuchadnezzar's food. Like Daniel, we risk a similar tendency to be assimilated. Would we as Christian lawyers be able to spot if we are becoming assimilated to the culture around us?

If our secular anti-Christian legal system suggested that a gospel preacher had contravened that system, would we go ahead and prosecute? Or would we have the courage to stand up and refuse? Daniel provided an explanation to King Nebuchadnezzar (in Daniel chapter 2) of the dream the king had which establishes the reality that the Lord God is in control and orders the world. Despite what Nebuchadnezzar seeks to do, God sets up kings and deposes them. This is most visibly demonstrated at the end of Daniel chapter 4 when the king of Babylon falls from power and is humbled.

Dr Ovey reminded us that this is the reality for our day and age – that God is in control and orders all. The state is the servant of God, a truth echoed in the teaching of Romans 13. Is there a point where a state is de-legitimated? Would one bad law de-legitimate a state? What are the lines that we as Christians should draw?

Elsewhere in the book of Daniel, Shadrach, Meshach and Abednego made the decision to disobey a royal decree and not worship an image of gold since they served the living God. They faced the consequences, trusting that God had the power to save them from their punishment. Such was their resolve not to serve idols that they trusted the Lord God even if God chose not to rescue them from the blazing furnace. Why were they and Daniel right to disobey the king's decree? Could it be said that the state had at that point interfered excessively into the private sphere? These Israelite men chose to disobey the secular law because the secular law required them to worship an idol. This was a clear interference with their covenant obligations with the Sovereign God. Some laws then surely must be disobeyed.

### Ends and Means

Dr Ovey examined whether it is true to argue that the ends can justify the means. Should Christians ever do harm so that good results?

Is it better to have Christian judges even though they preside over bad laws? Christians must identify those issues where the Bible sets out clear teaching e.g. adultery. These revealed areas can be contrasted with those areas of discretion where Christians must use conscience to reason consequentially. But Christians must not confuse the two. Any discretionary thinking must always be shaped by the Bible otherwise there is a danger of moving away from Biblical thinking. In considering this area, we should remember the points of compromise – for the gospel's sake, contention – for those areas where we must contend, and compassion – for handling disagreements with other Christians.

### LCF UK Chairman's Comments

*We are very grateful for Mike Ovey's contribution in this area. One of the elements of the Vision of the Fellowship is to support and encourage each other in being godly lawyers. Some issues may be matters of conscience where Christians may differ, but genuine conscience based on Christian belief should be respected. However, there may be courses of action in which Christians should not take part. During questions Mike was asked whether the decision of Lilian Ladele, the Registrar, to refuse to preside over the formation of civil partnerships was one in which there was a legitimate discretion for Christians to disagree. He was also asked about the decision of a practitioner to refuse a case on the basis that to take it would require the practitioner to assist a same sex couple to settle in the UK and continue their sexual relationship. Mike considered that in both cases the Christian should not act.*

A link to the audio of Dr Ovey's talk (and several other talks in the series) is available on the LCF website.

### LEGAL UPDATE

#### Change to Victorian Discrimination legislation

Victoria's new Equal Opportunity Act 2010 has commenced. While not directly relevant to members in NSW it does include some differently drafted (to NSW Anti-Discrimination Act s.56) religious belief exemptions (some of which already existed in the predecessor Act) that might become a model for future amendments in other states. Whether they are given a broader effect will remain to be seen.

#### 81 Definition of religious body

*For the purposes of sections 82 and 83, **religious body** means—*

*(a) a body established for a religious purpose; or*

*(b) an entity that establishes, or directs, controls or administers, an educational or other charitable entity that is intended to be, and is, conducted in accordance with religious doctrines, beliefs or principles.*

*(Continued on page 4)*

## 82 Religious bodies

(1) Nothing in Part 4 applies to—

(a) the ordination or appointment of priests, ministers of religion or members of a religious order; or

(b) the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order; or

(c) the selection or appointment of people to perform functions in relation to, or otherwise participate in, any religious observance or practice.

(2) Nothing in Part 4 applies to anything done (except in relation to employment) on the basis of a person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity by a religious body that—

(a) conforms with the doctrines, beliefs or principles of the religion; or

(b) is reasonably necessary to avoid injury to the religious sensitivities of adherents of the religion.

(3) Nothing in Part 4 applies to anything done in relation to the employment of a person by a religious body where—

(a) conformity with the doctrines, beliefs or principles of the religion is an inherent requirement of the particular position; and

(b) the person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity means that he or she does not meet that inherent requirement.

(4) The nature of the religious body and the religious doctrines, beliefs or principles in accordance with which it is conducted must be taken into account in determining what is an inherent requirement for the purposes of subsection (3).

## 83 Religious schools

(1) This section applies to a person or body, including a religious body, that establishes, directs, controls, administers or is an educational institution that is, or is to be, conducted in accordance with religious doctrines, beliefs or principles.

(2) Nothing in Part 4 applies to anything done (except in relation to employment) on the basis of a person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity by a person or body to which this section applies in the course of establishing, directing, controlling or administering the educational institution that—

(a) conforms with the doctrines, beliefs or principles of the religion; or

(b) is reasonably necessary to avoid injury to the religious sensitivities of adherents of the religion.

(3) Nothing in Part 4 applies to anything done in relation to the employment of a person by a person or body to which this section applies where—

(a) conformity with the doctrines, beliefs or principles of the religion is an inherent requirement of the particular position; and

(b) the person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity means that he or she does not meet that inherent requirement.

(4) The nature of the educational institution and the religious doctrines, beliefs or principles in accordance with which it is conducted must be taken into account in determining what is an inherent requirement for the purposes of subsection (3).

## 84 Religious beliefs or principles

Nothing in Part 4 applies to discrimination by a person against another person on the basis of that person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity if the discrimination is reasonably necessary for the first person to comply with the doctrines, beliefs or principles of their religion

The definition of religious belief still defies belief or unbelief as the case may be:

religious belief or activity means—

- (a) holding or not holding a lawful religious belief or view;
- (b) engaging in, not engaging in or refusing to engage in a lawful religious activity;

Of concern is the requirement that conformity with the doctrines etc must be "an inherent requirement of the particular position" for the exemption to apply. What positions will fall within this inherent requirement exemption is no doubt going to be resolved in the context of litigation. For those advising national organisations that as a policy employ Christian staff in Victoria consideration will need to be given as to whether adherence to a particular religious belief is an inherent requirement of the position and what documentation is going to be required to support this contention.