



Global Developments in Religious Freedom and Equal Treatment

March 2015

Dear Friends:

Welcome to the fifth issue of the International Network of Civil Liberties Organizations' (INCLLO) quarterly newsletter, *Global Developments in Religious Freedom and Equal Treatment*. This newsletter highlights recent international developments, including cases and legislation, concerning religious freedom, equal treatment, and the intersection of the two.

Already, the year is off to a brisk start. Here are a few brief highlights from this quarter's issue: A legal storm is brewing in Canada over whether law societies must recognize degrees awarded from religious law schools that ban same-sex partnerships; Ireland is considering legislative reforms to prevent religious schools from discriminating on the basis of sexual orientation, as well as having a referendum on same-sex marriage; and the US Supreme Court held that prison officials could not prevent a Muslim prisoner from growing a half-inch beard in accordance with his religious beliefs.

As always, please note that this newsletter does not purport to be comprehensive or definitive. Instead, it is our best effort to identify and characterize the international legal developments in this arena. To provide the fullest possible view of relevant developments, we include both current cases and cases of particular significance from recent years. Please feel free to alert us to developments you think should be included in future issues of INCLLO's newsletter.

If there is someone you think would benefit from this newsletter or if you would prefer not to receive future issues, please contact Kelsey Townsend at INCLLOnewsletter@aclu.org.

Best,
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About INCLO: The International Network of Civil Liberties Organizations (INCLO) is a group of civil liberties and human rights organizations committed to addressing, among other issues, questions of religious freedom and equal treatment. INCLO's members include: American Civil Liberties Union, Association for Civil Rights in Israel, Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), Egyptian Initiative for Personal Rights, Hungarian Civil Liberties Union, Irish Council for Civil Liberties, Kenya Human Rights Commission, Legal Resources Centre (South Africa), and Liberty (United Kingdom).

Religious Freedom & LGBT Rights

Marriage & Family

Ireland: On May 22, Ireland will hold a [referendum](#) on whether to legalize marriage for same-sex couples. Currently, same-sex couples in Ireland can enter into civil partnerships, which confer rights and responsibilities similar but not equal to marriage. Recent polls suggest that roughly 70% of the public supports same-sex marriage. INCLO member ICCL is playing a leading role in the campaign to pass the referendum.

On January 21, 2015, the Irish government [announced](#) plans to amend the Children and Family Relationships Bill to extend full adoption rights to cohabiting couples and those in civil partnerships. Under current Irish law, children may be adopted only by married couples or single applicants, making it impossible for a same-sex couple to jointly adopt. The government hopes to pass the reform ahead of Ireland's [referendum on same-sex marriage](#).

United States: On April 28, the U.S. Supreme Court [will hear](#) oral arguments in four consolidated cases addressing marriage for same-sex couples. The Court granted review on two discrete questions: (1) whether the Constitution requires states to license a marriage between two people of the same sex; and (2) whether the Constitution requires states to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state. INCLO member ACLU represents plaintiffs in [two](#) of the four cases before the Court. INCLO members CELS, CCLA, LRC and Liberty joined in a friend-of-the-court brief that highlights the lessons and perspectives from other countries affording marriage for same-sex couples.

Services & Public Accommodations

Canada: In [Trinity Western University v. Nova Scotia Barristers' Society](#), the Nova Scotia Supreme Court (the provincial trial court) ruled that the Nova Scotia Barrister's Society (NSBS), the regulatory body for lawyers in that province, may not refuse to recognize law degrees issued by Trinity Western University (TWU), a private Christian university in British Columbia. The NSBS had decided that it would recognize law degrees from TWU only if the school changed its student conduct policy, which prohibits sexual intimacy outside of "traditional marriage." The Nova Scotia Supreme Court ruled that the NSBS has jurisdiction to protect the public interest in the practice of law in the province but not to regulate a law school. NSBS thus lacked the authority to deny recognition to degrees from TWU absent a change to its policy. The court

further held that, in making its decision, the NSBS had not appropriately balanced equality concerns with freedom of religion. The NSBS has [announced](#) that it will appeal the court's ruling.

Litigation involving TWU continues apace in [other provinces](#). In June 2015, an Ontario court will hear TWU's challenge to a similar denial of recognition by the Law Society of Upper Canada. And, in British Columbia, there is also litigation challenging a similar decision of the Law Society of British Columbia to refuse to recognize those degrees.

United Kingdom: On March 26 and 27, a court [will hear](#) a case brought by the Equality Commission for Northern Ireland against a bakery that refused to serve a customer seeking a cake to mark the International Day Against Homophobia and Transphobia. As reported in our December 2014 issue, the customer had asked for a cake featuring the slogan "support gay marriage" together with a picture of Bert and Ernie from the children's show *Sesame Street*. The family-owned bakery asserts that it refused the cake order because it was "at odds" with the company's Christian beliefs and maintains that it has acted lawfully.

On February 27, public [consultation](#) closed regarding a proposed amendment to Northern Ireland's Equality Act to allow businesses and service providers to engage in sexual orientation discrimination on religious grounds. The proposed amendment, which was drawn up in the wake of the bakery dispute described above, would state that the Equality Act's ban on discrimination based on sexual orientation does not prohibit businesses or service providers from restricting the provision of goods, facilities, and services "so as to avoid endorsing, promoting or facilitating behavior or beliefs which conflict with [their] strongly held convictions." More than [148,000 people](#) have signed a petition against the proposed amendment. Sinn Fein and the Social Democratic and Labour Party (SDLP) have said that they will block the bill when it comes before the Northern Ireland Assembly.

The European Court of Human Rights has received an application from a case originating in Wales about whether guesthouse owners may deny service to same-sex couples on the basis of religion. Jeff and Sue Green, who run a 13 bed guesthouse in Wales, filed the challenge after the UK's Equality & Human Rights Commission informed them that their policy of providing rooms with double beds only to married couples constituted unlawful discrimination on the grounds of sexual orientation. This case comes after a unanimous UK Supreme Court [decision in a separate case, where the Court](#) ruled that any burden on the religious rights of guesthouse owners is justifiable and proportionate in light of the need to protect others against discrimination.

United States: On February 18, a Washington State judge ruled in [Ingersoll v. Arlene's Flowers](#) that a flower shop impermissibly discriminated against a same-sex couple by refusing to provide flowers for their wedding. Both the couple and the Washington Attorney General sued the florist for violating Washington's anti-discrimination and consumer protection statutes. The court held that the refusal to provide flowers for the same-sex wedding violated the statutes and that the florist did not have a constitutional right to ignore the law simply because it went against her religious beliefs. The florist is appealing the court's ruling. INCLO member ACLU represented the couple in the proceedings. This is the most recent in a series of rulings in the United States rejecting religious motivation as a defense to discrimination claims brought by same-sex couples.

[Employment](#)

Ireland: The Justice and Equality Minister of Ireland has announced [plans](#) to amend the Employment Equality Act to prohibit religious schools from discriminating against LGBT teachers. Currently, § 37 of the Act allows religious, education, and medical institutions to discriminate in employment “where it is reasonable to do so in order to maintain the religious ethos of the institution.”

Other

Egypt: An Egyptian court has [acquitted](#) all 27 defendants charged after police raided a bathhouse in central Cairo. The court cited insufficient clarity in the case papers and the forensic department’s report. The police arrested the men on suspicion of “debauchery” – a charge that has been used against gay people in Egypt extensively—and accused them of organizing same-sex orgies. The prosecution has ordered an appeal. The defendants, meanwhile, have indicated their intention to bring defamation charges against Egyptian journalist Mona Iraqi, who led police to the bathhouse, as well as the owner of the television network that broadcasts her show. In December 2014, INCLO member EIPR [reported](#) that at least 150 individuals have been arrested on debauchery charges in the last 18 months

Kenya: In August 2014, Kenya’s Republican Liberty Party [introduced](#) a bill that would impose life imprisonment on anyone convicted of engaging same-sex sexual activity. The bill, which resembles [legislation](#) in Uganda, has received strong support from many of Kenya’s religious leaders. INCLO member KHRC will soon publish a report on how religious leaders and institutions view same-sex sexuality and gender nonconformity. Among other conclusions, the study found that 63.9% of religious leaders in Kenya felt that their religious views supported criminalization of same-sex sexual activity; 30.2% felt that their religious views did not support criminalization; and about 5% did not know whether their religious views support criminalization.

South Africa: On the December 3, 2014, South Africa’s Western Cape High Court handed down judgment in [Makumba v Minister of Home Affairs and Others](#), ordering the Department of Home Affairs to reconsider the asylum application of a Malawian woman who was assaulted and abused when her employer, family, and community members found out that she was a lesbian. Malawi, a majority Christian country with a significant Muslim minority, has a significant record of religiously-motivated persecution against LGBT individuals. A moratorium on enforcement of laws criminalizing same-sex activity was lifted three days after it was announced in 2010, in light of strong opposition by the county’s Council of Churches. INCLO member LRC represented Ms. Makumba in the case.

Religious Freedom & Women’s Rights

Access to Abortion

United Kingdom: The High Court in Belfast has [granted](#) the Northern Ireland Human Rights Commission leave to pursue judicial review of abortion law in Northern Ireland. The Human Rights Commission is seeking a change that would allow abortion in cases of rape, incest, or “serious malformation” of a fetus. Currently, abortion is legal in Northern Ireland only where there is either a risk to the woman’s life or a risk of serious or permanent damage to her physical or mental health. The case has been listed for a three-day hearing in June.

New Zealand: The Abortion Law Reform Association of New Zealand has created a database known as [My Decision](#) that lists health care professionals and organizations that will not provide or refer for abortion care and/or contraception services. The database includes the name of the individual or organization that refuses to provide care, the region in which they operate, and their professional title. Right to Life New Zealand [condemned](#) the database, claiming that it is meant to “name and shame” and that “[c]onscientious objection is a fundamental right and one that must be preserved if we are to continue to live in a free and civil society.”

International: Last fall, the Center for Reproductive Rights released a report entitled [Conscientious Objection and Reproductive Rights: International Human Rights Standards](#) (Spanish version available [here](#)). The report analyzes the various human rights standards that govern conscientious objection in the reproductive health care context, as compared with the human rights standards that govern conscientious objection to military service. The report concludes that, because conscientious objection in the reproductive health care context can impose significant harm on third-parties (i.e., patients), the conscientious objection right should be more narrowly circumscribed in the reproductive health care context than elsewhere.

[Access to Contraception](#)

Canada: Following complaints last year about an Ottawa walk-in clinic that refused on religious grounds to provide a woman with birth control, and as part of a policy review process, the Ontario College of Physicians and Surgeons voted earlier this month to update its professional and human rights policy. The updated policy requires doctors who are unwilling to provide certain forms of medical care (such as prescriptions for contraception) to: (1) refer patients to a “non-objecting, available, and accessible” physician; and (2) provide care themselves in cases of medical emergency. Doctors who violate the policy could face disciplinary action. The Christian Medical and Dental Society of Canada, the Canadian Federation of Catholic Physicians’ Societies, and five individual doctors have [filed](#) a notice of application for judicial review in Ontario’s Superior Court of Justice, alleging that the College’s updated policy violates their rights to freedom of conscience and freedom of religion. They maintain that the policy’s “effective referral” requirement may prove unconscionable for some doctors, and insist that refusing to provide certain procedures or medications does not violate the rights of patients and does not amount to discrimination.

United States: As reported previously, the U.S. Supreme Court held in [Burwell v. Hobby Lobby](#) that a federal rule requiring insurance to cover contraception impermissibly burdened the religious rights of closely held for-profit corporations that objected to providing coverage. (A closely held corporation is, loosely speaking, one whose stock is not freely traded and is held by a relatively small number of shareholders.)

Religiously affiliated nonprofit organizations continue to object to rules governing them concerning insurance for contraception. Under an accommodation now in place, religiously affiliated non-profit organizations that object to insurance coverage for contraception can certify their objection to their insurers, third-party administrators, or the federal government; the insurer or third-party administrator would then arrange and pay for the contraceptive coverage separately.

The accommodation is being challenged, as requiring organizations to facilitate contraceptive coverage in violation of their religious beliefs. To date, all four federal appeals courts to have considered the issue – the Third, Sixth, Seventh, and D.C. Circuits – have [rejected](#) the challenges. The US Supreme Court recently vacated the Seventh Circuit’s decision in [University](#)

[of Notre Dame v. Burwell](#), which was issued before the Supreme Court's decision in *Hobby Lobby*, and ordered the appeals court to reconsider the case in light of *Hobby Lobby*. The Michigan Catholic Conference has asked the Supreme Court for full review of the Sixth Circuit's decision in [Michigan Catholic Conference v. Burwell](#). Six courts of appeals have or soon will hear arguments in cases challenging the new rule. INCLC member ACLU joined friend-of-the-court briefs in several of these cases.

Other

Ireland: On February 10, the Ireland High Court [heard arguments](#) in a case where a woman is seeking damages from a hospital that performed a symphysiotomy on her twelve days before the birth of her child. As discussed in our last issue, symphysiotomy is a surgical procedure that was once used to facilitate a vaginal birth by severing one of the main pelvic joints and unhinging the pelvis. The practice is alleged to have been carried out on approximately 1,500 women and girls in Ireland between the 1920s and the 1980s, often without consent. Survivors have argued that it was promoted in Catholic-run hospitals and by medical personnel who, for religious reasons, wished to avoid procedures that might limit a woman's capacity to bear more children. In August 2014, the UN Human Rights Committee [indicated](#) that the practice amounted to torture or "cruel, inhuman or degrading treatment or punishment," as defined by Article 7 of the International Covenant on Civil and Political Rights (ICCPR).

A [redress scheme](#) established by the Government in November 2014 provides *ex gratia* payment to survivors in exchange for the release of legal claims related to the practice. Both Survivors of Symphysiotomy, which represents the majority of survivors, and INCLC member ICCL have argued that the release is overbroad because it requires waiver of all claims related to symphysiotomy, not just those against the government, as a condition of payment.

United Kingdom: The UK Parliament has [voted](#) in favor of legislation authorizing the creation of babies using DNA from three people. The technique at issue is designed to prevent the inheritance of certain mitochondrial diseases by combining the DNA of two people with the healthy mitochondria of a donor woman. The bill authorizing the technique passed over the objections of the Catholic and Anglican Churches in England; the churches maintain that the technique is neither safe nor ethical, particularly because it involves the destruction of embryos.

On January 26, the Church of England ordained Libby Lane as its first female bishop. As we reported in our last issue, the Church held a [final vote](#) in November 2014 allowing women to become bishops, overturning a centuries' old gender barrier in the Church. The reform had previously been approved by both the Church's lawmaking body and the British Parliament. (The text of the amending Canon can be found [here](#).)

Religious Freedom & Individual Rights

Clothing and Garb

Canada: On February 6, the Federal Court of Canada held in [Ishaq v. Minister of Citizenship and Immigration](#) that a Muslim woman who applied for Canadian citizenship could not be required to remove her religious veil, or niqab, as part of the oath taking portion of her citizenship ceremony. The federal government has appealed the decision.

United States: On January 20, the U.S. Supreme Court held in [Holt v. Hobbs](#) that a prison rule prohibiting a Muslim inmate from growing a half-inch long beard violated his religious rights. The Court held that the prohibition violates the federal Religious Land Use and Institutionalized Persons Act of 2000, which prohibits the government from substantially burdening a prisoner's religion unless it can demonstrate that the burden is narrowly drawn to serve a compelling government interest. The prison officials argued that the regulation was necessary to prevent prisoners from smuggling contraband and to ensure that inmates can be easily identified on sight. But the Court concluded that the government could not point to any evidence to support its justifications for the ban. INCLC member ACLU submitted a [friend-of-the-court brief](#) in the case.

And on February 25, the Supreme Court heard oral argument in [Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.](#), which involves a Muslim woman's claim that she was denied a job because her religious headscarf, or hijab, did not meet the company's "look policy." Under federal employment discrimination law, employers are required to accommodate the religious beliefs and practices of employees and applicants unless doing so would place an undue burden on the employer. In this case, the company maintains that it had no obligation to accommodate the plaintiff's hijab because she never informed them that it was part of her religious practice. The Court will address whether an employer's obligation to accommodate a religious practice is triggered only when an employee or applicant identifies a potential conflict. Audio and a transcript of the argument are available [here](#). INCLC member ACLU joined a [friend-of-the-court brief](#) in the case.

Other

Canada: The Supreme Court of Canada recently held in [Carter v. Canada](#) that the Criminal Code's absolute prohibition against assisted suicide violates Section 7 of the Canadian Charter of Rights and Freedoms, which protects the right to life, liberty, and security of the person, which may not be deprived except in accordance with the principles of fundamental justice. A number of religious groups had intervened in the case, asking the Court to confirm that physicians and other health-care workers cannot be compelled to provide medical aid in dying. The Court held that nothing its opinion would compel physicians to provide assistance in dying, and that "[w]hat follows is in the hands of the physicians' colleges, Parliament, and the provincial legislatures."

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