

**Re Royal Burial Ground, Frogmore**

Oxford Consistory Court: Bursell Ch, 24 April 2013

*Exhumation – Serbian royalty – comity of nations – reburial in unconsecrated ground*

The Serbian ambassador petitioned at the direction of the Serbian government for the exhumation of the remains of Queen Maria of Yugoslavia for their re-interment in a royal mausoleum in St George's Church, Oplenac, in Serbia. Queen Maria had died in England and her remains had been interred in the Royal Burial Ground at Frogmore since 1961. The chancellor noted that, pursuant to section 25 of the Burial Act 1857, a licence was necessary and had been granted by the Secretary of State, as the intention was to re-inter the remains in a location that was not consecrated for the purposes of the Burial Act. The chancellor stated that a faculty for exhumation in such circumstances should not be granted unless the court was satisfied that the remains would continue to be treated with reverence and dignity and would be preserved in a place of real permanence. Such conditions were clearly satisfied here. In granting the faculty, the chancellor further found that special reasons existed for the departure from the norm of permanence in Christian burial, including the establishment of a family grave and the principle of the comity of nations. [RA]

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**Doogan & Anor v NHS Greater Glasgow & Clyde Health Board**

Court of Session Inner House, Extra Division: 24 April 2013

[2013] ScotCS CSIH 36

*Abortion – Roman Catholic midwives – conscientious objection*

Ms Doogan and Mrs Wood ('the reclaimers') worked as midwives in the labour ward at the respondents' Southern General Hospital as labour ward co-ordinators. Both are practising Roman Catholics who, when they started working in the labour ward, claimed conscientious objection to participating in termination of pregnancy, pursuant to section 4 of the Abortion Act 1967, and took no part in the treatment of certain patients in the ward. Previously, terminations had been carried out in the labour ward at the Southern General only if the foetus was more advanced than 18 weeks' gestation, but from 2007 all terminations took place in the labour ward. The number of abortions increased further in 2010 when the Queen Mother's Maternity Hospital was closed. In September 2009 the reclaimers initiated a formal grievance procedure, concerned that their duties had changed and that they were being required to supervise and support staff who were carrying out abortions; however, the Board

rejected their complaint. On appeal to the Outer House the Lord Ordinary [Lady Smith] refused declarator that their right of conscientious objection included a right to refuse to supervise and/or support staff caring for patients undergoing termination of pregnancy. They reclaimed.

It was agreed that the reclaimers' duties as labour ward co-ordinators included, inter alia, managing resources within the labour ward; providing detailed handover on every patient in the ward; allocating staff to patients; giving guidance, advice and support (including emotional support) to all midwives; responding to requests for assistance and providing direct care in emergencies; and supporting and assisting with medical interventions such as forceps deliveries. At first instance, the Lord Ordinary construed the words 'treatment' and 'participate' in the phrase 'participate in any treatment authorised by this Act' in section 4(1) very narrowly and concluded that because the reclaimers were not required to play any direct part in terminating pregnancies they were not being asked to 'participate in any treatment authorised by this Act'; instead, their role was a supervisory and administrative one.

Delivering the judgment of the Inner House, Lady Dorrian noted that Parliament had tried to balance competing interests by liberalising the law while exempting from participation those with a genuine conscientious objection, qualified only by the need to participate if treatment was required to save the life of a pregnant woman or to prevent grave permanent injury to her physical or mental health. Counsel for the Board had accepted that the performance of any of the listed duties might involve participation in treatment authorised by the Act and therefore be covered by the right of conscientious objection, and that, even though their role was supervisory, the reclaimers were part of the team responsible for the overall treatment and care of the patient and would thus participate in treatment authorised by the Act. Distinguishing *R v Salford Area Hospital Authority ex parte Janaway* [1989] 1 AC 537 (which involved a conscience claim by a secretary who was required to type appointment letters for patients seeking termination), she concluded that the reclaimers' duties were far removed from those of the petitioner in *Janaway* and it had not been argued that their duties involved anything other than treatment in the proper sense. They were actually taking part in treatment for the purpose of terminating pregnancy in accordance with section 1(3) of the Act. The appeal was therefore allowed. [Frank Cranmer]

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