

Church in Wales

Courts, tribunals or other adjudicative structures: Numerous quasi-judicial functions are conferred on archdeacons, bishops and the archbishop (typically in liturgical matters). As to formal judicial bodies there are the: Archdeacon`s Court, Diocesan Court, Disciplinary Tribunal, Provincial Court; Special Provincial Court, and Supreme Court.

The matters dealt with: The subject-matter jurisdiction of the courts and tribunal are provided in the Constitution of the Church in Wales. Archdeacons` Court: disputes about parochial elections; Diocesan Courts: primarily property matters under the faculty jurisdiction, but also some complaint and dispute matters; Disciplinary Tribunal: clergy and lay discipline; Provincial Court: appeals from Diocesan Courts and Disciplinary Tribunal, with an original jurisdiction over certain disputes; Special Provincial Court: the discipline of bishops; Supreme Court: final court of appeal in the church.

Legal representation: There is explicit provision for legal representation in all courts (except the Archdeacon`s Court) and the tribunal.

Selection of decision-makers : Archdeacon`s Court: presided over by the archdeacon (or appointees); Diocesan Court: chancellor (judge) appointed by the bishop; Disciplinary Tribunal: members appointed by Bench of Bishops, Diocesan Conference, Standing Committee of Governing Body (including legally and medically qualified persons); Provincial Court: ecclesiastical judges and lay judges appointed by the Bench of Bishops; Special Provincial Court: *ex officio* membership (archbishop, diocesan bishops and judges of Provincial Court); Supreme Court: prescribed membership - Archbishops of Canterbury, York, Armagh and Dublin, Primus of Scottish Episcopal Church, plus assessors.

The detail of the rules of procedure : The basic rules for the courts and the tribunal are detailed and to be found both in the Constitution of the Church in Wales and in subordinate instruments made by a Rules Committees (such as the Rules of the Disciplinary Tribunal). Typically, they treat pleadings, documents, witnesses, and the hearing.

Appeals and enforcement: There are provisions for appeals against decisions made throughout the judicial hierarchy. The basis of enforcement within the church is consensual: clergy and prescribed office-holders undertake formally to comply with the decisions of the courts and tribunals. Church members are also under a duty to attend and give evidence at any trial or investigation held under the authority of the constitution.

The secular courts: The domestic law of the Church in Wales makes no explicit provision with regard to the relation of State courts to those of the church. However, the Welsh Church Act 1914 enables the church to establish a system of courts, but it also provides that their jurisdiction is consensual rather than coercive. The internal property laws of the church are enforceable by virtue of the Welsh Church Act 1914 in civil courts. Several recent judicial decisions from the secular courts indicate that the exercise of jurisdiction by the Provincial Court is a matter of private law and not susceptible to judicial review. Whether the same principle applies to the faculty jurisdiction of the Diocesan Court (over property matters administered under the ecclesiastical exemption) is debatable.

See the following for a fuller discussion of these matters.

INTERFAITH LEGAL ADVISERS NETWORK

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THE CHURCH IN WALES: COURTS AND DISCIPLINARY TRIBUNAL

The church has five categories of judicial body. They deal with discipline, disputes and property matters. At the lowest level, the Archdeacons' Court handles, mainly, disputes about parochial elections. The Diocesan Courts deal primarily with property matters under their faculty jurisdiction, but also enjoy disciplinary powers over lay officers. The Disciplinary Tribunal has jurisdiction over both clergy and lay discipline. The Provincial Court entertains appeals from the Diocesan Courts and the Disciplinary Tribunal, and has an original jurisdiction over certain disputes. The Special Provincial Court treats cases concerning the discipline of bishops. The Supreme Court is the final court of appeal in the church.¹ Under civil law, which enables the church to establish a court system, their jurisdiction is consensual rather than coercive.² In addition to the courts and tribunal, church law assigns extensive quasi-judicial functions: for example, to the archdeacon,³ the bishop,⁴ the archbishop,⁵ the Provincial Synod of Bishops,⁶ and arbitrators;⁷ these are considered, where appropriate, elsewhere in this volume. Members of the Church in Wales are under a duty to attend and give evidence at any trial or investigation held under the authority of the constitution,⁸ and the Rule Committee is responsible for making rules regulating the administration of justice in the tribunal and courts of the church.⁹

Archdeacon's Court: In each archdeaconry there must be an Archdeacon's Court. It is presided over by the archdeacon or, where the constitution so permits, by one or more lay communicants of the Church in Wales appointed by the archdeacon. Its

¹ Const. XI.1(1); see also Const. XI.1(2)(a) and (b): for the purposes of the courts and disciplinary tribunal, 'a member of the Church in Wales is a person on whom the Constitution is binding' by virtue of Const. I.2; and a person is legally qualified if he or she has been a member of the Bar of England and Wales or a Solicitor of the Supreme Court of England and Wales. See N. Doe, *The Law of the Church in Wales* (Cardiff, 2002).

² Welsh Church Act 1914, s.3(3): the constitution of the Church in Wales may provide for 'the establishment for the Church in Wales of ecclesiastical courts...but no such courts shall exercise any coercive jurisdiction and no appeal shall lie from any such court to His Majesty in Council'.

³ Const. XI.17(3) for quasi-judicial aspects of the archdeacon's visitatorial jurisdiction.

⁴ Eg Book of Common Prayer 1984, vi: disputes as to provisions of the BCP must be referred to the bishop 'for his determination of the matter'; Const. XI.16(2) (dispensations) and XI.17(2) (episcopal visitations).

⁵ See eg BCP, vi: the bishop may refer any question of interpretation of the BCP to the archbishop. Const. XI.16(1) (dispensation) and XI.17(1) (archiepiscopal visitations).

⁶ Eg Const. IV.33: if the diocesan bishop withholds his consent to a resolution of the Diocesan Conference which, at its next annual meeting, overrides this in a vote by orders, the resolution must be referred to the Provincial Synod, the decision of which binds the Conference and the members of the church in the diocese.

⁷ See eg Const. X.22ff.

⁸ Const. XI.39: witnesses must solemnly declare to speak the truth; wilful neglect or refusal to attend and give evidence, when duly summoned to do so, may result in the court or tribunal declaring vacant any office held by that person, who may also be deprived or suspended from the right to vote in the church.

⁹ Const. XI.41; see also XI.42: all fees payable in respect of cases heard by any court or the tribunal must be paid to and collected by its Registrar, who must account for the fee quarterly to the Representative Body.

principal jurisdiction is to hear and determine appeals arising from disputes concerning the electoral roll. Any person whose application for inclusion on the roll has been refused by the parochial church council, or whose name has been expunged from the roll by the council, may appeal in writing to the archdeacon. The archdeacon must then appoint one or more lay communicants to form the court to consider and determine the appeal. The court is entitled to inspect all papers and to be furnished with all relevant information. Its decision is final. Similarly, a qualified elector may appeal to the court against the council's decision to disallow objections to the inclusion or exclusion of names on the roll; the appellants must apply to the archdeacon's registrar for directions (eg as to costs).

The archdeacon must appoint a person as Registrar of the archdeaconry and of the Archdeacon's Court. The person must be a communicant over the age of thirty, legally qualified, and qualified to be a member of the Governing Body of the Church in Wales. Every Registrar (unless resigned or removed from office) must retire at seventy five. The registrar is entitled to a salary fixed and paid by the Representative Body, and cannot be removed from office except by order of the archdeacon, which must be confirmed by the Provincial Court. In the event of the illness or temporary incapacity of the registrar, the archdeacon may appoint a person to act as Deputy Registrar. Every registrar and deputy, before entering office, must make and sign a declaration in the presence of the archdeacon.

The Diocesan Court: In each diocese there must be a Diocesan Court presided over by the Chancellor. The diocesan bishop must appoint a fit and proper person to be Chancellor of the diocese; the person must be a communicant, over the age of thirty years, legally qualified, and qualified to be a member of the Governing Body of the Church in Wales. The diocesan bishop must also appoint a fit and proper person to be Registrar of the diocese and of the Diocesan Court. The person so appointed must be a communicant, over thirty years of age, legally qualified, and qualified to be a member of the Governing Body of the Church in Wales. The bishop may also appoint a Deputy Chancellor or Deputy Registrar. Every Chancellor, Deputy Chancellor, Registrar and Deputy Registrar, unless they have previously resigned or been removed from office, must retire at seventy five. They may not be removed from office except by order of the bishop, confirmed by the Provincial Court. Whereas the offices of Chancellor and Deputy Chancellor are honorary, the Registrar is entitled to a salary, to be fixed and paid by the Representative Body. Before entering office, all four officials must make and sign a declaration, in the presence of the bishop.

The Diocesan Court has jurisdiction over three classes of complaints and disputes (or suits): complaints against churchwardens and lay parochial church councillors, and disputes with regard to their election; all matters referred to it by the constitution (eg appeals as to membership of the Diocesan Conference, and matters concerning arbitrations resulting from parsonage inspection reports); and any dispute between a member of the Church in Wales and a Diocesan Board of Finance, Diocesan Parsonage Board, Diocesan Board of Patronage, Deanery Conference or Chapter, Vestry or Parochial Church Council, or between any such bodies, the determination of which is not otherwise provided for by the Constitution. The Diocesan Chancellor also has jurisdiction with respect to marriage licences and the appointment of

surrogates. The Diocesan Court is not bound by any decision of the English courts in relation to matters of faith, discipline or ceremonial.¹⁰

The procedure applicable to suits is detailed and deals, amongst other things, with: pleadings; documents; the hearing; witnesses; costs; and court practice.¹¹ Unless otherwise ordered by the Chancellor, all contentious proceedings must be heard in open court. Each party may appear in person or be represented by a cleric, solicitor or counsel, or by such persons as the court permits. All costs are in the discretion of the Chancellor. After giving opportunity to the parties to be heard, the Chancellor may enlarge the prescribed times governing the proceedings.

The Diocesan Court is also empowered to hear and determine all applications for faculties in the diocese. In so doing the court is not bound by any decision of the English courts in matters of faith, discipline or ceremonial, though as a matter of practice, Chancellors do have recourse to these from time to time. The faculty jurisdiction represents, in practical terms, by far the greatest volume of the business of the court, and functions as an integral part of the ecclesiastical exemption operative under the law of the State. The faculty jurisdiction and procedure covers both consecrated and unconsecrated property. A faculty is required for the following: (1) any change of use of a church or land; (2) any alteration, addition or repair to, decoration, redecoration or demolition of or removal from the fabric of a church or land; (3) the introduction, removal, or alteration or repositioning of furniture, fittings, murals, monuments (including gravestones), plate and other precious objects, into, from or in, a church or land; (4) the repair of furniture, fittings, murals or objects (other than in the case of a loan to a museum or similar institution); (5) the acquisition of a permanent or exclusive right of burial in any grave, grave space, vault or tomb; and (6) the removal of a corpse, or human or cremated remains, from an existing grave, vault or tomb.

The faculty procedure is detailed and deals with: the petition; notification of petition; involvement of the Representative Body; citations; notice of opposition; hearings; and grant or refusal of the faculty.

The Disciplinary Tribunal: This was established, by the Governing Body,¹² to process complaints against clergy and other members of the church.¹³ The Tribunal is composed of eighteen persons: six appointed by the Bench of Bishops; six clerical members, one from each diocese, elected by the Order of Clergy of the Diocesan Conference; two legally qualified members, being Chancellors or persons eligible to be a Chancellor, appointed by the Standing Committee of the Governing Body; two members, each being medically qualified or a trained counsellor, appointed by the Standing Committee of Governing Body; and two lay persons appointed by the Standing Committee of Governing Body. No tribunal member may also be a member of the Provincial Court. Five members form a quorum. Its Investigatory Committee has five persons drawn from the membership of the tribunal.

Members of the tribunal hold office for five years and are eligible for re-appointment, but their membership ceases when they reach the age of seventy (except for the

¹⁰ Const. XI.47.

¹¹ See Diocesan Court Suit Rules, draft RODC, Pt. II, r.1.

¹² Can. 21-9-2000, which effects the necessary amendments and additions to the Constitution.

¹³ Const. XI.18(1).

purposes of completing a hearing in which the member is already engaged). A member may be removed from office only by order of the Bench of Bishops confirmed by separate majorities of the Orders of the Clergy and the Laity of the Governing Body. The tribunal may, if it thinks fit, summon for their assistance one or more persons of skill and experience in a matter to which proceedings relate to act as assessors.

There must be a President of the Tribunal appointed by the Standing Committee of the Governing Body from among the legally qualified members of the tribunal. The tribunal must, from time to time as occasion may require, appoint fit and proper persons to be Registrar and one or more Deputy Registrars. These must be over the age of thirty and legally qualified. They must be paid for their services such sums as the Representative Body thinks fit. They are to hold office for five years and are eligible for re-appointment, but they must retire from office at the age of seventy-five.

The Tribunal is empowered to hear and determine a complaint against any member of the Church in Wales. Its jurisdiction covers six forms of complaint: teaching, preaching, publishing or professing, doctrine or belief incompatible with that of the Church in Wales; neglect of the duties of office, or persistent carelessness or gross inefficiency in the discharge of such duties; conduct giving just cause for scandal or offence; wilful disobedience to or breach of any of the provisions of the constitution; wilful disobedience to or breach of any of the rules and regulations of the Diocesan Conference of the diocese in which such member holds office or resides; and disobedience to any judgment, sentence or order of the Archbishop, a diocesan bishop, the tribunal or any court of the Church in Wales. The exercise by the tribunal of its functions is subject to an overriding principle: [i]n discharging its task of maintaining the highest standards of professional and personal conduct by members of the Church in Wales, the Tribunal shall have as one of its objectives the resolution of conflict, where appropriate through reconciliation.

The powers of the tribunal include: the making of a judgment, sentence or order of absolute discharge, conditional discharge, rebuke, monition, inhibition, disqualification, deprivation or suspension of preferment, office, membership of a body or right to vote in the Church in Wales, and deposition from holy orders and expulsion from the office of cleric of the Church in Wales. The tribunal also has power to suspend from any preferment, office, membership of a body, and the right to vote in the Church in Wales any person against whom a complaint has been made and is under investigation by the tribunal until the hearing and determination of the complaint. The bishop of the diocese of such person may make arrangements for carrying out the duties of that person during such suspension. Also, the diocesan bishop may suspend from office, until the hearing and determination of a case, any person holding office in the diocese against whom a charge is pending.

The Rule Committee of the tribunal may make rules to carry into effect the provisions of the constitution and to regulate all matters relating to the administration and procedure of the tribunal. The committee consists of two legally qualified members of the tribunal, four other members of the tribunal nominated by a majority of the whole tribunal membership, and the President of the Provincial Court. The committee may alter or vary these rules.

The Provincial Court: This acts both as an appellate court and as a first instance court. Its appellate jurisdiction covers cases coming from the Diocesan Court and the Disciplinary Tribunal, and cases involving patronage. Its original jurisdiction covers disputes between church members and prescribed institutions, and matters referred to it under the Constitution. It consists of four ecclesiastical judges and six lay judges. The judges are appointed by the Bench of Bishops, which must from time to time nominate one of the judges to be President. The ecclesiastical judges must be bishops or clerics of not less than fifteen years' standing in holy orders; and the lay judges must be communicants over the age of thirty-five and legally qualified. The judges must be qualified to be members of the Governing Body of the Church in Wales or, which would appear to be a vestige of establishment, of the General Synod of the Church of England. Before entering office, they must make and sign a declaration in the presence of a diocesan bishop. Each judge holds office for seven years, or until resignation or removal from office, but is eligible for reappointment. No judge may be removed from office except by order of the Bench of Bishops, confirmed by separate majorities of the clerics and laity of the Governing Body. A judge is not disqualified or prevented from hearing and determining a case by reason of being a member of a body in the Church in Wales which is a party to the proceedings. However, on the trial of a member of the Church in Wales, the bishop and the chancellor of any diocese in which that member either holds office or resides must not sit. One ecclesiastical and two lay judges form a quorum; their judgment, or that of the majority, represents the judgment of the court. The Provincial Court must appoint a fit and proper person to be its Registrar. In the case of the illness or temporary incapacity of the Registrar, the court may appoint a fit and proper person to act as Deputy Registrar during such illness or incapacity. Both the Registrar and Deputy Registrar must, before entering office, make and sign a declaration in the presence of a judge of the Provincial Court.

The Provincial Court has both an appellate and an original jurisdiction. First, it may hear and determine: (1) appeals from a Diocesan Court; (2) appeals with reference to institutions, collations, nominations to cures, incapacity and rights of appointment relating to clerics and deaconesses; and (3) appeals from the Disciplinary Tribunal. Secondly, the court may hear and determine: (1) any dispute between a member of the Church in Wales and the Representative Body; (2) any dispute between a member of the Church in Wales and a Diocesan Conference; and (3) any matter referred or reported to the Provincial Court in accordance with the Constitution. The court is not bound by any decision of the English courts in relation to matters of faith, discipline or ceremonial.

The Provincial Court may employ a number of sanctions over both clergy and laity involved in cases falling within its jurisdiction. As a general principle, subject to the provisions of the constitution, the power of the Provincial Court includes that of passing sentence of monition, suspension or expulsion from office in the Church in Wales. A judgment, sentence or order of the Provincial Court may include an order that a cleric be deposed from holy orders and expelled from the office of cleric in the Church in Wales. In the case of a suspended cleric or deaconess, the Provincial Court or the diocesan bishop may order them not to reside in the parsonage, not to retain possession of glebe lands during suspension, and to deliver up all books, keys and other property held by them in virtue of office to such person(s) as the court or bishop

appoint to have custody for and on behalf of the Representative Body. Finally, the court may suspend any body of the Church in Wales (except the Governing Body or the Representative Body) for neglecting or refusing to obey any judgment, sentence or order of the archbishop, a diocesan bishop or any court or the tribunal of the Church in Wales. However, no order suspending a Diocesan Conference is valid without the consent of the diocesan bishop.

The procedure of the Provincial Court, to be followed in the exercise of its appellate and original jurisdiction, is very detailed and contained in the Rules of the Provincial Court. Any party has the right to call witnesses and to appear in person or be represented by a cleric, solicitor or counsel before the Provincial Court and before the Registrar. The Registrar, after deciding that the pleadings are complete, must inform the President accordingly, who then must fix a time and a place for the hearing. Once notified of this, the Registrar, by way of Notice of Trial, must inform the parties of the time and place fixed for the hearing. Hearings must be in open court unless the President directs otherwise.¹⁴ The judgment of the court must be in writing signed by the President.

The Special Provincial Court: This consists of the archbishop, the remaining diocesan bishops and the judges of the Provincial Court. The archbishop, two diocesan bishops and four judges of the Provincial Court form a quorum. The jurisdiction of the court relates to the disciplining of bishops. First, it has jurisdiction over disciplinary charges involving diocesan bishops. Secondly, the court has jurisdiction over a bishop, concerning the same disciplinary charges, residing in the province and assisting the archbishop or any diocesan bishop. The decision of the court, on the facts of a case, is final. However, a bishop must not be found guilty of any charge unless the archbishop and the majority of the diocesan bishops of the Church in Wales, assembled in the Provincial Synod, are of the opinion that the bishop is guilty of such offence. In this event the archbishop must pronounce sentence. A bishop found guilty by the Special Provincial Court has a right of appeal to the Supreme Court. Subject to the provisions of the constitution, the power of the Special Provincial Court includes that of passing sentence of monition, suspension or expulsion from office in the Church in Wales. In exercising its jurisdiction, the court is not bound by any decision of the English courts in relation to matters of faith, discipline or ceremonial.

The Supreme Court: This consists of the Archbishops of Canterbury, York, Armagh, and Dublin, and the Primus of the Scottish Episcopal Church, sitting with four Assessors nominated by the President of the court. The Assessors, of whom at least two must be lay members of the Special Provincial Court, have no vote. Any of the Archbishops or the Primus may nominate a diocesan bishop in communion with the Church in Wales to sit in his place. Four members of the court form a quorum, of whom at least one must be an Archbishop or the Primus, and the President of the court must be an Archbishop or the Primus. The Supreme Court has both original and an appellate jurisdiction. First, it carries out the trial of the archbishop. Secondly, the court is responsible for the hearing of appeals from the Special Provincial Court. Thirdly, it hears appeals from the Provincial Court, provided that such appeal is allowed by the Provincial Court. Subject to the provisions of the constitution, the power of the Supreme Court includes that of passing sentence of monition, suspension

¹⁴ ROPC, I.35.

or expulsion from office in the Church in Wales. In the exercise of its jurisdiction, the Supreme Court is not bound by any decision of the English courts in matters of faith, discipline or ceremonial.

Church Courts and the Courts of the State: The Welsh Church Act 1914 confers upon the Church in Wales the right to establish its own ecclesiastical courts, but these are forbidden to exercise coercive jurisdiction. Submission to their jurisdiction is voluntary, and compliance with their decisions is effected by means of declarations made by prescribed ecclesiastical classes.¹⁵ A number of principles of pre-1920 ecclesiastical law, derived from the decisions of the courts of the State, continue to apply to the courts and tribunal of the Church in Wales: they must be satisfied about their competence to determine a matter;¹⁶ they must not exceed their jurisdiction;¹⁷ nor determine a matter in accordance with rules contrary to the common law;¹⁸ they must not decline to exercise jurisdiction in a case in which they ought to do so;¹⁹ but there is a presumption that they act within their jurisdiction.²⁰ In exercising their jurisdiction, however, 'the Courts of the Church in Wales shall not be bound by any decision of the English Courts in relation to matters of faith, discipline or ceremonial'.²¹ Whether State courts exercise a supervisory jurisdiction over the tribunal and courts of the Church in Wales depends on the subject in issue.

Disciplinary cases: The relationship between the courts of the Church in Wales and those of the State, in clergy discipline cases, has been the subject recently of judicial consideration by the High Court, in *R v The Provincial Court of the Church in Wales, ex parte Reverend Clifford Williams* (1998).²² The case concerned an application for leave for judicial review, a public law process, to quash two decisions of the Provincial Court, which found the applicant guilty of clerical indiscipline, recommended deposition, and refused to grant leave to the applicant to appeal to the Supreme Court of the Church in Wales. First, whilst the courts of the established Church of England were 'part of the fabric of the State', and judicial review generally lies in respect of their decisions, the authority of the Church in Wales, as a voluntary association, was based on a consensual submission to its jurisdiction.²³ Consequently, the Provincial Court being a domestic (or private) body, the High Court lacked jurisdiction to review its decisions.²⁴

¹⁵ See eg, for clergy, Const. VII.66: clergy undertake 'to accept, submit to, and carry out any sentence of...any Court or the Tribunal of the Church in Wales'.

¹⁶ *R v Twiss* (1869) LR 4 QB 407.

¹⁷ *Blunt v Harwood* (1838) 8 Ad & El 610.

¹⁸ *Tey v Cox* (1613) 2 Brownl 35; *Veley v Burder* (1841) 12 Ad & El 265.

¹⁹ *R v Archbishop of Canterbury* (1856) 6 E & B 546; *R v Arches Judge* (1857) 7 E & B 315.

²⁰ *Mackonochie v Lord Penzance* (1881) 6 App Cas 424 at 446.

²¹ Const. XI.47: no definition of 'the English Courts' is given.

²² (1998) CO/2880/98. At the time of the case, the Provincial Court had original jurisdiction over clergy discipline cases; this jurisdiction has now passed to the Disciplinary Tribunal, to which the High Court's decision would now apply.

²³ The Church in Wales was analogous to other non-established religious bodies; and, it was decided, the High Court 'has consistently declined to exercise jurisdiction over such bodies'; the court cited in support *R v Chief Rabbi of the United Hebrew Congregations of Great Britain and the Commonwealth, ex parte Wachmann* [1992] 1 WLR 1306 at 1042: as to whether 'someone is morally or religiously fit to carry out the spiritual and pastoral duties of his office...[the] court must inevitably be wary of entering into so self-evidently sensitive an area, straying across the well-recognised divide between church and state'.

²⁴ The High Court did not consider that 'this Court has any jurisdiction to supervise the Provincial Court of the Church in Wales.' In short, unlike the courts of the Church of England, exercising

Secondly, it was held that, 'where there is no express provision to the contrary the appropriate standard of proof in domestic proceedings is the civil standard'.²⁵ Thirdly, whilst State courts may, in an appropriate case, interfere with a perverse sanction imposed by a body, it is likely 'to be very slow to interfere in a case such as this, where the judgment has been made within an area of religious faith and discipline by a body charged with the protection of that faith and ensuring discipline within a religious community'.²⁶ In short, whilst they are reluctant to intervene in disciplinary decisions of religious tribunals, the State courts will nevertheless do so, even if the tribunal is private or domestic rather than public, in serious cases (such as a breach of the principles of natural justice).²⁷

Property Cases and Civil Rights Cases: The domestic law of the Church in Wales which regulates the property of the church is enforceable both in the courts of the church and in the courts of the State.²⁸ It is a general principle of secular law that for the due disposal and administration of property, the courts of the State will take cognizance of the rules of a voluntary religious organisation entered into for the regulation of its own property affairs.²⁹ The rationale underlying this principle is that 'where property is involved the consensual compact [of a religious organisation] is given the same effect, in relation to property matters, as if it were a common law contract'.³⁰ Consequently, failure by a court of the Church in Wales to comply with the internal rules of the church governing property held on behalf of its members may, as a matter of general principle, be subject to the supervisory jurisdiction of the courts of the State.³¹ Finally, the secular courts may upset a decision of a court or tribunal of

coercive statutory and governmental functions, the Provincial Court was a creature of private law - the necessary public element, essential for judicial review, was, therefore, lacking in the jurisdiction of the Provincial Court.

²⁵ The court adopted this general principle from *R v Hampshire County Council, ex parte Ellerton* [1985] 1 WLR 749 (CA).

²⁶ The High Court did not consider that the recommendation of the Provincial Court 'can be categorised as perverse or disproportionate'; in any event, the applicant had not exhausted the remedies available to him within the Church in Wales, that is, appeal to the Provincial Synod. The applicant subsequently lost the appeal to the Synod.

²⁷ See eg *R v Lord President of the Privy Council, ex parte Page* [1993] AC 682 (HL): whilst it was recognised that a university visitor had exclusive jurisdiction to determine what were the relevant rules applicable and their proper application, for Lord Browne-Wilkinson this exclusive jurisdiction extended 'so as to prohibit any subsequent review by the court of the correctness of a decision made by the visitor acting *within his jurisdiction and in accordance with the rules of natural justice*'. For persuasive authorities, see eg from Ireland, *State (Colquhoun) v D'Arcy* [1936] IR 641: church members 'bind themselves to conform to certain laws and principles, the obligation to such conformity and observances resting wholly in the mutual contract of the members, enforceable only as a matter of contract by the ordinary tribunals of the land when brought within their cognizance and not enforceable under any independent coercive jurisdiction'.

²⁸ Welsh Church Act 1914, s.3(2): pre-1920 ecclesiastical law applicable to the Church in Wales 'shall be capable of being enforced in the temporal courts in relation to any property which by virtue of this Act is held on behalf of the said Church or any members thereof, in the same manner and to the same extent as if such property had been expressly assured upon trust to be held on behalf of persons who should be so bound'.

²⁹ *Forbes v Eden* (1867) LR 1 Sc & Div 568; for the Church in Wales, see eg *Powell v Representative Body of the Church in Wales* [1957] 1 All ER 400.

³⁰ *Scandrett v Dowling* [1992] 27 NSWLR 483 (CA NSW): this applies even 'when spiritual matters become mixed with property matters' as 'an incident of the consensual compact or contract',

³¹ Indeed, it is arguable that the faculty jurisdiction of the Diocesan Court of the Church in Wales is subject to the supervisory jurisdiction of the secular courts by way of judicial review, insofar as this jurisdiction may be understood as containing a public element, being exercisable, under the ecclesiastical exemption, in place of that enjoyed by the planning authorities of the State. It is certainly

the Church in Wales when that decision, in applying the internal rules of the church, is in breach of a civil right,³² that is, rights found in the law of the State, such as rights arising under the principles of natural justice,³³ or rights to marriage and burial.

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a rule of pre-1920 ecclesiastical law that the courts of the State may supervise decisions about church property made under the faculty jurisdiction: see eg *R v Tristram* [1898] 2 QB 371; (1899) 80 LT 414; [1902] 1 KB 816.

³² *Forbes v Eden* (1867) LR 1 Sc & Div 568: ‘A Court of Law will not interfere with the rules of a voluntary association unless to protect some civil right or interest which is said to be infringed by their operation’.

³³ See eg *R v Lord President of the Privy Council, ex parte Page* [1993] AC 682 (HL): see *supra*. In *R v The Provincial Court of the Church in Wales, ex parte Revd Clifford Williams* (1998) CO/2880/98, it was held that there was no breach of natural justice: the applicant claimed that the bishop acting as prosecutor and sentencer was a breach of natural justice and, as such, in contravention of the ECHR, Art. 6(1); the applicant cited the case of *Findlay v UK* 24 EHRR 221 in which it was held that a Court Martial was not an independent and impartial tribunal, as required by ECHR Art. 6(1); the High Court concluded: ‘the applicant, by being ordained in and serving as a Minister of the Church in Wales, consented to the procedures set out in its Constitution, which were followed in this case. He cannot, in those circumstances, have, by reason of the procedures themselves, a legitimate sense of grievance. Further, there is, in my judgment, no real risk of bias. The Constitution makes it clear that the Bishop cannot play any part in the decision as to guilt; and as to sentence, he cannot impose any greater sanctions than those recommended by the Court. The decision of the European Court of Human Rights in *Findlay* is not in point. The jurisdiction of the Provincial Court does not involve the applicant’s “civil rights and obligations” under Article 6 of the Convention, which is therefore not relevant to the present case’.

