

**R (on the application of Rudewicz) v Secretary of State for Justice**

Court of Appeal: Lord Neuberger MR, Stanley Burnton and McFarlane LJ,  
April 2012

*Exhumation – ECHR – freedom of religion – family life*

An application had been made for judicial review of the Home Secretary's decision to permit the exhumation and re-interment of the remains of Father Jarzebowski, a Polish Marian Father who had been instrumental in founding a school at Fawley Court, where he was buried. The Fathers, supported by the local bishop, wanted to reinter his remains with those of his fellow Marian priests at Fairmile Cemetery, where his grave would be publicly accessible – which at Fawley Court it was not. Counsel for Ms Rudewicz relied on the general presumption of permanence of burial enunciated by the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299; and argued that it was illogical for the Secretary of State to have relied on the desire of people to visit Father Jarzebowski's grave, since a large number of the objectors had expressly referred to their desire to visit his existing grave in situ and no-one appeared to have written in support of the proposal to exhume and rebury. It was also argued for Ms Rudewicz that, as the priest's nearest relative, exhumation would violate her rights under Article 8 (family life) and Article 9 ECHR (thought, conscience and religion). The Divisional Court had upheld the decision to allow exhumation. The Court of Appeal held that the decision of the Divisional Court had been neither irrational nor disproportionate. Moreover, the approach of consistory courts to faculties for exhumation did not apply to the grant by the Secretary of State of licences under section 25(ii) of the Burial Act 1857: the reasons for the general presumption of permanence in *Blagdon* was based on the theology of burial, which was not relevant to secular applications. In human rights terms, the decision had been proportionate. As to Article 8, the Divisional Court had dismissed that argument on the grounds, inter alia, that family life could not subsist after death. The Court of Appeal took the view that the wishes of the Provincial Superior had to be set against those of Ms Rudewicz, since in many ways he had the stronger case for being treated as Father Jarzebowski's closest family member. As to Article 9, the religious concerns of Ms Rudewicz and the objectors had to be balanced against those whose religious beliefs appeared to favour the grant of the licence. The appeal was dismissed. [Frank Cranmer]

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**Sturt v Farran**

New South Wales Supreme Court: Sackar J, April 2012

*Clergy – employment status*

The plaintiffs were clergy in the Diocese of Newcastle against whom allegations of sexual misconduct had been made. After a hearing at which the plaintiffs