THE ROLES OF THE VICAR-GENERAL AND SURROGATE IN THE GRANTING OF MARRIAGE LICENCES

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1. INTRODUCTION

As a general principle, regular marriage in the Church of England is solemnized after the publication of banns. This requirement entered the mediæval canon law first as a matter of local custom, but was made universal in 1215 by a decree of the Fourth Lateran Council. Lord Hardwicke's Act[1] did not impose the requirement of banns for the first time; it simply ensured that the option of an irregular marriage without banns, previously recognised by Church and State though frowned upon, would no longer be valid in law.

Banns, however, had always been an element of marriage in respect of which the Church exercised a dispensing power[2]. If a couple for some reason wished to marry regularly but without banns, they could apply to the bishop, the archbishop or the pope, and a dispensation could be given.

The exercise of the dispensing power was an act of jurisdiction, rather than a sacramental act requiring episcopal order for its validity. It was therefore one of the many episcopal acts which the bishop, not having time to perform in person, might leave to his vicar-general. The vicar-general of a large diocese might in turn delegate this power (along with certain others) to surrogates.

The Reformation made little difference to the dispensing power in this field, save that those dispensations previously reserved to the Holy See (and in practice granted by the papal courts, Legates *a latere*, or the Archbishop of Canterbury as *Legatus natus*) – including what we know as 'special' marriage licences – were transferred to the Archbishop of Canterbury in his own right, subject to a right of appeal to the Lord Chancellor against a refusal. In particular, section 9 of the Ecclesiastical Licences Act 1533 provided that

> "This Acte shall not be prejudiciall to the archebisshopp of Yorke or to any bisshopp or prelate of this realme; but they may lawfully (notwithstondyng this Acte) dispence in all cases in which they were wonte to dispence by the comen lawe or custome of this realme afore the makying of this Acte."

Dispensations, or Licences as they came to be known, for marriage without banns have continued to be granted to this day. (The reasons why they are sought, and the practice usually followed in granting them, are considered in Part 4 of this article). The Ordinary grants them for marriages in his diocese; the

1. Marriage Act 1753.
2. The dispensing power makes a fascinating study in its own right. The basic principle is that the lawgiver, from whom a law made for the general good derives its force, has power to relax it in particular cases where its effect would not be beneficial. Authorities inferior to the lawgiver can dispense where the lawgiver has delegated that power to them. A dispensation must be given for cause, and is usually subject to the tacit condition that the petitioner's allegations are true.

Metropolitan for marriages in his province; the Archbishop of Canterbury exercises throughout England[3] the papal power transferred to him by statute. The Ordinary may act by his vicar-general; the Metropolitan by the vicar-general of the province; the papal power is exercised through the Archbishop of Canterbury's Commissary or 'Master of the Faculties'. Lord Hardwicke's Act expressly allowed marriage by licence to remain available as an exception to his general rule about banns, although other statutory requirements (e.g. authorised building, minimum period of residence, solemnisation between 8 a.m. and 6 p.m.) applied to all marriages except those by the Archbishop of Canterbury's 'special licence'.

The law regarding marriage licences granted on the authority of the Ordinary or Metropolitan may now be found in section 5 of the Marriage Act 1949:

> "A marriage according to the rites of the Church of England may be solemnised – (c) on the authority of a licence of marriage (other than a special licence) granted by an ecclesiastical authority having power to grant such a licence (in this Act referred to as a 'common licence')"

Canon B34 amplifies this as follows:

> "3. The archbishop of each province, the bishop of every diocese, and all others who of ancient right have been accustomed to issue a common licence[4] may grant such a licence for the solemnisation of matrimony without the publication of banns at a lawful time and in a lawful place within the several areas of their jurisdiction as the case may be; and the Archbishop of Canterbury may grant a common licence for the same throughout all England.[5]"

This article will concentrate primarily on the jurisdiction given to diocesan bishops and those who act for them, and will not deal (except in passing) with the Archbishops' and other special jurisdictions.

The Act of 1949 also contains an important point on licence procedure, carried forward from earlier legislation:

> "16-(1) A common licence shall not be granted unless one of the persons to be married has sworn before a person having authority to grant such a licence –
> (a)" (There follow three paragraphs as to impediments, residence and parental consent)

The administration of this oath is now the most obvious formal step in the obtaining of a common licence; so much so that surrogates are sometimes thought of as primarily appointed "to take affidavits", a serious misapprehension as this article seeks to show.

2. THE VICAR-GENERAL

The word 'vicar', of course, like the word 'surrogate', means a deputy or substitute. Just as the vicar of a parish was the deputy of the rector, who performed those spiritual duties which the rector was unwilling or unable to perform,

3. And Wales, despite the effect of the Welsh Church Act 1914; *Powell v Representative Body of the Church in Wales* (1957) 1 All ER 400.
4. This refers to certain dioceses where Ordinary jurisdiction in this respect is exercised by the Archdeacons; and may also allow for any special customs in royal and other peculiars.
5. The granting of special licences by the Archbishop of Canterbury in the Province of York is easily enough understood as an exercise of transferred papal authority; but his granting of *common* licences in the northern province is more difficult to explain, and is probably best seen as an historical anomaly dating from the days of strong rivalry and power struggles betwen the two sees.

so the vicar of a diocese (or 'vicar-general') stood in a similar relation to the bishop. (As already indicated, we speak here of acts of jurisdiction, not sacramental acts whose minister must be in bishop's orders.) There might be other officers appointed by the bishop, such as the Official Principal whose role it was to preside in the bishop's court to determine contentious matters; but except in so far as the bishop had divested himself entirely of his ordinary jurisdiction by granting it to another, it remained possible for it to be exercised either by him in person or by his vicar-general.[6] The dispensing power was an example of this 'voluntary jurisdiction', not being concerned with suits between party and party. Marriage licences, therefore, could be granted either by the bishop in person or by his vicar-general, (except in so far as the power might be restricted on the vicar-general's appointment). The provincial vicar-general stood (and stands) in the same relation to the Metropolitan.

The vicar-general of a province or diocese is appointed by letters patent. Originally the appointee was always a clerk learned in the laws ecclesiastical. Today there is no objection to the appointment of a lay person with the requisite learning, indeed there is a convention that the Chancellor of the diocese, to whose appointment the ancient office of Official Principal is now annexed[7], is also appointed vicar-general[8]. But even when this is done (and there seems to be no actual requirement that it should be so), it is as vicar-general of the Diocese, not as Chancellor, that he (or she) will be concerned with marriage licences.

In determining the extent of the vicar-general's authority in the field of marriage licences, references must be made to the letters patent by which the bishop makes the appointment. If convention is followed, the letters will first confer the office of Chancellor; this has, by statute, the effect of giving jurisdiction in a number of fields, both as Chancellor and as Official Principal. The appointment as vicar-general which follows, however, is not the subject of any statutory provision, and the powers which are delegated to the officer in this capacity may be limited in any way the bishop sees fit. A typically qualified wording is as follows:

> "So far and as often as law and custom do allow to visit in Our name Our Cathedral Church of . . . . . and all other Churches and ecclesiastical places within the City and Diocese of . . . . . and the clergy and people thereof and to exercise thereover the usual ecclesiastical jurisdiction (save and except the giving of Institution or Collation to benefices the grant of Licence for the exercise of any ministry and the

6. According to Lyndwood, *Officiales dicuntur, quibus causarum cognitio generaliter per habentes jurisdictionem ecclesiasticam committitur, et in tales transfunditur cognitio causarum totius diocesis; non tamen inquisitio, nec correctio sive punitio criminum, nec possunt aliquos amovere a beneficiis, nec conferre beneficia, nisi specialiter fuerint talia eis commissa. Sed Vicarii Generales omnia praedicta facere possunt, virtute officii, excepta collatione beneficiorum.*
7. Ecclesiastical Jurisdiction Measure 1963, s.13(2).
8. It is possible, though, to imagine ways in which this convention might be broken. In particular, the offices of Chancellor and Official Principal may now be made virtually freehold offices by capitular confirmation (Ecclesiastical Jurisdiction Measure 1963, s.2(3),) but there is no comparable statutory provision for the vicar-general. It has been suggested that such confirmation is not necessary to give the vicar-general a freehold (G. H. Newsom, *Faculty Jurisdiction in the Church of England*, p.9), but it seems equally possible that the pre-reformation (and continuing) English position may be reflected by the present Roman Catholic canon law: 'The power of the vicar-general (or episcopal vicar) ceases when the period of their mandate expires, or by resignation. In addition . . . it ceases when they are notified of their removal by the diocesan bishop, or when the episcopal see falls vacant' (RC Can. 481, §1); and that this would be the position irrespective of capitular confirmation. If this were correct, an incoming bishop would have to put up with a chancellor already confirmed in office, but could appoint a new vicar-general of his choice. It would equally follow that during a vacancy in see, the granting of licences would be a matter for the guardian(s) of the spiritualities to perform through their own vicar; the Metropolitan acting by the Provincial Vicar-General, or the Dean & Chapter acting by a Vicar specially appointed.

> acceptance of resignations) whenever We shall be hindered from making such visitation and exercising such jurisdiction in Our own proper person And further to grant in Our name throughout Our said Diocese all such Licences and Dispensations as law and custom do allow [but reserving to Us and Our successors the grant or refusal of Common Licences for the solemnisation of matrimony without publication of banns in such cases or classes of case as We may signify to you from time to time (saving to you in such cases all fees arising from the grant of such licences which you would have received in case you had yourself granted the same)] And further to constitute and appoint any fit person or persons as your deputy or surrogate to act in your stead in any matter in which you shall be hindered from acting personally as such Vicar-General and to revoke any such appointment [(first having in all cases Our consent and approbation)] RESERVING always to Ourselves and Our successors (any thing herein to the contrary notwithstanding) the appointment and removal according to law of the Registrar or joint registrars of Our said Diocese and Consistory Court and of the Apparitor thereof"[9]

The two sets of words in square brackets are not by any means uniformly included in such letters patent; but they are given here as examples of restrictions that would be legally possible. By the first, a bishop could (for example) reserve to himself the sensitive decision whether a licence should be granted in particular cases where one of the applicants had a former spouse still living (see part 4). By the second, a bishop could exercise a veto over the vicar-general's choice of surrogates. In many dioceses, of course, there is no such express reservation, but an understanding between bishop and vicar-general which renders it unnecessary.

Between the early days and the nineteenth century, there was a tendency for those episcopal acts that were performed by the vicar-general to be seen less as administrative or pastoral, and more as judicial. At the height of this 'judicial tendency', the vicar-general took a very personal involvement in the granting of licences, and heard any remotely doubtful cases in open court. The judicial approach must have been correct up to a point, in that a decision to grant or refuse a licence (or, for that matter, to visit a parish, or for the provincial vicar-general to confirm or quash the election of a new bishop) should not be exercised capriciously; and if a decision is taken for reasons of law, the law ought to be correctly applied.[10] But the principle was surely taken too far by Chancellor Tristram, Vicar-General of the Diocese of London, in 1895 when he held that a licence must be granted *ex debito justitiæ* where no legal objection existed, and that there was no discretion in him or (by implication) in the bishop.[11]

During this century, the 'judicial tendency' has been reversed. Fewer difficult questions of law now arise on marriage licence applications, and bishops and vicars-general alike have sanctioned the practice of consulting them only in cases of doubt. (In such cases it tends to be the Registrar who alerts them to the

9. The *Encyclopaedia of Forms and Precedents*, 4th Edition, Service, contained a form of Chancellor's patent which achieved brevity and simplicity of wording at the cost of omitting almost all the detail of the form here set out. The result of using such a form (not reproduced in the 5th Edition) would be to give a vicar-general almost unlimited episcopal authority.

10. Two clear examples of the judicial role that the vicar-general must play may be taken from the Marriage Act 1949 as amended: s.16(2) (caveats against the issue of common licences), and s, 16(28) (declarations that no impediment of affinity exists, in cases where the parties cannot both swear that such is the case).

11. *Ex p. Brinckman* (1895) 11 TLR 387. A conflicting authority, relating to the transferred papal jurisdiction, may be found in the decision of Dr Nicholl, Master of the Faculties, in *Prince Capua v Count de Ludolf* (1836) 30 LJPM & 71n. It is submitted that Dr Nicholl's view is to be preferred.

problem.[12]) Almost all licences are accordingly issued on the authority of the surrogate (though still in the name of his principal – see below), and the formality has largely disappeared from the procedure. There is now no doubt in the minds of most bishops – and many of their advisers – that a discretion to refuse a licence does exist. In its nature, however, a licence application remains just as much a judicial proceeding as it ever was in Tristram's day.

3. THE APPOINTMENT OF SURROGATES

We have seen that the vicar-general had a wide jurisdiction, not confined to marriage licences. In large dioceses he also had a wide territory to cover. There was a need to share the workload.[13] The appointment of surrogates was the answer.

The word 'surrogate' is not an exclusively legal term. Admittedly the 1964 edition of the *Concise Oxford Dictionary* gave its meaning as 'deputy, *esp.* of bishop or his chancellor for granting of marriage licences'; but that was before recent developments in the field of human fertility. To civil law systems, however, a surrogate was familiar as an officer exercising, to a limited extent, the judicial power of another.[14] A vicar-general, himself a clerk learned in the law, would appoint other clergy with the requisite knowledge specifically for matters concerning marriage preliminaries.

The system could easily be abused, resulting in the delegation of important powers to incompetents. The 1603 Canons were no doubt repeating earlier injunctions when it was provided that

> "No Chancellor . . . Official or other person using ecclesiastical jurisdiction shall at any time substitute in their absence any to keep any court for them except . . ."[15]

The qualifications followed. A surrogate had to be *either* (a) a 'grave minister' holding a benefice and located near to the seat of the judge's court, and being (i) a graduate or (ii) a licensed public preacher, *or* (b) a person 'of honest and modest conversation', a 'favourer of true religion' and a Bachelor of Laws or Master of Arts skilled in the civil and ecclesiastical law.

Canon cxxviii was swept away in the 1964/69 revision, and not replaced. Its spirit is, however, still generally observed. The vast majority of surrogates are now appointed on the bishop's recommendation from the middle ranks of the clergy; one to each deanery is an average level of provision, though the jurisdiction of each covers the whole diocese. A diocesan registrar's patent will normally include wording giving him a surrogate's powers, so that he can deal with applicants in person at the registry, and it can be helpful for other members of his staff to be similarly authorised.

The appointment of a surrogate is testified by a Commission under the seal of the judge who appoints him. A surrogate for marriages may be commissioned in these words:

12. See part 4. The matters mentioned at note 10 above, however, will always be dealt with by the vicar-general.
13. This need increased considerably in the 19th and 20th centuries, with some individuals being vicar-general of several dioceses at once. The trend has now been halted, and no chancellor presently in office is appointed for more than three dioceses.
14. A recent example of a surrogate sitting in a secular court in this country (operating under a civil law system) was *Manchester Corporation v Manchester Palace of Varieties Ltd* (1955) 1 All ER 387, when Lord Goddard sat as surrogate of the Earl Marshal in the High Court of Chivalry: though, unusually, his principal the Earl Marshal was also present in person.
15. Canon cxxviii.

> "We do by these presents appoint you during Our pleasure or so long (if shorter) as you shall remain Incumbent of the Benefice of . . . to be one of Our Surrogates in the Diocese of . . . . for the granting of marriage licences and for administering oaths upon applications for such licences. ."

(Wording follows as to the oath of office.) It is important to note that the administering of oaths is merely ancillary to the surrogate's main function of actually *granting* the licence.

By the Marriage Act 1949, s. 16(4), the surrogate must swear 'faithfully to execute his office according to law, to the best of his knowledge'. Until a very recent reform,[16] he also had to give 'security by his bond in the sum of £100 to the bishop of the diocese for the due and faithful execution of his office': the bond was forfeited for malpractice.

The surrogate is, however, paid for his trouble. The dispensing power was never thought of as conferring spiritual benefits in such a way that payment could be tainted with simony; and fees have always been charged (though kept within bounds by the example of the Ecclesiastical Licences Act 1533). Today the vicar-general prescribes a fee, following a national recommendation, and directs how it is to be split between himself, his surrogate and the registrar who prepares the licence document for sealing. Some dioceses negate this benefit to the surrogate by deducting this fee income from his stipend augmentation; others generously refrain.

A surrogate may be removed from office by his principal at will, and his commission may impose other conditions for remaining in office. It is clear that, apart from statute, a surrogate's office must cease when his principal's office falls vacant; for it was necessary to provide expressly by an Act of 1829[17] that on the deaths of the judges of the Court of Arches and the Consistory Court of London, surrogates appointed by them would continue in office till new appointments were made.

4. THEORY, PRACTICE AND THE ROLE OF THE REGISTRAR

In the remainder of this article, we shall examine how the practical experience of a surrogate's work fits the legal theory set out above.

The need for a common licence may arise in number of ways. First, there may be a wish to avoid publicity: an elderly couple, perhaps a widow and widower well-known in their village, often find the notoriety of banns off-putting.

Then there is the 'foreign element', which can manifest itself in either of two ways. If one party to an intended marriage lives abroad (that is, outside England, Wales, the Channel Islands and the Isle of Man[18]) and consequently has no residence in a parish where banns can be called, the marriage can only take place in church by licence. Or if a party, although having sufficient residence in this

16. Statute Law (Repeals) Act 1975.
17. 10 Geo. IV c.53, s.13.
18. Proclamation of banns according to the use of the Church of Scotland was formerly a recognised preliminary to a Church of England marriage, where one of the parties resided north of the border. But by s.3 of the Marriage (Scotland) Act 1977 a marriage notice published by a civil registrar became the only preliminary to marriage recognised by the law of Scotland, and an Act of the General Assembly provided that proclamation of banns should cease in the Church of Scotland save as an option for purely religious purposes. It is apprehended that proclamation on that basis would not be within the contemplation of the English Act of 1949, which recognised banns proclaimed in Scotland 'according to the law or custom there in force'. Banns published in the Church in Wales, however, are effective for English purposes despite the disestablishment of that Church, thanks to the construction provision in s.78(2) of the 1949 Act.

country for banns, has a foreign nationality or domicile, it is prudent to ensure that the country concerned will recognise the validity of a marriage contracted in England. (In the extreme case of certain Islamic countries, the parties to an unrecognised marriage may be under pressure to separate, which can place considerable difficulty in the way of keeping the marriage vows.) Consequently such couples are commonly advised to forego their right to marry after banns, and to apply for common licences so that the diocesan Registry can check on the recognition point when dealing with the case.

Thirdly and most commonly, a licence is sought for reasons of speed. The need for qualifying residence for banns to exist at the time of the application and continue over the three Sundays of publication may rule this method out for people who live and work abroad, but are coming briefly to England to marry. A mere fifteen days' residence by one party, immediately before the application, is sufficient for a common licence; and once the licence is granted the applicants may freely leave the parish, not returning until the wedding day, if they so choose (though the validity of the licence is still restricted to three months). Sadly more common still, speed may be necessary because persons intending to marry after banns are out of time, due to a failure to call the banns on the right dates in all the right places.

In the typical case, a person seeking a common licence for one of these reasons (or any other) goes to see (or, in the words of the formal record, 'appears personally before') a nearby surrogate. The application is made in writing, supported by affidavit as required by s.16(1) of the Act of 1949. In practice the surrogate himself fills in the blanks on a printed form, containing both the record of the application and the text of the required oath; he obtains the details orally from the applicant, who then signs the form.

It is at this stage that specifically pastoral work may be done, either if the applicant appears to be totally unfamiliar with Church marriage (though the clergyman who is intending to officiate should have already begun to remedy this), or if there is some reason why a licence cannot be granted and the consequences of this need to be faced.

The whole transaction, however, has pastoral consequences, because the surrogate represents at that moment the official face of the Church and the impression which that face makes on the applicant can be critical. When a bride is facing the collapse of all her family's plans due to a mishap over banns, or a nervous and inarticulate groom is groping his way through half-understood formalities, the pastoral touch is essential.

Having explained its significance, the surrogate administers the oath. The Act requires only that the oath be taken 'before' the surrogate, but usually nobody is present to administer it but the surrogate himself. Once the oath is taken, the surrogate may if satisfied grant the licence. This is the point about which so many misconceptions are held.

As this article has sought to show, the surrogate is an inferior ecclesiastical judge. His powers are limited and his legal training may be minimal; the words he uses may be simply 'Fine; I'll get the papers off to the registry and the licence should reach you shortly'; but they are as much the 'definitive sentence and final decree' of an ecclesiastical court as the declaration of a provincial vicar-general confirming a bishop's election. From that moment onwards, the licence has been granted and the parties may validly marry in accordance with its terms; therefore when it is enshrined in a document under seal, the date will be that of the appearance before the surrogate, not the date of sealing.

The printed form, signed by the surrogate, goes to the diocesan registry where it is, no doubt, checked. If it is in order, the registrar's function is a purely ministerial one: the court has already made its order and his task is to reduce it to writing. Details are copied on to a printed form of licence, made out in the name of the surrogate's principal (usually the name of the vicar-general, in some dioceses the name of the bishop or other Ordinary, in a vacant see the name(s) of the guardian(s) of the spiritualities). The vicar-general's seal is affixed and the licence despatched to the applicant. None of this amounts to the registrar 'granting' the licence; none of it is a matter over which the registrar exercises any discretion. Because the registrar knows the law, and has probably produced the printed forms and been concerned with the surrogate's appointment in the first place, there is a natural tendency on both sides to suppose that the surrogate works under the registrar's instructions. In fact the opposite is the case.

What happens, though, when the surrogate gets it wrong? An oath as to the bridegroom's residence, when the marriage is to take place in the bride's church, does not fulfil the requirement of s.16(1)(b). A person who is unbaptised cannot qualify to marry in a 'usual place of worship', because his enrolment on the electoral roll is a nullity[19]. If a vicar-general's patent reserves cases of remarriage after divorce to the bishop's personal discretion, the surrogate cannot take that discretion to himself. Errors such as these are normally detected when the affidavit reaches the registry.

It is submitted that in such cases the surrogate's decree granting the licence is *ultra vires*, and therefore itself a nullity. The registrar is not bound to record such a decree on paper, and his action should be dictated by the nature of the error. If it is such that there has been no valid application, the parties should be invited to apply again if they can fufil the legal requirements, or otherwise directed to banns or some other form of preliminary. If (as in the last example) there is a valid application, but one which only a superior judge (such as the bishop) can determine, then the application should be referred to that judge, and no fresh affidavit is required.

This highlights one of the two main differences in nature between the delegation from bishop to vicar-general, and that from vicar-general to surrogate. If the vicar-general performs an episcopal act, then the bishop is *functus officio*, because the vicar-general's act is declared to be his; but neither the bishop nor the vicar-general is bound in the same way by what the surrogate has done. (The other difference is that the surrogate has no power of further delegation.)

It is rare, at the present time, for a licence to be refused. When a licence is actually not available in law, for example because the residence requirements are not fulfilled, the surrogate will normally point this out gently but firmly before administering the oath; so no formal application is made. A surrogate who encouraged a non-resident to sign the form and swear to its correctness, only to refuse the application as soon as it was made, would certainly be failing in his pastoral, if not his judicial, duty; while a surrogate who granted such an application by oversight would be acting *ultra vires*, and the matter would be dealth with as outlined above.

But cases do arise where a licence is refused although there *is* jurisdiction to grant it. The divorced and the unbaptised are the main categories of applicant affected. Bishops and vicars-general, and surrogates following their

19. Church Representation Rules, r.1(2)(a).

guidelines, have at present a more or less universal policy of not authorising by licence the remarriage of a divorced person with a surviving former spouse; even though they have no power in law to prevent a willing incumbent from marrying such a person after banns.

The discretionary nature of licences (*pace* Chancellor Tristram) can be seen even more clearly in the case of the marriage of two unbaptised persons. It seems to be fairly clear that the lack of baptism is not a legal impediment to marriage[20], and cannot deprive parishioners of the legally enforceable right to a Church marriage after banns; but some bishops exercise a discretion against the grant of a licence in such a case, while others have been known to allow it. If only one party is baptised, and the other professes goodwill towards Christianity and a desire for a Church marriage, understanding its implications, there is seldom any obstacle to the grant of a licence.

Occasionally an applicant may find it convenient to 'appear' in the diocesan registry instead of seeing a clergy surrogate locally. As previously mentioned, the opportunity thus given for the registrar to check the recognition requirements of a foreigner's country of domicile is a useful service that the Church can offer to those seeking its ministration. The principle, however, remains exactly the same. An affidavit sworn in the registry results in the registrar 'wearing two hats'. He (or a member of his staff so authorised) takes the affidavit and grants the licence in his capacity as a surrogate; then, in his ministerial capacity, he reduces his own decree to writing.

5. CONCLUSION

In 1973 a Law Commission working party put forward a proposal to replace banns and licences by universal civil preliminaries to Church marriage[21] A report to the Archbishop of Canterbury on this proposal[22] gave five reasons why it should be rejected. The group reporting commented (*inter alia*) that common licence procedure was flexible and responsibly exercised, that clergy were more generally available than superintendent registrars, and that there was insufficient evidence that the clergy had failed to fulfil their duties in carrying out the existing law.

The General Synod working party report published in 1988, 'An Honourable Estate'[23], supported this view and recommended no change in the law, though it stressed the need for proper training of clergy in their legal duties in this field. The working party also recognised the significant pastoral possibilities inherent in the surrogate's role, commenting 'we are conscious that the visit of a couple to the church to arrange for banns to be published *or to make arrangements for a licence to be issued* (author's italics) may be the first opportunity given to the Church for offering pastoral care'.

Against this background, the duties of the vicar-general and surrogate in the marriage licence field will continue to be important for the foreseeable future. The legal roles that they play, however, seem to have become somewhat misted with time; and it is hoped that this article has succeeded in casting some light on this area of law, while relating it to the practical and pastoral realities of the task.

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20. See the treatment of this subject in *An Honourable Estate*, GS 801.
21. Law Comm. No. 53, Annex, 54.
22. GS Misc. 25.
23. GS 801.

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