

Pat-a-Cake: should bakers bake me a 'gay' cake?



Northern Ireland Court holds that baker's refusal to provide cake with same-sex decoration is discrimination. Here are the reasons why the judgment is right.

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There has been an outcry from Christian groups at a Northern Ireland Appeal Court ruling against the owners of a bakery who refused to decorate a cake with the message 'Support Gay Marriage'. Once again, they claim, we are discriminated against and persecuted by being forced to act against our conscience. In the name of freedom of belief, they demand that the law be changed to allow them to practice their beliefs as they will.



Colin and Karen McArthur, the owners of Asher Baking, a Northern Ireland business, refused to provide a cake for a LGBTI gathering with this image.

They oppose the introduction of same-sex marriage (which not yet been legalised in Northern Ireland) as they believe that it is contrary to God's law. They claimed the requirement to provide the cake was forcing them to endorse same-sex marriage, breaching their right to freedom of conscience, and their act was not thus unlawful discrimination.

The trial judge rejected the McArthur's claim, and this finding was endorsed by the Court of Appeal, thus refuting their allegation of persecution.

Was the message an 'endorsement' of same-sex marriage?

No, the judges declared. This was, it recognised, a message based on both religious and political conviction, but by providing the cake, the McArthurs would not be 'promoting and supporting a change in the law of Northern Ireland so as to enable same sex marriage'. They pointed out, for example, that people don't

believe that by a cake decoration for a customer the baker is intending to promote a football team or witches on Halloween. In fact, the Court said, 'they would be doing no more than obeying the law and providing the Plaintiff with a service'. Indeed, by refusing to provide the cake, the McArthurs were discriminating in the provision of a service they were to provide equally to all potential customers.

Was refusal to provide the cake unlawful discrimination?

Yes, the judges said. As the court at first instance ruled that Ashers are not a religious organization; they are a bakery conducting a business for profit notwithstanding the owners' religious beliefs, and 'the Legislature, after consultation and consideration, has determined what the law should be'. It went on to explain the legal test of discrimination. Joshua Rozenburg, BBC legal commentator states it as follows:

...the correct comparison was not with a straight man who wanted a 'gay' cake, which Ashers would have refused. It was with a gay or straight person who ordered a cake celebrating traditional marriage - which the company would have supplied. (see [here](#)).

Similarly, a gay baker would be required by law to supply a cake with the words 'support heterosexual marriage'. The law applies equally to and for all.

The judge determined that 'the relevant anti-discrimination provisions were necessary in a democratic society and were a proportionate means of achieving the legitimate aim of protecting the rights and freedoms of the respondent. To do otherwise would be to

...allow religious belief to dictate what the law is. The first and second appellants were entitled to continue to hold their genuine and deeply held religious beliefs and to manifest them, but this must be done in accordance with the law and that included not manifesting them in the commercial sphere if the manner of doing so was contrary to the rights of others.

The McArthurs are not deprived of their right to manifest their religion in their private life, nor of their right to free speech. But when it comes to their treatment of fellow human beings, they should respect the right of all individuals to equal recognition before the law. If you provide forum for the public to express views and beliefs, you should not discriminate in the messages you carry on the grounds of (legal) religious or other personal life-stance.

Bakers are perfectly at liberty to refuse to fulfil an order for the cake with the pro-same sex marriage message, if they are to be non-discriminatory, they should also refuse one with a pro-opposite-sex marriage too. They should either make cakes with any religious, political, or other discriminatory message, or refrain from any such message at all.

Otherwise, as has happened in the US as a result of the [Burwell v. Hobby Lobby - Supreme Courtcase](#), religious organisations would be free to discriminate according to the (mainly religious) beliefs of their proprietors. That decision

effectively extends what is a matter of personal conscience to constituting the policy of corporate enterprise, thus severely negating the individual human rights of individuals.

Are the McArthurs being ‘forced’ to act contrary to their beliefs?

Well, no. They have options: (a) treat all those seeking wedding cakes with religious or political messages equally, (b) refuse to provide wedding cakes bearing any religious or political messages, or (c) cease making wedding cakes altogether. As a result of the Court decision, Ashers are now concentrating on birthday cakes, avoiding religious and political messages altogether.

The ruling is consistent with human rights and the public interest in the equal treatment of all.

This ruling, it is argued, accords with the UN interpretation of the right to have and manifest religious belief according to Article 18 of the *Universal Declaration of Human Rights* (‘UDHR’), to which all nations of the world subscribe. Article 18, based on the UDHR principle of liberal democracy, states that everyone has the right to have and ‘manifest’ a ‘religion or belief’. This statement is cited by those who would subject others’ rights to their personal conscience. But they ignore the critical exception to Article 18. That says that in the exercise of their rights, ‘everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society’. A similar exception is contained in Article 18 of the *International Covenant on Civil and Political Rights* (‘ICCPR’), to which 175 nations also subscribe, requiring them to apply it to domestic law.

Anti-discrimination law is there to preserve the democratically accepted public interest in mutual recognition of everyone’s rights. As the National Secular Society points out, the ruling doesn’t mean Christians don’t have rights. ‘It simply means their rights are not superior’ ([see here](#)).