

## **Clerical Enquiries**

(A report of the Standing Committee revising and updating to 19 September pages 49 to 51 of the Standing Committee's Annual Report)

### **The Ordinances**

1. The Standing Committee has an obligation to administer the ordinances of the Synod. Two such ordinances are -

- (a) the Tribunal Ordinance 1962 (which replaced ordinances passed in 1868 and 1904); and
- (b) the Incapacity and Inefficiency Ordinance 1906.

2. Recent experience is that, while there have been enquiries about the use of these ordinances and several "near starts", it is not often that a matter proceeds. Our early records of the usage of these ordinances are deficient.

### **Broad Operation of the Ordinances**

#### *General*

3. The minister of a parish is an office holder who has the right of tenure until age 65 (extendable to 70). This tenure can be terminated under these ordinances.

#### *Tribunal Ordinance*

4. In general terms, the Tribunal Ordinance deals with the investigation and hearing of charges against members of the clergy of alleged -

- (a) breaches of faith, ritual, ceremonial or discipline;
- (b) unchastity;
- (c) drunkenness;
- (d) habitual and wilful neglect of ministerial duty after written admonition by the Archbishop;
- (e) wilful failure to pay just debts; and
- (f) conduct disgraceful in a member of the clergy and productive or likely to be productive of scandal or evil report.

5. Any 5 or more parishioners can bring a charge under the Tribunal Ordinance. When a charge is made a copy of the charge is sent to the member of the clergy for an answer and if the charge is not admitted the enquiry proceeds in 2 stages.

6. The charge and the answer (if any) are first considered by the Board of Enquiry which must determine if a *prima facie* case against the member of the clergy has been made out. If the Board finds that such a case has not been made out the matter proceeds no further since the charge is not a proper charge to be heard.

7. However if the Board thinks that a *prima facie* case has been made out, the matter is referred to the Diocesan Tribunal for formal hearing and the taking of evidence. After the hearing the Tribunal can either dismiss the charge or find the member of the clergy guilty. If the Tribunal finds the member guilty, it must report to the Archbishop and recommend such sentence (being one or more of monition, suspension of office, deprivation of rights and emoluments appertaining to office or deposition from Holy Orders) as it thinks just in the circumstances.

8. The Archbishop must give effect to the Tribunal's recommendation although, in the exercise of his prerogative of mercy, may mitigate the sentence, suspend its operation or do both.

9. The Board of Enquiry has 3 members, 1 member of the clergy and 1 layperson elected by the Synod every 3 years and 1 member of the clergy appointed by the Archbishop. The Diocesan Tribunal has the Archbishop as President (or a Deputy President appointed by the Archbishop) and 5 other members: 2 members of the clergy and 3 laypersons elected by the Synod every 3 years.

*Incapacity and Inefficiency Ordinance*

10. In general terms, the Incapacity and Inefficiency Ordinance deals with enquiries into circumstances of alleged incapacity for or inefficiency in the discharge of ministerial duty by members of the clergy.

11. Any person can make representations to the Enquiry Committee about the alleged incapacity and inefficiency in the discharge of ministerial duty by the member of the clergy. The Enquiry Committee must, upon receipt of such representations, enquire in such manner as it thinks fit.

12. If, after enquiry, the Enquiry Committee reports to the Archbishop circumstances which raise the question of removing the member of the clergy on the grounds of incapacity and inefficiency the Archbishop must appoint 3 Commissioners (2 clergy, 1 lay).

13. The Commissioners must enquire into the circumstances identified by the Enquiry Committee, notify the member of the clergy of the nature of those circumstances and call upon the member to give such explanation and evidence as the member thinks fit. The Commissioners must afford the member reasonable facilities for giving such explanation and evidence.

14. After their enquiry the Commissioners must report to the Archbishop. If the Commissioners report that there are no circumstances which render it expedient that the member of the clergy be removed then no further proceedings are taken. However if the Commissioners (or the majority of them) report that circumstances exist which render it expedient that the member be removed the Archbishop must notify the member and give reasonable opportunity for making representations about the report or the whole

circumstances of the case. If the Archbishop thinks it expedient he may, within the time limits in the ordinance, remove or temporarily suspend the member.

15. The Enquiry Committee has 3 members, 1 member of the clergy and 1 layperson elected by the Synod every 3 years and 1 member of the clergy appointed by the Archbishop. As noted in item 12, the Archbishop appoints the commissioners when required.

### **The Pymble Enquiries**

#### *Proceedings Under the Tribunal Ordinance*

16. On 22 November 1993 a charge was made against the Rector of Pymble by 17 parishioners. The Standing Committee does not know the details of the charge. The charge was referred to the Rector and an answer was provided.

17. The Board of Enquiry met on several occasions and considered the charge, the Rector's answer to the charge and other submissions from the complainants and the Rector.

18. On 22 March 1994 the Registrar was informed that the complainants did not intend to press the charge further due to the appointment of Commissioners under the Incapacity and Inefficiency Ordinance 1906 (see items 21 to 23) and to the possible unnecessary duplication of enquiries of 1 area of the charge.

19. The Board of Enquiry considered that a charge could not be withdrawn and on the basis of the material before it, found on 30 March 1994 that a *prima facie* case against the Rector had not been made out.

20. The complainants dispute the Board's finding that a charge cannot be withdrawn. However the point is academic at this time since the complainants are not pursuing the charge pending the outcome of the Commissioners' enquiry.

#### *Proceedings under the Incapacity and Inefficiency Ordinance*

21. The background to the appointment of the Enquiry Committee in relation to the events at Pymble was set out in the Archbishop's circular of 4 January 1994 to Synod members.

22. The Enquiry Committee investigated those events and, by a majority decision, reported to the Archbishop that there were circumstances that raised the question of the removal of the Rector on the grounds of incapacity and inefficiency. The Archbishop then appointed 3 Commissioners to enquire into the matter.

23. The Commissioner's independent enquiry has involved many people and required extensive interviewing and martialling of evidence. In all, 58 people were called in evidence and there are about 900 pages of transcripts of meetings since 28 March 1994.<sup>1</sup>

*Costs*

24. Each year the Synod gives the Standing Committee funds for contingencies and diocesan administration. No separate provision has ever been made by the Synod for the administration of the 2 ordinances.

25. Members of the Board of Enquiry and the Enquiry Committee gave their time freely, and their costs (staff time of 183 hours plus office costs) were contained within existing budgets. No staff members paid from Synod funds are involved in the Commissioners' independent enquiry.

26. The Commissioners have not charged for their time, neither has counsel assisting the Commissioners. The solicitors who have assisted in assembling evidence for all parties have charged for their time but at significantly reduced rates. The transcripts have been prepared by CAT Reporting Services.

27. The costs of the Commissioner's independent enquiry to date total \$159,912 (Commissioner's expenses \$4,980, meeting room hire \$660, CAT Reporting Services \$13,661 and legal costs of \$140,611)<sup>2</sup>. These costs have been funded from Synod Fund contingencies (\$71,232) and from the working capital of the Synod Fund. The working capital must be replaced and a special grant of \$100,000 is recommended as part of the next diocesan budget.

28. The Standing Committee has been pressed to pay the legal costs of the Rector but has not done so at this time. The matter is to be further considered by the Standing Committee.

*Standing Committee Debates*

29. The Pymble matter has troubled the Standing Committee, we have made some hard decisions and do not pretend to be unanimous. Members of the Standing Committee who are or who represent parties in the 2 enquiries have not voted in these decisions.

**Privacy**

30. It is desirable that all proceedings under the Tribunal Ordinance and the Incapacity and Inefficiency Ordinance be kept confidential to the people involved. A duty of confidentiality, except for the purpose of the enquiry, is owed to those who give evidence and to the member of the clergy. No publicity should be given to allegations which ultimately may be rejected.

31. There is also the risk of defamation in matters of this kind.

**Moves for Reform**

32. Several years ago our Legal Committee started a review of the Tribunal Ordinance. This led to the promotion to the Synod last year of the Clergy Discipline Bill. But it was deferred with several other bills as we ran out of time. Due to the Pymble matter, we have invited the

mover of the Bill to consider asking leave to withdraw it with a view to it being promoted another time.

33. Under Synod resolution 9/94 the Archbishop has appointed a committee to report on Future Patterns of Ministry, including clergy tenure and licences, and the Standing Committee has referred a proposal for a different system of clerical enquiry to that committee for consideration.

34. The Standing Committee has also arranged for the appointment of a committee to work out an amendment to the Tribunal Ordinance concerning the role of the Advocate of the Diocese.

35. Subsequently, the Standing Committee decided that it should appoint a person (not a committee) to prepare a Parish Disputes Resolution Bill. The person had not been appointed at the date of this report. In the preparation of this Bill, the following matters may need to be addressed.

- (a) Money matters: who pays what expenses?
  - (b) Once started, can an enquiry be stopped?
  - (c) Does privilege apply?
  - (d) What levels of confidentiality apply to the various reports and proceedings?
  - (e) What is the meaning of "incapacity" and "inefficiency"?
36. None of these possible reforms can have any effect on the present enquiry.

For and on behalf of the Standing Committee

W.G.S. GOTLEY  
*Diocesan Secretary*

30 September 1994

#### **Notes**

1. Since the Standing Committee met on 19 September, the Commissioners have reported to the Archbishop: no other information is available.
2. Further expenses were paid in October, the present and probably final position for the Commissioners' Enquiry is -

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Solicitors	180,896
CAT Reporting Services	13,661
Commissioners' Expenses	6,136
Meeting Rooms etc	660
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