

Discipline Ordinance 2006 Amendment Ordinance 2012 *(did not pass)*

Explanatory Report

1. The Discipline Ordinance 2006 (the Ordinance) has been in operation since 2007 and has served us well.
2. After the first two years of experience with the Ordinance, a number of amendments were made at Synod in 2009. The amendments mainly involved the situation where an unpaid lay person failed to respond to or did not accept the recommendations of the Professional Standards Committee (PSC) as a means of dealing with a complaint without the need to go to the Disciplinary Tribunal. In this case, the Ordinance mandated that the matter had to proceed to a Disciplinary Tribunal. This produced costly, prolonged and difficult outcomes in cases where this may otherwise have been avoided. By amending clauses 36(3) and (4), the Archbishop was given the option not to send the matter to the Disciplinary Tribunal but instead refer the matter back to the PSC under a new clause 37A. These amendments removed the necessity for tribunal hearings by "default".
3. With the benefit of further experience, it is proposed that further amendments be made to the Ordinance.

Amendments to remove unpaid church workers from the jurisdiction of the Disciplinary Tribunal

4. It is proposed that further amendments be made to the procedures in the Ordinance for dealing with complaints made against unpaid lay persons.
5. Under clause 34(1)(j), the PSC currently may recommend that the Archbishop appoint a person to promote a charge against an unpaid lay person if the PSC is of the opinion that there is a reasonable likelihood that the complaint will be sustained and will result in the Disciplinary Tribunal recommending that a prohibition order be issued against the person. In this situation the Archbishop must send the matter to the Tribunal.
6. In light of further experience with the Ordinance, it is considered that referring complaints made against unpaid lay persons to the Disciplinary Tribunal should be discontinued entirely, even in cases where the PSC is able to form the view that there is a reasonable likelihood that the complaint will be sustained by the Tribunal and will result in a prohibition order. The reasons for this are –
 - (a) any referral of a complaint to a tribunal has the potential to be very costly in terms of time and money for both the person concerned and the Diocese, and
 - (b) such costs cannot be justified in circumstances where issues of employment or livelihood are not at stake as is the case with clergy or employed church workers.
7. The proposed amendments in clause 2 of the bill remove unpaid lay persons from the jurisdiction of the Disciplinary Tribunal thereby removing the ability of the PSC to refer complaints made against unpaid lay persons to the Disciplinary Tribunal. This means that in the event that an unpaid church worker does not respond to or accept an initial recommendation of the PSC under clause 34(1), for example that the person undertakes not to engage in specific types of ministry and/or the person resign from his or her office (clauses 34(1)(h) and (ha)), the Archbishop would be required, pursuant to clause 36(3)(c), to refer the matter back to the PSC for determination under clause 37A.
8. The PSC would determine the matter by making recommendations to the relevant church authority, for example that a prohibition order be made against the person or that the person be removed from office. A review process, similar to the review process used for the Disciplinary Tribunal, would be available to the person (clause 37AA). However a review would only be available if the PSC recommends that a prohibition order be made which would prevent the person holding any paid position in the Diocese in the future.

Amendments in relation to the functions of the Director, Professional Standards Committee and the Disciplinary Tribunal

Director

9. It is proposed to amend clause 13 to make it clear that the Director may decline to deal with a complaint if the person against whom the complaint is made is not a church worker.
10. Investigations have proved to be very costly. There are relatively minor or simple matters when an investigation by an external investigator is not necessary. The proposed inclusion of a new clause 20A would give the Director the authority to investigate the complaint him or herself instead of appointing a person to do so.

Professional Standards Committee

11. Under clause 34 the focus of the PSC is to make recommendations to a person about the action he or she should take to avoid further disciplinary steps being taken against them under the Ordinance. This is distinct from the recommendations that can be made to a relevant Church authority by the PSC under clause 37A in order to determine a matter involving an unpaid church worker. Clause 34(1)(h) is proposed to be amended to make this distinction clear and to closely parallel the matters covered in the definition of "prohibition order" in clause 2.

12. Currently a person against whom a complaint is made and who receives a recommendation of the PSC has 14 days in which to respond. This may not be long enough, and the proposed amendments to clauses 35(2) and 36 give the Director the ability to extend the period to longer than 14 days in certain circumstances.

13. It is proposed to amend clause 37A to give the PSC the express ability to recommend to a Church authority that an unpaid lay person be removed from a specified position or office. A corresponding amendment is proposed for clause 66 in respect of recommendations made by the Disciplinary Tribunal.

Other amendments

14. Clause 4 of the bill makes several miscellaneous minor amendments updating reference to child protection and other legislation in the Ordinance and the notes which describe the effect of this legislation.

15. It is also proposed to amend clauses 16(1) and (2) to reflect the fact that the Director may refer a complaint to the PSC under clause 19 as well as under clause 32.

Recommendation

16. The Standing Committee recommends that the Synod pass the bill as an Ordinance.

For and on behalf of the Standing Committee.

ROBERT WICKS
Diocesan Secretary

21 August 2012