

1/03 Review of Church ordinances and abuse matters

(A report from a committee appointed by the Synod.)

This report was first printed for the 2005 session of the Synod.

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Background

1. By resolution 1/03, the Synod appointed a committee consisting of Mr Michael Orpwood QC, Mr Garth Blake SC, Mr Neil Cameron, Mr Philip Gerber and Mr Robert Wicks to –
 - (a) review the Tribunal Ordinance 1962, the Church Discipline Ordinance 2002 and the Relinquishment of Holy Orders Ordinance 1994 in light of recent experience and the basic principles contained in the proposed National Model legislation for dealing with abuse matters, and consistent with Biblical teaching, and
 - (b) prepare any draft amending ordinances for consideration by the Synod in 2004.
2. The committee has met on 9 occasions over a 2 year period under the chairmanship of Mr Orpwood.
3. There have been a number of attempts in the years prior to resolution 1/03 to reform the laws relating to discipline in the Diocese. While a number of useful reforms have been implemented during this time, these have largely been a reaction to specific events rather than an outcome of a comprehensive review.
4. In 1994, a Select Committee on Clerical Enquiries was appointed to review, among other things, the administration of the Tribunal Ordinance 1962. A bill to amend the Tribunal Ordinance was

introduced into Synod in 1997 and approved in principle at a subsequent session. The amending bill was however withdrawn from the Synod in 2003 in part because of experience arising from contested proceedings before the Diocese Tribunal at that time (see paragraph 7).

5. The Synod passed the Church Discipline Ordinance in 1996. Amendments to this Ordinance were prepared for the Synod in 1997. These amendments were ultimately incorporated into a more extensive redraft of disciplinary procedures to deal specifically with the issue of child protection. This resulted in the passing of the Church Discipline Ordinance 2002.

Developments since 2002

6. Since the passing of the Church Discipline Ordinance 2002, the Professional Standards Unit has gained valuable experience in dealing with complaints of wrongful conduct by church workers. This experience has provided a useful basis for assessing our practices and evaluating our procedures.

7. In 2003, a charge was promoted to the Diocesan Tribunal under clause 15 of the Tribunal Ordinance 1962. It is thought that these were the first contested proceedings to have been conducted before the Diocesan Tribunal. The members of the Diocesan Tribunal made a number of comments about the operation of the Tribunal Ordinance 1962 and disciplinary matters more generally arising from their experience of those proceedings. The committee has found these comments to be a valuable starting point in undertaking its review of our current laws under resolution 1/03.

8. In October 2004, in a significant development, the General Synod adopted a number of measures designed to establish, and to provide for the enforcement of, appropriate standards of behaviour by church workers. They included the adoption of the code of behaviour, *Faithfulness in Service*, and a request that dioceses adopt the model *Professional Standards Ordinance* prepared by the Church Law Commission. The General Synod also passed the Holy Orders Relinquishment and Deposition Canon 2004. The Standing Committee has recommended that this canon be adopted and that the Relinquishment of Holy Orders Ordinance 1994 be repealed. The committee supports this recommendation.

9. It is principally in the light of these developments that the committee has undertaken its review. The review has resulted in the drafting of the Discipline Ordinance 2005. The remainder of this report outlines the principles upon which the draft Discipline Ordinance 2005 has been prepared.

Draft Discipline Ordinance 2005: the principles

Consolidation, rationalisation and simplification

10. Not all the law relevant to discipline in the Diocese is presently found in a single instrument. Consequently, dealing with a complaint may require reference to the 1961 Constitution, the Tribunal Ordinance 1962 and the Church Discipline Ordinance 2002. These are all reasonably complex instruments and the inter-relationship between them is not always easy to work out.

11. The draft Ordinance seeks to effect a consolidation, so far as possible, of the current law. It repeals and replaces both the Tribunal Ordinance 1962 and the Church Discipline Ordinance 2002. It also includes extracts from the 1961 Constitution as explanatory notes in order to provide a single, comprehensive text.

12. The draft Ordinance is not however a mere consolidation. There has been a significant attempt to effect both a rationalisation and a simplification of the current law. The extent to which this has occurred is explained in the following comments.

Division of wrongful conduct – breaches of faith, ritual and ceremonial, and other wrongful conduct

13. A distinction has been drawn between breaches of faith, ritual and ceremonial, on the one hand, and other wrongful conduct, on the other. It is the other wrongful conduct which is the major focus of the draft Ordinance. This is where significant reform occurs. Except for some minor changes, the current law relating to breaches of faith, ritual and ceremonial is retained.

14. The following references in these explanatory comments to “wrongful conduct” are references to wrongful conduct other than breaches of faith, ritual or ceremonial.

Uniformity and consistency

One standard of wrongful conduct for all church workers

15. Under the 1961 Constitution, the jurisdiction of the Diocesan Tribunal applies principally to “a person licensed by the bishop of the diocese, or any other person in holy orders resident in the diocese”. Because of this jurisdiction, laws were developed to regulate the conduct of such persons. Some of these laws have not been applied to persons in significant lay ministries, or to other church workers, with the result that equivalent wrongdoing by them has been left unregulated. The draft Ordinance corrects this.

16. The same standards of conduct are now applied to all church workers, whether they are clerical or lay, and whether they are licensed by the Archbishop or carry out their functions in some other capacity.

Wrongful conduct is generally to be objectively determined

17. The draft Ordinance retains a complaints-based system. A complaint must allege wrongful conduct by a church worker. Wrongful conduct includes sexual misconduct and child abuse, and conduct that comprises unchastity, drunkenness, habitual and wilful neglect of the church worker's duty, wilful failure to pay just debts, disgraceful conduct (being conduct productive of scandal or evil report), and conviction for offences under the law punishable by imprisonment for 12 months or more.

18. This approach is different from that in the model *Professional Standards Ordinance*. That Ordinance allows the examination of conduct "which, if established, might call into question the fitness of a Church worker...to hold a particular or any office, licence or position of responsibility in the Church...".

19. The test of conduct in the model Ordinance is thought to have 2 main weaknesses. The first is its subjectivity. A person will not necessarily know if they possess the requisite "fitness" until an adjudication is made by the appropriate authority. The second is that, being a broader and vaguer test, it has the potential to lead to the making of a larger number of allegations, particularly minor allegations.

One process for dealing with wrongful conduct

20. The draft Ordinance provides a single process for making, investigating and assessing complaints of wrongful conduct by church workers.

The synthesis of the 2 Tribunals

21. Under the current law, 2 Tribunals are established. The first is the Diocesan Tribunal. It exists because of the 1961 Constitution. Its jurisdiction, and some of its powers, are conferred by the 1961 Constitution. The provisions of the 1961 Constitution are supplemented by the Tribunal Ordinance 1962 and the Church Discipline Ordinance 2002. The 1961 Constitution confers a right of appeal from determinations of the Diocesan Tribunal to the Appellate Tribunal.

22. Because there are church workers who should be subject to discipline, but who do not fall within the jurisdiction of the Diocesan Tribunal, the Church Discipline Ordinance 2002 establishes another Tribunal. The members of this other Tribunal are different from those of the Diocesan Tribunal. The processes of this other Tribunal are also different. There is currently no right of appeal from a determination of this other Tribunal.

23. The draft Ordinance, because of the constitutional constraints, retains the 2 Tribunals. It renames "the Tribunal" as "the Disciplinary Tribunal" in order to distinguish it from the Diocesan Tribunal. However, it creates a common membership by providing that the

members of the Disciplinary Tribunal are to be those who are appointed or elected to membership of the Diocesan Tribunal. It provides that the practices and procedures for dealing with complaints are to be the same in each Tribunal. It also confers a right of appeal, on specified grounds, against a decision of the Disciplinary Tribunal if the decision will, or may, have the effect of terminating a person's employment or removing or suspending a person's capacity to gain income as a church worker. The appeal is to an experienced lawyer appointed by the Chancellor.

Investigation and assessment of complaints

Replacement of the experienced lawyer and panels of advisers with the Professional Standards Committee

24. The investigation of a complaint is proposed to be carried out in the first instance, as is presently the case, by an investigator. However, in place of an experienced lawyer and panels of advisers, the assessment of complaints will be undertaken by a standing committee, the Professional Standards Committee, whose members are to be appointed by the Archbishop-in-Council. The composition, role and powers of the Professional Standards Committee are based on that of its namesake under the model *Professional Standards Ordinance* of the General Synod. In particular, in order to demonstrate fairness and openness, one of its members must be a person who is not a member of this Church.

25. It is hoped that, because it is a standing committee, the members of the Professional Standards Committee will develop expertise over time in complaint handling and resolution.

The test of objective seriousness

26. The test to be applied by the experienced lawyer under the current law in order to determine whether a matter should proceed for hearing before a Tribunal is a complex one. The experienced lawyer is to report –

- (a) whether there is prima facie evidence that the person against whom the allegations are made engaged in wrongful conduct for which a charge could be promoted before a Tribunal, and
- (b) whether, in his or her opinion, having regard to all the evidence, a Tribunal is not likely to find that the person engaged in wrongful conduct.

27. This test has been found to be unworkable in practice. It has been replaced with a discretion in the Professional Standards Committee, to be exercised according to specified criteria, to make a broad range of recommendations having regard to the circumstances of each case.

28. In particular, the Professional Standards Committee can recommend that a charge is to be promoted before a Tribunal only if it is of the opinion that there is a reasonable likelihood that the complaint, if sustained, will result in –

- (a) in the case of a person who is subject to the jurisdiction of the Diocesan Tribunal – the making of a recommendation for the person's deposition from orders, prohibition from functioning or removal from office, and
- (b) in the case of a person who is subject to the jurisdiction of the Disciplinary Tribunal – the making of a recommendation for a prohibition order against the person.

29. Any charge promoted before a Tribunal is to be promoted by a person appointed by the Archbishop.

Suspension and prohibition orders

30. Suspension and prohibition orders can now be made at an earlier stage in the complaint-handling process, where necessary. They can also be made following complaints that may not necessarily allege a "serious offence" as defined in the draft Ordinance.

Conciliation

31. A greater emphasis is given in the proposed Ordinance to the possibility of resolving complaints by conciliation.

Exempt conduct

32. The opportunity for conduct to be declared to be exempt conduct is broadened so as, potentially, to be co-extensive with all wrongful conduct committed by any church worker, except serious misconduct.

The Diocesan Advocate

33. The office of Diocesan Advocate under the *Tribunal Ordinance 1962* is abolished. However, there is an obligation on the Director to appoint a person to prosecute a charge before a Tribunal.

Costs of proceedings before a Tribunal

34. An attempt is made in the proposed Ordinance to limit the costs of proceedings before a Tribunal to a reasonable amount by undertaking to meet the costs of a party represented by a legal practitioner in accordance with a scale of costs approved by the Standing Committee if an order for costs is made in favour of the party to the Tribunal.

Recommendations

35. The committee recommends that the Standing Committee –
- (a) approve the printing of this report for the Synod, and

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- (b) request that the bill for the Discipline Ordinance 2005 be promoted to the 2005 session of Synod “by request of the Standing Committee”, and
 - (c) request that the following procedural motion be moved at the Synod “by request of the Standing Committee” –
 - “Synod –
 - (a) agrees to the following arrangements for consideration of the bill for the Discipline Ordinance 2005 –
 - (i) consideration of a motion for the introduction of the bill is to start at 4.30pm on Tuesday 11 October, and
 - (ii) after a motion to introduce the bill has been moved and the mover and seconder have spoken to the motion, there is to be a time for questions about the bill before any debate on the motion proceeds, and
 - (iii) if the motion to introduce the ordinance is passed, further consideration of the bill is to be adjourned until the next ordinary session of Synod in 2006, and
 - (b) suspends so many of the rules of the Synod as would prevent these arrangements, and
 - (c) requests that members provide comments in respect of the bill to the Diocesan Secretary by 31 March 2006.”

Standing Committee’s response

36. The Standing Committee has agreed to implement each of the recommendations referred to in paragraph 35 above except that the procedural motion to be moved at the Synod will include a request that the Professional Standards Board also provide comments in respect of the bill by 31 March 2006.

For and on behalf of the committee

MICHAEL ORPWOOD QC
Chairman

30 September 2005