

## 24/03 Prohibited Persons

(A report from the Professional Standards Board.)

1. On 24 March 2003 Standing Committee passed the Prohibited Persons (Church Administration) Ordinance 2003. The effect of this ordinance was to provide that a person who is a Prohibited Person within the meaning of the Child Protection (Prohibited Employment) Act 1998 may not be appointed or elected as a churchwarden of a church or as a member of a parish council or committee of a parish. A consequential amendment is that persons so appointed are required to make a declaration that they are not a Prohibited Person.

The ordinance commenced on 1 June 2003. This meant that the majority of its effect was not felt until the round of annual vestry meetings held in early 2004.

2. Synod passed the following motion:

“Synod requests that the Standing Committee have the Professional Standards Board review clauses 22(6) and 32(2) of the Church Administration Ordinance 1990 which state respectively “A person who is a Prohibited Person within the meaning of the Child Protection (Prohibited Employment) Act 1998 may not be appointed or elected as a churchwarden of a church and “a person who is a Prohibited Person within the meaning of the Child Protection (Prohibited Employment) Act 1998 may not be elected or appointed as a member of a parish council or committee established under clause 29A of a parish” and report to the 2004 session of the Synod on:

- (a) the operation of those clauses and their effect on parish councils and the administration of parishes; and
- (b) the inclusion of an appropriate diocesan review and decision process to allow church members with Prohibited Person status to apply for conditional or full exemption from the exclusions to be elected or appointed as a churchwarden or parish councillor.”

3. The Professional Standards Board has made enquiry into the operation of those clauses and their effect on parish councils and administration of parishes. Enquiry was made of two parishes where it was known that a Prohibited Person was a member of the congregation. A random third medium size parish was also surveyed as to the effect of the clauses.

- The first parish did have a person who is a prohibited person and a member of the congregation. That person had previously been nominated to parish council but not

elected. In that parish the rector indicated on the vestry meeting notices and at the vestry meeting, the Prohibited Persons were ineligible to be nominated. He received no negative feedback. Some people commented that they thought it was a good thing that the church had taken this step. The person who was a Prohibited Person made no comments.

- In the second parish there was a person who was a Prohibited Person and a parish councillor. The amendment was notified in the notice for the vestry meeting. The Prohibited Person who had previously been on parish council quietly declined nomination and no negative or positive feedback was received as to the amendments.
  - The third parish indicated in their weekly bulletin and at the vestry meeting that Prohibited Persons could not be nominated for positions of parish council or a churchwarden. The rector received no comments or feedback, and there was no indication of any effect. As far as the rector knew there was nobody in the parish who fell into this category.
4. The Board also had a report from the Director, Professional Standards who indicated that the Archbishop's ministry team and the Professional Standards Unit had indicated that there were no particular issues or problems that arose during the 2004 round of annual vestry meetings and that there is no general disquiet or concern about the provisions. The Professional Standards Unit received a small number of enquiries about the requirements for implementation. However, these were of an administrative nature.
  5. The Board concludes from this information that the operation of those clauses and the effect on parish councils and administration of parishes is, firstly, that there is wide acceptance of the measures as being appropriate and necessary. Secondly, they are being implemented without any significant problems.
  6. The Board considered the question of the inclusion of an appropriate diocesan review and decision process to allow church member with Prohibited status to apply for conditional or full exemption from the exclusions to be elected or appointed as a churchwarden or parish councillor. When resolution 24/03 was passed by Synod the situation was that the only way that a Prohibited Person could have their status reviewed was to apply to a court, the administrative decisions tribunal or the industrial relations commission, to have the matter considered. Since then, amendments to the Child Protection (Prohibited Employment) Act 1998 now provide that an application to have

ones status as a Prohibited Person reviewed can be made in writing to the Commission for Children & Young People. The application for review is dealt with administratively at first instance, and a decision is made without the applicant having to appear before a decision-making body and employ and pay for legal advice and representation. Any unfavourable decision of the Commission for Children & Young People can be appealed to the administrative decisions tribunal or industrial relations commission.

7. Because there is now a non-litigious process in place to enable Prohibited Persons to have their status reviewed, the Board considers that it would be preferable for the Church to rely on this secular external process rather than setting up an internal process of their own. The Board considers that there are several reasons against the Church having its own review and decision-making process. Firstly, it would be necessary to find the people with expertise to undertake this process, and either ask them to do it on a voluntary basis or alternatively it would be necessary to employ people to do it. Secondly, to have an internal process which questions the status of Prohibited Persons would give the impression that the Church considers that it is able to deal with these sorts of matters internally despite the fact there is an external albeit secular process available. Thirdly, the advantage of using the external secular review process is that the Commission for Children & Young People has available to it all the resources of the state, particularly in relation to the information which they can take into account, in determining whether a person's Prohibited Persons status should be lifted. This wealth of information would not be available to any process that the Church undertook. Instead, the Church would have to rely on information provided only by the Prohibited Person themselves.
8. Having regard to the foregoing, the Board recommends to Standing Committee and Synod that the Prohibited Persons clauses be retained in their present form.
9. The question arose as to whether such exclusion of Prohibited Persons should be extended to other offices, positions and roles in the church such as parish nominators, Synod representatives and other church committees. The Board was of the view that churchwardens and parish councillors in particular are in positions of prominence and leadership within a parish which could be directly interpreted by members of congregations as indicating that they are "safe". Synod representatives, parish nominators, and to a lesser extent, members of diocesan committees, do not have the same prominence at a local level, and therefore it is considered that the risk is not as great in those positions. However, the Board could certainly see the

**62 Report of Standing Committee & Other Reports & Papers**

---

argument going the other way. On balance the Board does not recommend extending the exclusion to more positions.

PHILIP GERBER

*Director, Professional Standards Unit*

*For Professional Standards Board*

27 August 2004