

Discipline Amendment Ordinance 2009

Explanatory Report

1. The Discipline Ordinance 2006 has been in operation since 2007. Under its procedures there have been thirteen matters come before the Professional Standards Committee (PSC) and three matters come before the Tribunal in this time.

2. As a result of this experience a number of amendments are now proposed to improve the procedures.

Role of the Professional Standards Committee

3. The PSC receives the report of an investigation into an allegation and the response of the person against whom the allegations are made (Respondent). The PSC must consider the report and a range of matters [cl. 34(2)]. They may then make one or more specified recommendations as to what should then happen with the allegations [cl. 34(1)(a) to (k)].

4. Currently, the default position is that the PSC must recommend that the matter go to the Diocesan or Disciplinary Tribunal in every case where the complaint, "if sustained", will result in the Diocesan or Disciplinary Tribunal making a recommendation for the person's deposition from orders, prohibition from functioning, removal from office, or a prohibition order against the person. [cl. 34(1)(i) and (j)].

5. The PSC does not have the option of considering whether the complaint is sufficiently strong to warrant it being sent to the Tribunal.

6. It is proposed that cl. 34(1)(i) and (j) be amended so that the PSC also considers whether there is "a reasonable likelihood that the complaint will be sustained before the Diocesan or Disciplinary Tribunal". This amendment will make the PSC an evidentiary "filter" in a similar way to a Magistrate's committal hearing.

7. It would also be advantageous for the PSC to have the power to recommend to the Respondent that, having regard to all the circumstances, the Respondent resign or request voluntary deposition or relinquishment. This would enable the PSC to "negotiate" such a "plea of guilty" at an early stage rather than leaving this as a possible outcome only at the Tribunal stage. The proposed new cl. 34(1)(ha) creates this possibility but only in circumstances where the PSC also recommends that the resignation be accompanied by appropriate admissions and other conditions.

Tribunal hearings by "default"

8. A further default procedure is that if the PSC recommends a way forward other than a Tribunal, the Respondent can, by not agreeing or responding to the recommendation, compel a Tribunal

hearing. [Cl. 36(3) and (4)]. The maintenance of this right to a “day in court” to clear one’s name may be sustainable where a respondent is a member of the clergy or in paid employment and their livelihood is at issue. It is not sustainable in the case of unpaid lay volunteers.

9. It is proposed that cl. 36(3) and (4) be amended so that, in the case of unpaid lay volunteers, the Archbishop has a discretion not to send the matter to a Tribunal where the respondent does not agree or respond to a recommendation. If the Archbishop does not send the matter to a Tribunal he must refer it back to the PSC or to an appropriate body in another diocese.

10. In cases where the Archbishop refers the matter back to the PSC, it is proposed that the PSC have the power under a new cl. 37A to then recommend to the rector (as the relevant church authority) one or more of the following –

- That no further action be taken against the person,
- That the person be prohibited from holding a particular office or role in the parish,
- Any other recommendation that the PSC considers will assist in the on-going management of the situation.

Such action by the PSC would then finalise the matter under the Ordinance and leave the on-going management of the matter at the local level.

Recommendation of no further action

11. Currently, if the PSC recommends no further action be taken in relation to a complaint but the Respondent does not accept this recommendation, then it is arguable that the matter has to be referred to a Tribunal under clause 36(4).

12. It is proposed to remove this as a possible outcome by adding a new clause 36(5) to make it clear that the process of responding to a recommendation under clause 36 does not apply to recommendations that no further action be taken.

Costs

13. Currently there is no Ordinance provision to make rules for the reimbursement of reasonable legal assistance to a respondent in the initial stages of the procedures up to and including a response to the PSC. Provision has been made administratively by Standing Committee.

14. The Standing Committee has requested that a power to provide for such legal costs be included in the Ordinance. The administrative provision made by Standing Committee is retrospectively endorsed in the amending Ordinance [clause 3(1)].

Size of Tribunal Panel

15. Currently there is a pool of six persons (three clergy and three lay) elected by Synod who can be called upon to make up a Tribunal panel for consideration of each matter. [cl. 115].

16. From experience it is considered that this number of persons is insufficient having regard to the number of cases that occur, the demands made on the time of individuals, the requirement to have a mixed gender balance on each hearing panel and the requirement for a Disciplinary Tribunal to have an Experienced Lawyer. [cl. 124(3)]

17. It is proposed that the elected pool be enlarged to ten persons (five clergy and five lay) and that the legal and gender qualification mix of the pool membership be proportionately enlarged as a consequence.

Other Clarification Amendments

18. Recommendations by a Disciplinary Tribunal are currently made to the "relevant church authority". It is proposed to make it clear that recommendations can be made to the Archbishop under clause 66. This confirms that the Archbishop can take action if prohibition or other orders are recommended which need to be implemented across the Diocese.

19. It is proposed to include a new clause 35(1A) to ensure that where a recommendation is made by the PSC that the matter go to a Tribunal, the Respondent is notified in writing that proceedings will be taken against the person in the Tribunal.

Recommendation

20. The Standing Committee recommends that the Synod pass the bill as an ordinance.

For and on behalf of the Standing Committee.

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