

**THE PUBLICATION OF ANY MATERIAL THAT IDENTIFIES OR LEADS TO THE IDENTIFICATION OF WITNESSES A, B, OR C IS PROHIBITED**

**DETERMINATION PART 2**

- 1 On 14 April 2022, the Board provided its preliminary Determination of the issues raised by the Referral dated 4 February 2021.
- 2 The Determination dealt with the question of whether the evidence before the Board was sufficient to prove, on the balance probabilities in accordance with the *Briginshaw* standard, the allegations detailed in the Referral.
- 3 This second part of the Determination calls for a response to the questions referred to the Board, namely:
  - A Whether, temporarily or permanently, the Respondent is fit to hold a particular, or any office, licence or position of responsibility in the Anglican Church, or to be or remain in Holy Orders or in the employment of a Church body; OR alternatively
  - B Whether in the exercise of the Respondent's ministry or employment, or in the performance of any function the Respondent should be subject to certain conditions.
- 4 For the reasons set out in the preliminary Determination, my findings were decided on the papers. For this purpose, the Applicant relied on evidence that was substantially in affidavit form. The Respondent relied on his responses to letters of allegation dated 11 September 2020 and 2 December 2020 in which he denied all allegations of misconduct. The same denials, with some

modifications, were provided in the Respondent's table of pleadings dated 14 April 2021.

5 In the absence of sworn evidence of the Respondent, I accepted much of the affidavit evidence of the witnesses relied upon by the Applicant in reaching my findings, summarised below:

6 In respect of Witness A:

- (1) Failure to provide pastoral or any other support to Witness A following his disclosure of sexual misconduct by Mr Graeme Lawrence;
- (2) Failure to report Witness A's complaint of sexual misconduct to the NSW Police Force or any other authority;
- (3) Failure to report Witness A's complaint to the Director of Professional Standards as provided in the Professional Standards Protocol;
- (4) Failure to seek advice concerning his legal obligations following Witness A's complaint of sexual misconduct;
- (5) Failure to recognise and address the conflict of interests in his ministry responsibilities;
- (6) The existence of the impression of favouritism towards and an inappropriate special relationship with Mr Lawrence.
- (7) The consequential finding of failure to adhere to Part 4.4 of the Faithfulness in Service Code (July 2016).

7 In respect of the allegations of disparagement and disrespect:

- (1) The Respondent believed that Safety Agreements were unnecessary;

(2) The Respondent disparaged the Professional Standards Office within the Diocese and to others.

8 In respect of the witness, Mr Smith: the Respondent harassed and assaulted him at the Anglican Diocese of Newcastle Synod on 10 December 2016 with the consequential finding of failure to adhere to Part 6 of the Faithfulness in Service Code (July 2016).

9 In respect of Witness B: the Respondent assaulted Witness B in the manner alleged.

10 In respect of the Head Office incident: the Respondent engaged in behaviour towards the witness, Ms Torok, that was intimidating and threatening with the consequential finding of failure to adhere to Part 6 of the Faithfulness in Service Code (July 2016).

11 In respect of Witness C: the Respondent engaged in conduct designed to bully, harass and intimidate Witness C with the consequential finding of failure to adhere to Part 6 of the Faithfulness in Service Code (July 2016).

12 On 17 June 2022, the Applicant spoke to its written submissions concerning the response to be given to the questions referred to the Board. Although invited to do so, the Respondent did not provide written submissions or appear in person or by representative on these issues.

13 The Applicant submitted that the following factors placed the Respondent's misconduct at the upper end of the scale, so that I should conclude that the Respondent was not fit to hold a particular or any office, licence or position of responsibility in the Anglican Church or to be or remain in Holy Orders or in the employment of a Church body:

(1) The evidence of distress, damage and hurt to the witnesses for the Applicant;

- (2) The absence of recognition by the Respondent of the distress, damage and hurt that was the consequence of his misconduct;
  - (3) The absence of an apology or expression of remorse on the part of the Respondent;
  - (4) The Respondent's position of leadership within the Diocese, which it was submitted, was an aggravating factor when taking into account the findings concerning assault, intimidation harassment and bullying;
  - (5) In respect of Witness B, the Respondent's position of power as a priest and a teacher;
  - (6) The damage caused to the reputation of the Church and the Diocese by misconduct on the part of the Respondent that was unacceptable to the community in general.
- 14 On the matter of whether conditions or restrictions might be an appropriate measure, the Applicant submitted that the Respondent had been trained in and had committed to comply with the protocols introduced to respond to complaints of misconduct and to protect members of the community against misconduct on the part of those working within the Church. Notwithstanding this training, the Respondent failed to comply with the protocols, disparaged the Professional Standards Office and its work and expressed openly the view that Safety Agreements were unnecessary.
- 15 In those circumstances, it was submitted that the Board could have no confidence that the Respondent would comply with any conditions or restrictions that it might consider imposing.
- 16 The absence of appearance by or on behalf of the Respondent made this part of the process particularly difficult. While I appreciated the evidence of his mental health issues, I had hoped for representation on his behalf that might

present some mitigating factors to be considered in concluding my deliberations.

- 17 On the matter of mitigation, I noted the following from the materials before me:
- (1) The 42 year period of the Respondent's period of service to the Church from 1978 until his suspension in 2020.
  - (2) The evidence provided by Witness A of the Respondent's capacity as the priest for the St Stephen's Parish, to the point where he developed a considerable degree of respect for the Respondent.
  - (3) Except for the incident involving Witness B in 1986, no further complaint of misconduct prior to 2013 was presented to the Board.
  - (4) Between 2013 and 2019 when the remainder of the misconduct occurred, the circumstances that prevailed appeared to suggest to the Respondent that a number of his colleagues were being unjustly dealt with.
- 18 The Respondent's responses to those circumstances were inexcusable and immature. All of those responses were serious in nature but there were two of particular concern.
- 19 The first was the intimidation of Ms Torok by impliedly threatening harm to her and her children. As a member of the Diocesan staff, Ms Torok had no power over the work she was required to perform. I absolutely accepted that the Respondent's conduct caused her to fear for her own safety and for that of her children.
- 20 The second was the failure to offer the support demanded by the complaint made by Witness A and to report it to the appropriate authorities.

- 21 In the absence of the mitigating factors set out above, these two instances alone would warrant serious consideration of the question of whether the Respondent was permanently fit for any role within the Diocese.
- 22 However, in recognition of the mitigating factors referred to, I was prepared to allow that the Respondent's unfitness could be temporary and that consideration might be given to allowing him a period of six months within which to reflect on the Board's findings, to continue with the treatment of his mental health and to establish to the satisfaction of the Professional Standards Committee that his suspension from duties should be lifted, failing which he should be considered to be permanently unfit for any role within the Diocese.
- 23 As a minimum, in order to secure the lifting of his suspension, the Respondent must, within the six month period, satisfy the Professional Standards Committee that he is genuinely remorseful, that he has issued appropriate and genuine expressions of regret to those affected by his conduct and that he is committed to compliance with all aspects of the Faithfulness in Service Code.
- 24 In conclusion, the Board's answers to the questions referred by the Applicant are:
- (A) The Respondent is temporarily unfit to hold any particular or any office, licence or position of responsibility in the Anglican Church or to be or remain in Holy Orders or in the employment of a Church body;
- (B) The Respondent should, in the exercise of his ministry or employment or in the performance of any function, be subject to the following conditions or restrictions:
- (1) The suspension imposed on 14 August 2020 be continued for a further period of six months from the date of publication of Part 2 of the Determination so that the Respondent will remain during that period suspended from all duties associated with, or arising from, his office as the incumbent of the Parish of St Stephen's Adamstown, from his

membership of the Synod and from any role or ministry in the Parish or Diocese which arose from his office or ministry as a priest.

- (2) Within that period, the Respondent is to take appropriate steps towards rehabilitation to the point where the Professional Standards Committee is satisfied that the suspension should be lifted, with or without further conditions or restrictions.
  - (3) If the Respondent fails to satisfy the Professional Standards Committee that the suspension should be lifted, with or without further conditions or restrictions, the Respondent will have the right to require that the matter be referred back to the Board for consideration of the question of whether the Respondent is permanently unfit to hold any particular or any office, licence or position of responsibility in the Anglican Church or to be or remain in Holy Orders or in the employment of a Church body.
  - (4) The right to require review by the Board under clause 24(B)(3), is to be exercised by the Respondent, in writing to the Board, within 21 days from the date upon which the Respondent is notified of the final decision of the Professional Standards Committee on the matter.
- (C) The Respondent should be considered to be permanently unfit to hold any particular or any office, licence or position of responsibility in the Anglican Church or to be or remain in Holy Orders or in the employment of a Church, if, within 6 months from the date of publication of Part 2 of this Determination:
- (1) The Respondent fails to take appropriate steps towards rehabilitation; or
  - (2) The Respondent fails to satisfy the Professional Standards Committee that the suspension should be lifted, with or without further conditions or restrictions; and

- (3) In the event that the Respondent exercises the right of review under clause 24(B)(3), he fails to satisfy the Board that the suspension should be lifted, with or without further conditions or restrictions.

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