

**Report of the Diocesan Tribunal to the Bishop into allegations by Mr. Steven
John Fisher of breaches of the Offences Canon by the Reverend Garth
Hawkins**

Background

The Diocesan Tribunal was established by the Bishop of Tasmania, the Right Reverend John Harrower, on February 20, 2002 under the Ministry and Tribunal Ordinance (1998) of the Diocese of Tasmania, Anglican Church of Australia.

The Reverend Dr J. L. Young was appointed Deputy President and Mrs Helen Phillips and Mr Michael Walsh members of the Tribunal under the terms of the Ordinance.

The allegations were made and the Tribunal convened as a result of complaints made by two persons: Steven John Fisher and ^{BYF} _____.

At a preliminary conference with the Promoter of the charges for the Diocese (Mr Robert Webster) and legal representative of Mr Hawkins (Mr Roger Baker) it was agreed that all the charges would be heard at the one sitting of the Tribunal. It was further agreed that the Tribunal's sittings would be heard in camera and that all witnesses would be given the option of providing their evidence on oath.

All the witnesses called chose to testify on oath. The Tribunal was convened for hearing on May 13, 2002 and heard evidence and arguments from the counsel all that day and May 14 without substantial adjournment. The Tribunal conferred after the final adjournment and its findings were conveyed as recommendations to the Bishop on May 15. The summary of findings is below.

Findings

Charges brought on the complaint of Stephen John Fisher

1. Disgraceful conduct – PROVEN
2. Disgraceful conduct – PROVEN
3. Disgraceful conduct – PROVEN
4. Disgraceful conduct – PROVEN
5. Disgraceful conduct – PROVEN
6. Disgraceful conduct – PROVEN
7. Disgraceful conduct – PROVEN
8. Disgraceful conduct - CHARGE WITHDRAWN
9. Disgraceful conduct – PROVEN
10. Unchastity - NOT PROVEN

Charges brought on the complaint of BYF

1. Disgraceful conduct – PROVEN
2. Disgraceful conduct – PROVEN
3. Disgraceful conduct – PROVEN

The Hearing

Plea

Asked to plead to the charges brought on the complaint of Mr Fisher, Mr Hawkins (the respondent) replied that he pleaded neither guilty nor not guilty. The Tribunal took this, in effect, to be a plea of not guilty. Asked to plead on the charges brought on the complaint of Mr BYF, the respondent replied that he denied all three charges.

Although the complaints were heard together, the Tribunal delivers separate reports in respect of each complainant.

Mr. Fisher's Complaint

Mr Fisher's Evidence

The only oral evidence submitted on the first eight charges above, (charge 8 having been withdrawn), was given by Mr Fisher. Mr Fisher gave evidence that he had been befriended by the respondent, who was Rector of the East Devonport parish in which he lived, in late 1979. He had been 13 at the time. Mr Fisher told the Tribunal that his mother had been ill and that he had stayed at the Rectory in Devonport when she had been hospitalised on more than one occasion and at other times over the succeeding twelve months. His father had left the family years before. The respondent was good to him, took him fishing and shooting and he enjoyed the adult male company.

The Tribunal heard Mr Fisher's evidence that the respondent had during this period, at the rectory, on one occasion rubbed his groin suggestively against Mr Fisher (subject of the first charge); had repeatedly made obscene or suggestive comments about Mr Fisher (second charge); had put Mr Fisher's hand into the respondent's groin (third charge); had pulled Mr Fisher on to his lap and rubbed his stomach and grabbed at his genitals (fourth charge); had, on another occasion, pulled Mr Fisher onto his lap and rubbed his genitals (fifth charge).

At the end of 1981 the respondent had moved to Triabunna and Mr Fisher said he had moved to Triabunna to stay with him and seek work. At Triabunna, Mr Fisher said he had driven the respondent's car sitting on his lap. The respondent had rubbed Mr Fisher's stomach and had grabbed at his groin on about ten occasions that this had happened (sixth charge). Mr Fisher said that the respondent had once come into the bathroom at the Rectory when Mr Fisher was wearing only a towel, had put his hand under the towel and grabbed Mr

Fisher's testicles (seventh charge); and the respondent had asked Mr Fisher on several occasions to sleep in his bed with him (ninth charge).

Mr Fisher told the Tribunal that on many of the times the offences complained of occurred, the respondent had been drinking or was drunk.

Mr Hawkin's Response to Mr Fisher's Evidence

In response to these complaints, Mr Hawkins in evidence said that he was an alcoholic and had brain damage from birth and associated with his drinking. Consequently his memory was very poor and he was unable to refute Mr Fisher's evidence.

However, although the incidents complained of may have happened, he denied any lustful intent. He had probably been affected by alcohol and they would have been instances of an expression of camaraderie or "locker-room humour" and shyacking. He had regarded his relationship with Mr Hawkins as that of 'an uncle'.

Other Evidence in Relation to Complaints by Mr Fisher

Notes of interviews by the assessors appointed by the Diocese, the Reverend Greg Clifton and Mr Stephen Pincus were submitted to the Tribunal. Mr Clifton gave evidence that the notes related to interviews on September 20 and October 15, 2001. The notes confirmed the contention that Mr Hawkins was unable to affirm or deny the allegations due to his disabled memory.

A portion of a video recording of Mr Fisher's wedding reception was shown as evidence to the Tribunal. It recorded suggestive remarks made by Mr Hawkins who appeared to be affected by alcohol. Commenting on this video, Mr Hawkins told the Tribunal that he considered the remarks he had made were in keeping with the occasion.

Consideration of Evidence in Relation to Complaints by Mr Fisher

The Promoter had drawn the Tribunal's attention to the question of the standard of proof and, in particular, the principles enunciated by Dixon J in the case of *Briginshaw and Briginshaw*. "The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal."

If the standard of proof possibilities could be scaled between 'beyond reasonable doubt' at one end, and 'on the balance of probabilities' at the other, these considerations led the Tribunal to the view that the standard of proof in relation to the complaints by Mr Fisher would need to be near the 'beyond reasonable doubt' end of such a scale.

The Tribunal noted that there had been no evidence tendered which substantially contested the facts as recounted by Mr Fisher. Mr Hawkins maintained that he could not remember; that the actions which were the subject of complaint but they might have happened but that he could not recall them happening. He did, however, contest the motivation attributed to him by Mr Fisher and contended that what had been interpreted as sexual advances had been nothing but good-natured camaraderie.

Mr Hawkins said, (in the record of interview with Greg Clifton on October 15) that he considered that Mr Fisher's complaints were an exercise in manipulation and that his motivation was to get money out of the church or victims of crime funds.

The Tribunal considered that, setting aside questions of motivation on either side, the behaviour described in evidence if accepted was "disgraceful conduct if committed by a member of the clergy" (Offences Canon 1962-1981 (-1998)) and that there had been no evidence tendered that the behaviour had not taken place.

Mr. Fisher was a credible and reliable witness. He was not shaken in cross-examination.

On the other hand, Mr. Hawkins in his evidence in chief and also under cross-examination, was uncertain and hesitant and gave the impression of being evasive. Under cross-examination, he admitted that he was an alcoholic and that there were substantial gaps in his memory.

Some of the allegations in relation to Mr. Fisher were admitted specifically or generally by Mr. Hawkins.

Mr. Hawkins' evidence changed under cross-examination and while being cross-examined he admitted lying in his evidence in chief. Mr. Hawkins admitted giving Mr. Fisher access to cigarettes and alcohol when Mr. Fisher was 13 and 14 years of age.

Mr. Hawkins was an unimpressive and unreliable witness and where there are differences between the evidence of Mr. Fisher on the one hand and Mr. Hawkins on the other, the Tribunal has no hesitation in accepting what Mr. Fisher says as truthful evidence of what occurred.

For the above reasons the Tribunal recommends that the eight charges of disgraceful conduct be deemed proven.

The only evidence tendered in relation to the charge of unchastity was the evidence of the Reverend Greg Clifton that he "formed the impression that there was an on and off sexual relationship with REDACTED".

The Tribunal was not satisfied that this evidence provided adequate or sufficient evidence and recommends that the Bishop accept a finding that the charge of unchastity was not proved.

Recommendation of Sentence

In view of the continuing nature of the charges found proved at the complaint of Mr. Fisher, over a number of years and also having regard to the finding in relation to ^{BYF} the Tribunal recommends that:

1. The penalty in respect of all matters of complaint found proven be deposition from holy orders.

Dr. J. L. Young

REDACTED

HOBART, Tasmania, 7008

Helen Phillips

Michael Walsh