

**Report of the Diocesan Tribunal to the Bishop into allegations by [REDACTED]
 [BYF] 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 Disgraceful conduct - CHARGE WITHDRAWN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} [REDACTED]

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 ^{BYF} [REDACTED] the respondent replied that he denied all three charges.

Although all matters of complaint were heard at the one hearing, the Tribunal delivers separate reasons.

^{BYF} [REDACTED] 's Complaint

^{BYF} [REDACTED] 's Evidence

^{BYF} [REDACTED] gave oral evidence of two occasions on which he had met the respondent. The first was at the rectory in East Devonport where he had stayed overnight in company with Phillip Aspinall. When he and Phillip had got into sleeping bags in the rectory study, Mr Hawkins, the Tribunal was told, had come in and had stroked his ^{BYF} [REDACTED] (s) hair and had invited him to share his (Mr Hawkins') bed; (the subject of ^{BYF} [REDACTED] s first complaint). He had refused and had spoken the next morning to Phillip about the incident, saying that he thought it was an invitation to a sexual encounter. Phillip had dismissed the suggestion.

The second occasion was at the rectory in Triabunna some months later after Mr Hawkins had been transferred there. ^{BYF} [REDACTED] and a companion, **REDACTED**, had stayed the night there in the course of a trip down the east coast. A number of young people under the care of Phillip Aspinall were going sailing on Mr Hawkins' yacht and were also staying, in sleeping bags on the lounge room floor. Mr Hawkins had invited one of the young people to share his bed instead of sleeping on the floor. ^{BYF} [REDACTED] said that Phillip Aspinall had urged him to accept the invitation and he reluctantly agreed.

In the respondent's bedroom ^{BYF} [REDACTED] told the Tribunal, he had been sexually assaulted. He had been forced to perform fellatio on the respondent (third complaint) and had been forcibly sodomised (second complaint). During the encounter his back had been scratched extensively.

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BYF gave evidence that he had left early next morning with REDACTED and had said nothing to anyone about it. He said he had hinted at the events to Phillip Aspinall some months later but the matter had not been taken up, and he had mentioned having been abused by a priest to his wife soon after their marriage in 1986 but otherwise had not told anyone of the events complained of until October 2001 after he had attempted suicide.

He had experienced a period of ill-health and depression, culminating in his suicide attempt dating from seeing a video in a church leaders' meeting about screening church officials who had contact with children.

Cross-examined, BYF said he had thought some kind of sexual abuse was 'highly likely to inevitable' when he had gone to the respondent's bedroom. He had imagined it might involve mutual masturbation or something similar but had not 'in [his] wildest dreams' imagined that he might be sodomised.

Other Evidence in Relation to Complaints by BYF

Mrs REDACTED wife of BYF gave evidence confirming the fact that BYF had mentioned having been sexually abused by a priest shortly after their marriage and his deterioration in health, his depression and his attempted suicide.

Archbishop Phillip Aspinall gave evidence (by video link from Brisbane) that he remembered being at East Devonport with BYF, his complaint that he had been improperly approached and his (Phillip Aspinall's) dismissal of the matter as unimportant. Of BYF's visit to Triabunna, he said that he remembered his presence and his early departure.

Cross-examined, Archbishop Aspinall said that it was unlikely that he would remember details of events or conversations with a group of young people twenty years ago which he judged at the time to be joking or trivial. He said that if at the time he had judged a remark or event to be significant, it would be more likely to be remembered.

Mrs REDACTED gave evidence of her visit to Triabunna with BYF, and that she had seen Mr Hawkins drinking alcohol and formed the impression that he was an alcoholic. She had slept in a room separate from the other young people and had left next morning very quickly. She said that BYF had complained of a sore back over the following two days of their trip.

Mr Hawkins' Response to BYF's Evidence

Mr Hawkins said in an interview with the Reverend Greg Clifton on March 28, 2002 (notes of which were submitted as evidence) that he had no recollection about BYF's visit to East Devonport. He said that he could not remember meeting BYF and that he did not believe that such an incident would have taken place with Phillip Aspinall in the house.

About the visit of [BYF] to Triabunna, Mr Hawkins said he could not remember any of the events to which the complaints related nor could he remember anything of the weekend except for a technical detail relating to the sailing he had done with some young people. Asked if these things could have happened but have been blotted out of the memory, Mr Hawkins replied "Not really". Asked "If this had happened would you have remembered it?", Mr Hawkins replied "I can't answer". He said that the best indicator that the incident did not happen was the fact that others were present.

In cross-examination before the Tribunal, Mr Hawkins said "If sodomy occurred, I have no recollection of it". He said: "If he [BYF] had denied me it wouldn't have happened anyway."

Consideration of Evidence in Relation to Complaints by [BYF]

The Tribunal recognised that the behaviour which was the subject of these complaints was more serious than that complained of by Mr Fisher. If it was proven it could be the subject of criminal charges and, if proven, in the jurisdiction of the Tribunal might be expected to attract a more serious penalty.

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 [BYF] would need to be near the 'beyond reasonable doubt' end of such a scale.

Our first consideration was of the relative credibility of the principle witnesses. [BYF] was clearly the more credible witness. His evidence was lucid, contained detail and excited some passion. On the other hand Mr Hawkins' evidence was vague, contained many gaps and was at times self-contradictory. This may be in part due to his alcoholism and suggested brain damage, associated or not. Whatever the cause the result is clear: [BYF] produced a more coherent and accurate account of events than Mr Hawkins.

Secondly the Tribunal considered the fact that, as in the case of the complaints by Mr Fisher, the facts were not clearly denied by Mr Hawkins. He said he had no memory of the events or of the weekend in which they were alleged to have occurred. Pressed on the point, he said, as quoted above, that if sodomy occurred, he had no recall of it. While not an admission, Mr Hawkins seemed to go further when he said "If [BYF] had denied me it wouldn't have happened anyway".

Thirdly, it was suggested by Mr Baker that if Phillip Aspinall had been present he would have remembered the invitations to bed. An alternative explanation of Phillip's failure to recall would be, as Archbishop Aspinall himself suggested, that the tone and context was understood to be flippant or joking it would be unlikely to be remembered from that context. Further, at Triabunna if one of the number in the lounge room was to sleep elsewhere - for reasons of space or whatever, - it seems logical that BYF who was not a member of the group from Hobart that had come to go sailing together should be chosen.

Fourthly the Tribunal considered the invitation of Mr Hawkins' counsel, Mr Baker, to consider the complaints of BYF in the light of the evidence given in regard to the complaints by Mr Fisher. Mr Baker suggested that the evidence revealed a modus operandi in which there was "never an overt invitation to sodomy, fellatio or masturbation, not forceful or dominating but low-grade sexual touching and no evidence of any other sexual behaviour." While that is true of the evidence about Mr Fisher's complaints. Evidence was also given that invitations to join him in bed had been made to Mr Fisher by Mr Hawkins and that these had been vigorously if not aggressively rejected by Mr Fisher.

For these reasons the Tribunal considered that even if the conduct of Mr. Hawkins in relation to Mr. Fisher was taken into account in relation to the claims made by BYF, that this did not materially assist the Tribunal in its decision making process.

Finally the Tribunal considered the evidence of BYF's depression, ill-health and attempted suicide in the past eighteen months. Evidence had been given that he had had few problems until the conviction of Lou Daniels in 1999 and that subsequent deterioration was coincident with other matters directly related to sexual abuse and the church. The most recent hospitalisation had been related, according to the evidence of **REDACTED**, to media attention to the Governor-general's handling of sex abuse claims in Queensland. The Tribunal had no evidence from expert witnesses, but there seems to be a commonsense link which suggested BYF's problems might well be related to the subject of his complaints even so the Tribunal is not able to make any findings as to this.

BYF gave his evidence in a clear and precise manner and was not shaken in cross-examination.

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

The Tribunal accepts the evidence of BYF as the truthful recollection of the events as he outlined.

Due to the seriousness of the allegations made by BYF, the Tribunal considered the standard of proof as being higher than on the balance of probabilities but not as high as "beyond reasonable doubt".

After seeing and hearing all witnesses, the Tribunal is satisfied that the allegations of Mr. [BYF] are proved to the satisfaction of the Tribunal which recommends to the Bishop that all three charges of disgraceful conduct on the complaint of [BYF] be proven.

Recommendation of Sentence

In view of the serious nature of the charges found proved at the complaint of [BYF] and also having regard to the finding in relation to Mr. Fisher, 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