

MEMO TO: BISHOP BRIAN  
BISHOP PETER  
JOHN CLEARY

FROM: PETER YOUNG

SUBJECT: KEITH ALLEN'S SUBMISSION TO DIOCESAN COUNCIL ON  
PROFESSIONAL STANDARDS ORDINANCE OF 20 JANUARY  
2011

DATE : 28 March 2011

I would make the following comments on Keith Allen's memorandum. I have no objection to these comments being passed on to him if any of you think it appropriate. I will use the paragraph numbers as per Keith Allen's memorandum.

1. Section 23. Why has DC not put limits on expenditure?

I don't know. Indeed, I believe that in view of the problems that we had with the General Synod Episcopal Standards Commission in hiring expensive private investigators without the Standing Committee's approval, there is probably a good case for putting a limit on expenditure or providing some filter if expenditure is to exceed a set figure.

2. Section 24(2). What resolution of the appointment has been approved by DC?

I do not know, but the minutes should give the answer to this question.

3. Section 34(2). Silence does not mean guilt.

This proposition is a little doubtful. Section 34(2) obliges the respondent truthfully to answer any question put on behalf of the PSC. This sort of provision is not at all unusual in statutes or rules dealing with professional discipline. For instance, police have to answer the Commissioner and solicitors have to answer the Law Society and cannot merely remain silent. Whilst in an ordinary situation where a person has a right to remain silent, the exercise of that right does not mean guilt. It is not at all clear that that is so where there is an obligation to answer. Of course, if the respondent remains silent, then he or she may have committed an offence under section 34(2)(a) itself.

4. Section 38. Suspensions.

I cannot quite see the point being made here. Clause 38 allows a suspension of 3 months, but if the PSC has referred the matter to the Board, then the suspension continues. It is possible for a suspension to last more than 3 months and perhaps even 12 months, but it is for everybody's interest that these proceedings should continue as quickly as possible. Whilst some delays will be attributable to the boards and the difficulty of getting people together, very often delays are also brought about by the respondent who wishes to postpone the "evil day", but under s 39(d) stipends etc continue so that the prejudice is not that great.

5. Section 39(d).

This does create funding issues, but the budget of the Synod has just got to make some provision realising that in any particular year that provision might be inadequate and contingencies would have to be resorted to.

6. Section 48.

This permits the Board to be constituted by a single member sitting alone. Keith Allen says this is too dangerous and should be deleted. However, it is a common provision to allow the principal officer of the Board to permit simple matters to be dealt with by one member and thus saving expense.

7. Section 54(3).

The question is whether the Board should be bound by rules of evidence. It is quite common in the community for administrative boards not to be strictly bound by the rules of evidence, but it is a matter for the presiding member to ensure that as the clause says, the Board acts with fairness. Very often fairness will mean that hearsay material which would not be allowed under the rules of evidence should be allowed, but on the other hand on many other occasions fairness will require it not to be heard. The section should really stay as it is.

8. Section 57.

This is the question of costs and legal assistance to a church worker. I do not know what the reference is to the Second Reading Speech on the amendment of the ordinance. Reference to a legal aid scale may have some merit because there is some experience to show that some solicitors offer their services to respondents on a speculative basis and then have their client approach the church authority for a very large payment. On the other hand, it is not necessarily right to pay on the legal aid scale which may be too much or too little. Probably there is no real objection to a guideline being put in clause 57 such as "When considering what legal assistance should be granted the Diocesan Council shall take into consideration the scale of fees payable by the Legal Aid Commission in like cases."

9. Section 60(3). What rules have been made?

I don't know.

10. Has the Board complied with section 62 on every occasion?

Again, I don't know.

11. Section 71(1). "Why was counsel for the Director and Diocese allowed in one matter to give medical evidence from the Bar table with no qualifications?"

Again, I do not know, but it may be that under s 54(3) the Chairman of the Board considered that the material was receivable.

12. Section 30. What regulations have been made by the DC?

Again, I do not know. The minute book of the DC will show.

13. Section 23(1)(i). The DC should impose limits on expenditure.

Basically agreed for the reasons given in 1.

14. Section 24(2). Has the Director been appointed by the DC?

Again, the minutes will show this one way or the other.

15. Section 25(e).

Again, this is a matter for the minutes.

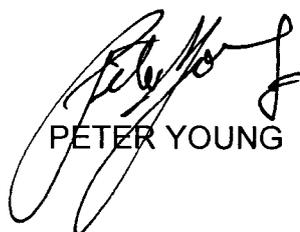
16. Section 54(3).

Whether or not there has been a breach of professional fairness would only become apparent after considering the transcript. There is now power to review in Part 12 of the Ordinance. The fact that this exists probably means that the Supreme Court would not in its discretion grant any relief unless the alleged aggrieved person had applied for a review. In any event, any application to the Supreme Court would have to be made within a reasonable time.

If it be the fact that there was no retainer of counsel or solicitors, that would not seem to have anything to do with procedural fairness. If no warning was given to priests being interviewed as to whether a statement would be used in evidence, in the light of the duty to answer query whether this would be a matter of breach of procedural fairness.

As to press releases, again this would not normally be a breach of procedural fairness, but it is not a good policy for the Board or the diocese to be involved in such activities if in fact they did take place.

17-23. These are matters of policy.



PETER YOUNG