

BEFORE A Tribunal constituted under Title D, Canon III, Part E of the Canons of the Anglican Church in Aotearoa, New Zealand and Polynesia

IN THE MATTER of a complaint of misconduct in Ministry under Title D, Canon III

BETWEEN The Anglican Church in Aotearoa, New Zealand and Polynesia

Informant

AND The Reverend Pitotori Naera

Respondent

Decision: 8 October 2022

Tribunal: The Reverend Amanda Mark (Chair), the Reverend Diane Miller-Keeley. Mr Cameron Hockly

Counsel: The Reverend Peter Jenkins, Church Advocate, in person
Written submissions from Richard Pidgeon, Barrister.

RECOMMENDATION OF THE TRIBUNAL ON OUTCOME FOLLOWING A FINDING OF MISCONDUCT

[1] On 24 May 2022 this Tribunal determined that the respondent was guilty of misconduct under Title D, Canon III of the Canons of the Anglican Church in Aotearoa, New Zealand and Polynesia. The Tribunal must now recommend to the respondent's Licensing Bishop one of the outcomes identified in Title D, Canon III, clause 54 which provides:

54. Where the tribunal determines there has been misconduct then the tribunal may recommend to the Licensing Bishop or, in the case of a Bishop, the Archbishop one of the following outcomes having considered prior authorities and also tikanga considerations:

- (a) admonition – which will be delivered by the Licensing Bishop or, in the case of a Bishop, the Archbishop and may be in the form of a formal written order or injunction which for an Ordained Minister must be entered in the record of that Ordained Minister and may be delivered in public or in private as the Licensing Bishop or, in the case of a Bishop, the Archbishop may determine;

- (b) suspension from the exercise of Ministry or office for the extent and duration considered appropriate by the tribunal which may include suspension of the whole or part of any stipend.
- (c) deprivation of office or ministry making the respondent incapable of holding any office or Ministry or performing any function in any Episcopal Unit of this Church for the extent and duration considered appropriate by the tribunal at the end of which period restoration may occur;
- (d) deposition from the exercise of ordained ministry including all the consequences of deprivation and meaning the permanent taking away of the right to perform the duties of every office for which Holy Orders are required, and ineligibility for re-election or re-appointment to that office, or any other office in this Church.

Process

- [2] Before recommending an outcome, submissions must be sought from the Licensing Bishop and an opportunity must be given to any party to make submissions as to the outcome¹
- [3] By letter dated 5 August 2022, the Respondent's Licensing Bishop, the Right Reverend Te Kitohi Pikaahu, Bishop of Te Tai Tokerau submitted that in his view the appropriate penalty should be a formal suspension from ministry for a minimum of two years.
- [4] The Licensing Bishop also indicated that it may also be appropriate for a requirement for adequate counselling for the Respondent to be included in the penalty.
- [5] The Canons also require the Tribunal to provide an opportunity to the complainant to provide information on the effect of the misconduct on him or her. The complainant in this case was Mr [redacted] the husband of Ms [redacted]
- [6] In an undated statement to the Tribunal, Mr [redacted] stated that he did not have a strong view about what disciplinary action should be taken against the Respondent. He also noted that he did not have any interest in a reconciliation meeting with the Respondent.

Submissions

- [7] The Reverend Peter Jenkins, as Church Advocate, provided a comprehensive submission on the outcome that ought to be recommended. He submitted that the

appropriate penalty is suspension. This submission was based on:

- (a) the Respondent's valuable ministry in the . parish
- (b) the possibility that the Respondent might be rehabilitated and able to return to his ministry, based on his admission and willingness to cooperate with this disciplinary process
- (c) the principle that the Tribunal should adopt the lesser of the available penalties.

[8] The Respondent represented himself at the hearing due to his counsel, Mr Richard Pidgeon, suffering such ill health that he had surrendered his practising certificate. The Tribunal nevertheless considered written submissions filed by Mr Richard Pidgeon before surrendering his practicing certificate, in which he argued that the appropriate penalty is deprivation of office under clause 54(c).

[9] The Respondent himself also made oral submissions at the hearing. He raised a number of matters relevant to the Tribunal's consideration of penalty. He expressed the view that suspension would be the appropriate penalty and indicated that he would not be willing to undertake counselling or training on boundary issues because he intended to resign from Ministry in October.

Penalty

Available penalty

[10] Under clause 54 of Canon III, Title D, the penalties available to the Tribunal given its finding that there has been misconduct on the Respondent's part are:

- (a) Admonition
- (b) Suspension from exercise of Ministry or office
- (c) Deprivation of office or Ministry
- (d) Deposition

Approach to penalty

[11] The approach to be taken by a disciplinary tribunal has been considered by the New Zealand courts in *Roberts v Professional Conduct Committee* [2012] NZHC 3354, a case brought under the Health Practitioners Competence Assurance Act 2005, and

National Standards Committee no.2 v Wilson [2021] NZLCDT 16, a case brought under the Lawyers and Conveyancers Act 2006.

[12] In *Roberts*, the court identified seven factors applicable to penalty. The penalty should:

- (e) Facilitate the Tribunal's role in setting standards
- (f) Punish the practitioner
- (g) Allow for the rehabilitation of the practitioner
- (h) Promote consistency with similar cases
- (i) Reflect the seriousness of the misconduct
- (j) Be the least restrictive penalty appropriate in the circumstances
- (k) Be fair, reasonable and proportionate in the circumstances of the case.

[13] In *National Standards Committee no.2 v Wilson*, the New Zealand Lawyers and Conveyancers Disciplinary Tribunal held that determining a proportionate penalty begins with an assessment of the seriousness of the misconduct, followed by consideration of the need for denunciation and deterrence and the opportunities for rehabilitation, risk of reoffending and whether a lesser penalty would suffice.

New Zealand precedents

[14] No previous disciplinary proceedings dealing with a breach of the requirement for chastity were available in any Diocese or any of the three Tikanga. The Church Advocate advised that he had been made aware of an Auckland Diocese disciplinary tribunal matter from June 2002 dealing with chastity. The Tribunal notes that the decision would have been made under the previous version of Title D and moreover the decision is confidential and therefore not available to assist this Tribunal. Information about that decision available to the Tribunal is a media report indicating that the Disciplinary Tribunal recommended that a five-year deprivation of ministry coupled with a requirement for the minister to show that he would not misuse pastoral relationships again before he could return to ministry.

English guidance

[15] The Church Advocate pointed to the *Guidance on Penalties* issued by the Church of England Clergy Discipline Commission in January 2021. The *Guidance on Penalties* is not binding on the Tribunal but acts as a usual reference point for assessing the

seriousness of the Respondent's breach of chastity. The *Guidance on Penalties* notes that penalty must be proportionate to the misconduct and states at page 7 that "sexual misconduct is usually a deliberate and damaging failure to comply with the high standards of Christian behaviour required of clergy. ... Clergy who commit sexual misconduct should be dealt with firmly and in a way which will protect those who could be harmed if the respondent were otherwise to be allowed to remain in ministry."

- [16] With respect to adultery, the *Guidance on Penalties* states that "Adultery is destructive of marriages and is hurtful and disturbing for the children of the families affected. If the adultery is with a person within the cleric's area of pastoral responsibility, that is an aggravating factor ... Removal from office and prohibition, either for life or for a limited time, are usually appropriate in cases of adultery."
- [17] Misconduct cases from Church of England are not binding on the Tribunal but may be instructive as they illustrate the approach taken to penalty in cases where chastity was at issue. The Church Advocate drew the attention of the Tribunal to the cases of *Re: The Reverend David King*, *Re: The Reverend Andrew Gair*, *Re: The Reverend Stephen Alan Vincent*, *Re: The Reverend Martin Waswa* and *Re: The Reverend Keith Hanson*.
- [18] Like the *Guidance on Penalties*, the Church of England decisions underscore the seriousness with which breaches of chastity by ministers are regarded. They also assist with assessing how much weight the Tribunal should give to the Respondent's previously good record.
- [19] In *Re: The Reverend David King*, The Court of Chancery recognised Mr King's record as a hardworking and caring priest and had no doubt that his ministry would be missed in his benefice, noting that the disciplinary proceedings "constitute a personal tragedy for Mr King in the light of his past service to the Church and his care for all those parishioners to whom he has ministered with diligence for many years' but stated that "this character evidence is only one factor to be taken into account in determining the appropriate penalty". The penalty imposed by the Bishop's Disciplinary Tribunal imposed and upheld by the Court of Chancery was prohibition from exercising the functions of his orders for four years and removal from any office or preferment.
- [20] The penalty in *Re: The Reverend Andrew Gair* for conduct which involved kissing and touching a parishioner to whom Mr Gair was providing pastoral counselling about her

marital difficulties (while also counselling her husband) was prohibition from exercising the functions of Holy Orders for seven years. The Tribunal notes the lengthy period of prohibition, particularly given that no adultery was found.

- [21] In *Re: The Reverend Stephen Alan Vincent* the misconduct involved adultery on 2 occasions and an exchange of numerous sexually explicit texts between Mr Vincent and a woman who had been attending his church and was 'shadowing' him while she explored a call to ministry. Mr Vincent was removed from office and prohibited from exercising any of the functions of his Orders for 8 years. The Tribunal noted that "for adulterous relationships, the periods of prohibition will usually be much longer"
- [22] In *Re: The Reverend Martin Wasma, the Bishop's Disciplinary Tribunal*, Rev Wasma, while married with two children, held himself out as an unmarried fundraiser for a charity to a woman he met on an online dating website. The penalty for Rev Wasma was prohibition from exercising the functions of his Orders for 12 months and removal from his position as assistant curate of a parish. The Tribunal felt this penalty was adequate considering Rev Wasma's early admission, apology to the woman and his Bishop and that he was having counselling with his wife. It also recognised particular pressures Rev Wasma faced such as feelings of isolation in his ministry which involved heavy responsibilities for a curate and the major spiritual and cultural and emotional upheaval he had faced in leaving the Roman Catholic Church, moving from Africa to the United Kingdom, marrying and taking on the responsibility for his wife's two children.
- [23] In *Re: The Reverend Keith Hanson*, Rev Hanson who was married entered an increasingly sexualized relationship with a woman who had started to attend his church. Rev Hanson was aware that the woman had a history of mental illness. Over 3 and 4 months, Rev Hanson exchanged numerous sexually explicit texts and messages with the woman and on 3 occasions had sexual intercourse with her. The Tribunal concluded that the nature of the relationships, the period of misconduct, the known vulnerability of the woman and Rev Hanson's lack of insight and absence of remorse made prohibition for life the only proportionate sanction.

Admonition and deposition not appropriate penalties

- [24] In the Tribunal's view, admonition is an appropriate penalty where the seriousness of the misconduct, while warranting a formal penalty, is at the lower end of the scale. It

is not a suitable penalty in this case given the seriousness of the Respondent's breach of the Standards of Ministry.

[25] Equally, deposition is not an appropriate penalty. Deposition should be reserved for the most serious misconduct. In the Tribunal's view, this case while serious does not involve misconduct of the most serious kind conceivable. Deposition would be a disproportionately severe penalty for the misconduct involved here.

[26] The Tribunal must therefore decide whether the penalty should be suspension under clause 54(b) of Canon III, Title D, or deprivation of office under clause 54(c).

[27] Suspension is described in clause 54(b), Canon III, Title D:

Suspension from the exercise of Ministry or office for the extent or duration considered appropriate by the tribunal which may include suspension of the whole or part of any stipend.

[28] Deprivation of office or ministry described in clause 54(c), Canon III, Title D:

Deprivation of office or ministry making the respondent incapable of holding any office of Ministry or performing any function in any Episcopal Unit of the Church for the extent and duration considered appropriate by the tribunal at the end of which period restoration may occur.

Deprivation of office is appropriate penalty

[29] The Tribunal has concluded that a proportionate penalty in this case which recognizes the serious nature of the Respondent's breach of the requirement for ministers to be chaste while taking into account various mitigating factors is deprivation of office or ministry under clause 54(c), Canon III, Title D. The reasons for the Tribunal's conclusion are set out in the following paragraphs.

Chastity

[30] The Tribunal has found that the Respondent committed serious misconduct by breaching the requirement to be chaste under Title D, Canon 1, clause 25, to preserve appropriate inter-personal boundaries under Title D, Canon 1, clause 18 and to observe

the general standards of personal behaviour and holiness required of an Ordained Minister under Title D, Canon 1, clauses 1,2, 19 and 20.

- [31] All of the charges stem from the Respondent's failure to observe the requirement to be chaste.
- [32] The Tribunal obtained an opinion on chastity from Bishop George 'Connor who noted:
- (l) The hallmarks of chastity are to refrain from adultery and fornication. For married people, chastity means having sex only with one's marriage partner which is sometimes referred to as fidelity.
 - (m) The Scriptures and church teaching have taken the commandment not to commit adultery
 - (n) An ordained person is expected to be an example of Christian living, which includes chastity. Candidates for ordination as priest promise to set forth the doctrines of the faith as the Church has received them, to show love, care and compassion and ask God to give them courage to strive for justice and peace among all people and to do all in their power to build up the body of Christ.
 - (o) It is generally understood that there is an unequal balance of power between an ordained person and a lay person and maintaining chastity in unequal power relationships is a particular responsibility for an ordained person.
- [33] Bishop George's opinion assists the Tribunal in determining that the Respondent's failure to observe the requirement to be chaste is a significant matter.

Aggravating factors

- [34] The Tribunal has considered factors which may be considered "aggravating" in the sense that they intensify the Tribunal's concern about the Respondent's conduct and suggest that a more, rather than a less, severe penalty is appropriate. Aggravating factors include:
- (a) The Respondent is a senior priest in '...', licensed both as a Minister to his Parish and as a Co-Archdeacon with many years in ministry. Given the length of his ministry and senior position, he could reasonably have been expected to know that entering a sexual relationship with Ms '...' was a serious breach of the standards of ministry and particularly of the requirement for ministers to be chaste
 - (b) The fact that the Respondent's failure was not a one-off lapse but a continuing course of conduct

- (c) The fact that the Respondent had himself married Ms [redacted] to Mr [redacted] fewer than six months before he and Ms [redacted] first engaged sexually is a significant breach of the requirement on ministers of the church to observe appropriate inter-personal disciplines and boundaries as required by clause 18, Canon I, Title D and a serious violation of his role as a priest.
- (d) The Respondent knew that Mr [redacted] and Ms [redacted] had been in a committed long-term relationship for nearly twenty years prior to their marriage and that they had not formally separated at the time the affair began.
- (e) The ending of the 20 year long relationship between [redacted] and Ms [redacted] was precipitated by the Respondent's affair with Ms [redacted]. While the Tribunal accepts that there may have been other issues in their relationship, it is clear from Mr [redacted] letter that the affair was the definitive thing that ended their relationship.
- (f) The harm caused by the Respondent's actions was significant. Mr [redacted] describes his extreme distress at discovering the affair and devastation at the end of his marriage. Mr [redacted] was unable to sleep for a time.
- (g) The impact on [redacted] and Ms [redacted] nineteen-year-old [redacted] was not covered in the evidence provided to the Tribunal, but it can be assumed that he would have been affected in some way by the ending of parents' relationship as a result of the Respondent's relationship with Ms [redacted]. [redacted] is likely to have felt confusion and betrayal that the minister who had married [redacted] parents less than a year before had begun a relationship with [redacted] mother.

Respondent's limited insight an aggravating factor

[35] The Tribunal asked questions of the Respondent to test his insight into his misconduct since insight may act as a mitigating feature. The Respondent's responses led the Tribunal to conclude that the Respondent has only limited or partial insight. This conclusion is based on the matters outlined in the paragraphs below.

[36] The Respondent said that it was only when Mr [redacted] learned about the affair and made it clear that he intended to complain to the Ministry Standards Commission that

he realised that his relationship with Ms [redacted] amounted to a breach of the standards for ministers. The Tribunal is concerned that it did not appear to have occurred to the Respondent up until that point that his relationship with Ms [redacted] amounted to a breach of the requirement of chastity specified in Title D. It would have expected the Respondent to have recognised the breach at the outset of the relationship.

[37] The fact that it was only when the affair was discovered by [redacted] and he indicated that he would complain to the Church that the Respondent formed the view he needed to end the relationship also led the Tribunal to question whether the Respondent would have continued his relationship with Ms [redacted] had it not been discovered by Mr [redacted]

[38] The Respondent's decision to resume the relationship with Ms [redacted] before this proceeding is concluded also suggests a lack of insight into the seriousness of his misconduct.

[39] The Respondent answered the Tribunal's questions about the impact on [redacted] and [redacted] by saying that he has known the Respondent all his life and therefore nothing had really changed for [redacted] as a result of the relationship the Respondent had entered into with Ms [redacted]. The Tribunal accepts that Ms [redacted] has known the Respondent all his life, but this does not exclude the very real likelihood that a [redacted] of 19 years might find [redacted] parents' separation and the emergence of [redacted] mother's relationship with the Respondent unsettling to some degree. Nor did it recognize the likelihood that [redacted] would find the fact that the Respondent had officiated at [redacted] parents' wedding in his role as a priest of the Church only months before yet now was engaged in a relationship with [redacted] mother at least confusing, and at worst a betrayal of trust and a problematic representation of church leadership. The Respondent failed to indicate an appreciation of the impact of parents' separation or the change in the nature of [redacted] relationship with the Respondent given the Respondent is now in a sexual relationship with [redacted] mother.

[40] In the Tribunal's view, the Respondent's lack of insight into the impact of his relationship with Ms [redacted] on his compliance with the requirement for chastity at the outset of this relationship and his failure to recognize the potential impact

on Ms [redacted] and Mr [redacted] is an aggravating factor which must be given quite some weight in deciding the appropriate penalty.

Impact on

[41] The Tribunal is mindful that the impact on the [redacted] Parish in which the Respondent has been ministering is not yet evident. The Respondent's affair is at this stage not widely known. Ms Kaahu White who is People's Warden of [redacted] was not aware of the affair or that the Respondent had stood down until June 2022 when the Licensing Bishop advised her of it so that she could be consulted by the Church Advocate for the purpose of this proceeding. While Ms Kaahu White's love and respect for the Respondent has not been displaced by knowledge of these matters, it can reasonably be expected that when the situation becomes known in the [redacted] at least some members of the parish are likely to feel upset, confused and perhaps betrayed and the standing of the Church and its ministers is likely to be adversely affected to some extent.

[42] The Tribunal has considered the impact on the [redacted] parish of the loss of availability of the Respondent to serve this community due to the penalty and the likely difficulty there will in finding a suitable replacement. It is clear that this community will feel the impact of the decision however that cannot be the dominant factor in how this Tribunal deals with the complaint and assesses the suitable penalty

Mitigating factors

[43] The Tribunal has also considered potentially mitigating factors which are relevant to penalty including:

- (a) The Respondent's early admission. The Respondent promptly admitted his relationship with Ms [redacted] when Mr [redacted] lodged his complaint.
- (b) The Respondent's prompt admission of the details of the affair and that this amounted to conduct unbecoming of a Minister and a breach of tikanga Māori on receiving the Notice of Complaint of 5 April 2022 in this matter.
- (c) The fact that the Respondent voluntarily took leave of absence while Mr [redacted] complaint was investigated, and these proceedings have been ongoing.
- (d) The Respondent's significant and valuable ministry in his Parish and wider community as set out in Ms Kaahu White's letter of 22 June 2022.

- (e) The personal support of Ms Kaahu White for the Respondent, notwithstanding his misconduct
- (f) The Respondent's sad loss of his wife of many years and the circumstances of her death.

Mana

[44] The Respondent requested the Tribunal to consider the impact of the Tribunal's decision on the mana of his whanau. Clearly the mana of the Respondent and his whanau will be impacted but the most significant impact on mana flows primarily from the Respondent's decision to engage in an adulterous relationship with Ms [redacted] to do so secretly and contrary to the duties of his office and then the consequential finding of serious misconduct. It does not flow from the Tribunal's decision on penalty. The Tribunal does not therefore believe that impact on mana should carry weight in its decision on penalty.

Impact on the standing of the Church

[45] The Tribunal has also considered the impact on the standing of the church and its ministers. The English decisions indicate that the interests of the wider church, the need to support the good standing of all who minister in the church and to ensure that clergy are worthy of the trust that is put in them as ministers by both the Church and the public need consideration when thinking of an appropriate penalty. If the Tribunal were not to impose an appropriate penalty for serious misconduct, the impact that would have on the standing of the Church, both within the wider Church and in the community generally must be seriously considered by the Tribunal. See *Re: The Reverend Stephen Alan Vincent*, paragraphs 29 – 30.

Weight to be given to the Respondent's good record

[46] In considering penalty, the Tribunal has weighed the Respondent's good work in the [redacted] Parish. Ms Kaahu White's letter to the Tribunal of 22 June 2022 indicates that the Respondent is highly respected. She praises his work at [redacted] and with long term residents and patients at the hospital in [redacted]. She also notes the aroha the congregation at [redacted] has for the Respondent, as evidenced in their response to the first service he took after his wife, Marina's death. She describes the Respondent as "a man who we all love and respect, who has helped us when we needed him."

[47] The Tribunal accepts that the Respondent's record in ministry is strong and that he has worked hard in service of his community, building up the Church in the . . . and offering an important ministry to the wider community through his work at . . . Hospital.

[48] This good record however does not displace the seriousness of the Respondent's departure from the requirement, for ministers to be chaste.

Serious misconduct

[49] The Respondent's misconduct was serious. The Respondent's counsel accepted this in para 14 of his submissions. Features of his misconduct which underscore the seriousness of the departure from the expected standard include:

- i. the commencement of the relationship with Ms . . . within only . . . months of officiating at her marriage to Mr . . . January 2021;
- ii. the continuation of the relationship over approximately six months
- iii. the cessation of the relationship only when Mr . . . discovered the relationship and confronted Ms . . . and the Respondent in early September 2021

[50] We are satisfied that the respondent's behaviour amounted to a serious breach of his obligations as an ordained Minister and is of such seriousness that the appropriate outcome is deprivation of office under clause 54(c) of Title D, Canon III.

Result

[51] Having considered the Respondent's conduct and the aggravating and mitigating factors set out above, the Tribunal recommends to the Licensing Bishop that the appropriate outcome is deprivation of office making the Respondent incapable of holding any office or Ministry or performing any function in any Episcopal Unit of the Church for four years at the end of which period restoration may occur.

[52] The Tribunal further recommends to the Licensing Bishop that if a decision is made to restore the Respondent at the end of the 4-year period of deprivation, the Respondent should be required to:

- (a) undertake training in boundaries;
- (b) attend regular supervision with a supervisor approved by the Licensing Bishop with requirements for supervision to focus particularly on maintenance of appropriate boundaries and for the supervisor to report to the Licensing Bishop at least quarterly for the first year.

Dated at Auckland this 3rd day of October 2022

J. M. Mark

For the Tribunal
The Reverend Amanda Mark (Chair)

² In terms of clause 58 of Title D, Canon III, it is noted that the Licensing Bishop is obliged to impose the outcome recommended by the Tribunal and that further procedural steps involving notification of and publication of the outcome are set out in clauses 59–66 of Title D, Canon III.