

Standing Committee – Report 2005

APPENDIX E

COURTS AND TRIBUNALS COMMITTEE

Report to Standing Committee

In 2003, the Courts and Tribunals Committee was set up by the Archbishop of Armagh to review the structures and procedures relating to the Courts of the Church of Ireland. The system is governed by Chapter VIII of the Constitution, which largely dates back to the late nineteenth century and is now in need of review.

The Courts and Tribunals Committee consists of the Archbishops of Armagh and Dublin and the Bishop of Cork together with a group of ecclesiastical experts, judges and lawyers. The Committee has met on six occasions over the past two years to consider what legal structures and procedures would best serve the needs of the Church of Ireland in the twenty-first century.

The area of disciplinary matters is the area in which there is the greatest need for a thorough review of structures and procedures and accordingly the Committee has been engaged in the preparation of a Disciplinary Scheme for clergy to replace a substantial part of the existing Chapter VIII of the Constitution, namely: the determination of cases (whether or not involving any question of doctrine or ritual or the deposition from holy orders of any member of the clergy) in which any member of the clergy is charged with any offence against any law or canon of the Church of Ireland or any other offence cognisable under the provisions of Section 53 of Chapter VIII of the Constitution.

The following organs would be established:-

- a Complaints Officer to be appointed by the Standing Committee with the approval of the R.C.B., who would be responsible for administering disciplinary matters as and when required;
- a Complaints Committee which would investigate complaints referred to it by Complaints Officer and decide if there were a *prima facie* case which should be prosecuted;
- a Disciplinary Tribunal which, would hear complaints, decide if they are well founded and impose sanctions if appropriate; and
- an Appeals Tribunal which would hear appeals from decisions of the Disciplinary Tribunal.

‘Complaint’ would be defined as any complaint or allegation touching or apparently touching upon conduct (whether by act or omission) behaviour, performance or affairs of any member of the clergy in respect of any of the “offences” already set out in Chapter VIII, the only additional offence would be that of ‘neglect or inefficiency in the performance of the duties of his or her office’.

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The Complaints Committee would consist of one clerical and one lay representative of each diocese or united diocese under the jurisdiction of one bishop, elected at diocesan synods to hold office for six years. The quorum of any meeting of the Committee would be six of whom at least two must be members of the clergy and two must be lay persons.

When required to sit, a Disciplinary Tribunal or an Appeals Tribunal would be selected from panels established for the purpose. The Disciplinary Panel would consist of not more than twelve persons, four of whom would be members of the clergy and four of whom would be lawyers, and the Appeal Panel would be similarly composed. [In this context members of the clergy would include archbishops and bishops and lawyers would include judges.]

This approach would allow for availability of persons to serve on particular occasions and to avoid possible conflicts of interest. A Disciplinary Tribunal would comprise three people: a lawyer, as chairman, a lay member and a clerical member. An Appeals Tribunal would have a similar composition.

Any person would be entitled to make a complaint to the Complaints Officer about a member of the clergy. If the Complaints Officer were to determine that the complaint was frivolous, or were to resolve it on an amicable basis, it would not proceed further; otherwise the complaints officer would refer the matter to the Complaints Committee for investigation.

The Complaints Committee would investigate (with the assistance of the Complaints Officer) the matter and decide whether a *prima facie* case against the member of the clergy existed. If the Complaints Committee were to decide that there were no *prima facie* case, the matter would not proceed further.

However, if the Complaints Committee were to decide that there was a *prima facie* case then it could do any of the following:-

- decide that no further action be taken;
- suspend action to allow time for the situation to develop;
- refer the matter to mediation;
- offer the member of the clergy concerned a “consent order” (i.e. the imposition of an agreed sanction). If the member of the clergy concerned did not accept the offer the case would be referred to a Disciplinary Tribunal; or
- refer the case to a Disciplinary Tribunal.

If the matter were referred to mediation and the mediation was successful it would not proceed further. If the mediation were unsuccessful then the matter would be referred back to the Complaints Committee for further consideration.

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If the matter were referred to a Disciplinary Tribunal a full hearing would be held in which both sides would be entitled to be represented by lawyers (or suitable others), to examine their own witnesses, to cross examine the other side's witnesses and so on. The matter would be prosecuted by the Complaints Committee and not the complainant. To the extent that the complaint involves a matter of doctrine or ritual it would be referred to the House of Bishops for a ruling.

The range of sanctions that could be imposed would include admonishment, suspension from benefice or office and removal from benefice or office. All sanctions would be available to both a Disciplinary Tribunal and an Appeals Tribunal.

If a member of the clergy were dissatisfied with the decision of a Disciplinary Tribunal he or she would be entitled appeal it to an Appeals Tribunal. The Complaints Committee would not have a right of appeal.

There would be appropriate provisions in relation to both a Disciplinary Tribunal and an Appeals Tribunal to ensure that procedures adopted by them were fair and consistent with natural justice. With certain limited exceptions, all proceedings before both a Disciplinary Tribunal and an Appeal Tribunal would be heard in public and the results of their decisions would be published.

The main benefits of this approach are:-

- An independent body assesses objectively whether a complaint should be prosecuted.
- The existence of a prosecuting body reduces the adversarial element of the present system where the “complainant” has to prosecute the complaint him- or herself.
- A tribunal system that is not diocese-based ensures fairness and independence by relieving dioceses of having to judge matters from within the diocese.
- A tribunal system with a lay president relieves the Bishops of being both judge and pastor but retains their role as “guardians of the faith” by involving them in doctrinal matters.
- The panel structure ensures the availability of enough Panel members to sit on the Tribunals.
- The proceedings of both Tribunals are open to public scrutiny.

As mentioned above, the suggested Disciplinary Scheme for the Church of Ireland, if accepted, would replace a substantial part of the existing Chapter VIII of the Constitution.

The Committee considers that irretrievable breakdown in relations between a member of the clergy and his or her parishioners should, for the present, continue to be dealt with by

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separate procedure under two Statutes of the General Synod, namely Chapter VI of 2001 and Chapter XVI of 2003, which provide for the establishment of Provincial Mediation Panels and of a Severance Fund respectively.

The other matters set out in Chapter VIII and in other provisions of the Constitution, which require further detailed consideration by the Committee and probable amendment, relate to the jurisdiction of Diocesan Courts concerning the determination of questions connected with the property of the Church and the administration thereof, with ecclesiastical rights generally and with matters referred by the diocesan bishop. Consideration must also be given to the appellate jurisdiction of Diocesan Courts and, of course, to the original and appellate jurisdiction of the Court of the General Synod not relating to matters of clerical discipline or alleged offences by members of the clergy.

The Committee considers that the existing provisions of the Constitution concerning ‘faculties’ require little amendment apart, possibly, from changes of nomenclature since, in practice; the system appears to work well.

Consequential amendment and revision of many of the Rules of the Court of the General Synod and of the Rules and Orders of the Diocesan Courts and Registries will also be inevitable.

Accordingly much further work by the Committee is required before detailed proposals and the requisite draft legislation for a complete revision of the provisions of Chapter VIII of the Constitution can be brought before the General Synod.

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