

ANGLICAN CHURCH OF AUSTRALIA

IN THE SPECIAL TRIBUNAL

Special Tribunal Canon 2007 Offences Canon 1962

IN THE MATTER OF THE RIGHT REVEREND ROSS OWEN DAVIES

Findings of the Special Tribunal on the issue of Bishop Davies' health

1. The Special Tribunal notes that in previous communications with the Special Tribunal, Bishop Davies has contended that his ill health precludes his attendance at the hearing of the Charges by the Special Tribunal.
2. In response to Directions made by the Senior President of the Special Tribunal on 12 August 2010 for Bishop Davies to produce a "detailed medical report", Bishop Davies produced a report dated 7 September 2010 from his psychiatrist, Dr Brian McKenny. Although Dr McKenny's report describes various health problems of Bishop Davies, Dr McKenny expresses the opinion that Bishop Davies is capable of instructing solicitors to represent him in this matter.
3. Further, in response to Directions made by the Senior President of the Special Tribunal on 12 August 2010 for Bishop Davies to produce Dr McKenny's medical records relating to Bishop Davies, and any other relevant medical records in the possession of Bishop Davies, he has failed to comply with those Directions. According to Dr McKenny's report dated 7 September 2010, Bishop Davies specifically instructed Dr McKenny not to offer up his medical records.
4. In these circumstances, the Special Tribunal is satisfied that there is no reasonable basis for Bishop Davies' continuing failure to attend at the hearing of the Charges on the grounds of ill health, or to at least instruct a solicitor or counsel to attend and make submissions on his behalf in answer to the Charges, or on matters of procedure.
5. Moreover, the events in the days immediately prior to the hearing on 27 September 2010 illustrate that the issue of ill health is no longer relied upon by Bishop Davies who has, in correspondence with the Special Tribunal, evinced the intention not to participate in its processes, not on the grounds of ill health, but because he has relinquished the office of Bishop of The Murray and purported to relinquish the exercise of Holy Orders entirely. The Tribunal found on 27th September, 2010 that he remained a bishop in Holy Orders for the purposes of the jurisdiction of the Special Tribunal pursuant to the Special Tribunal Canon 2007, and in particular section 46 (3) thereof.

Findings of the Special Tribunal on the Charges

6. It is noted that the Preferrers abandoned Particulars 4.10, 7.4 and 8.3 of the Charges.
7. Correspondence from Bishop Davies dated 2 June 2010 and 6 August 2010 records that he denies the Charges.
8. The Special Tribunal is to determine proof of each Count on the balance of probabilities.
9. We have considered the Statutory Declarations filed on behalf of the Preferrers and the documents in the Tender Book and have had regard to the Written Submissions of the Preferrers and the Summary of Evidence in relation to the Charges.

10. We have found that the charge of Disgraceful Conduct under Section 2 Item 4, Offences Canon, 1962 is made out by the evidence relating to eight counts, as follows:

Count 1, concerning the respondent's conduct with respect to the management of the Professional Standards issues connected with Archdeacon Coote, is proven in that he:

- a. appointed Archdeacon Coote, or allowed him to continue to hold various positions of responsibility within the Diocese, including Chair of the Diocesan Response Group, Registrar and Vicar-General, when he knew or ought to have known that such appointments were inappropriate having regard to the allegations made against him (some of which were admitted)
- b. inappropriately used his powers as Bishop to subvert the proper Professional Standards processes within the Diocese in relation to complaints against Archdeacon Coote in order to protect Archdeacon Coote from the full rigour of those procedures; and
- c. failed to act, appropriately or at all, on the recommendations made by the Professional Standards Committee of the Diocese and determined, inappropriately and improperly, that the Professional Standards Committee had recommended that no action be taken against Archdeacon Coote when, in fact, no such recommendation had been made.

Count 2, that the respondent expressed disenchantment with and displayed a lack of commitment to the Anglican Church in a way that is inconsistent with his role as Bishop of the Diocese, is proven in that he:

- a. expressed views that the Anglican Church no longer held his confidence nor deserved his loyalty and that he intended to leave it, if and when he was able to secure a financial payout in exchange for his retirement as Bishop of The Murray, and
- b. at times was not regularly conducting or attending worship in the Diocese, but rather was attending worship in another church not in communion with the Anglican Church of Australia.

Count 3, that the respondent sought to improperly influence the composition of Diocesan Council in an attempt to gain financial advantage, is proven in that he made various appointments and terminations and sought to manipulate the functioning of that body by using his position as Bishop in a way that furthered his own interests by seeking a financial advantage at the expense of the interests of the Diocese.

Counts 4 and 8, that the respondent displayed anger which is inconsistent with his pastoral role as a Bishop of the Diocese, are proven in that he used aggressive, threatening, offensive and abusive language towards parishioners and others in the Diocese thus giving cause for scandal and offence.

Counts 5 and 6, that the Bishop's behaviour at the Diocesan Council meetings on 18th June 2009 and 19th November, 2009 was inappropriate, irrational and abusive, are proven in that he:

- a. displayed a propensity to lose his temper suddenly, leading to abusive interjections, and
- b. displayed irrational and inappropriate anger inconsistent with the expectations of a Bishop, which has resulted in serious distress and hurt amongst the people of the Diocese.

Count 7, that the respondent wilfully violated the Ordinances of the Diocesan Synod, namely the Professional Standards Ordinance 2007, is proven and is dealt with under counts 2 and 3.

With respect to Count 9, we note that the matters of this count have been dealt with in counts 1, 2, 3, 4, 5, and 6 and find that the matter of the respondent's wilful intent with respect to his consecration vows has not been proven.

11. We note that pursuant to Section 60 of the Constitution, we have the power to make recommendations consequent upon our findings.

12. We note that Bishop Davies has relinquished the office of Bishop of The Murray. It is open to the Special Tribunal to recommend one or more of the penalties set out in Section 60 of the Constitution. Any recommendation as to penalty ought to be proportionate to the conduct that is the subject of the Charges and the findings of the Special Tribunal. Any such recommendation must have regard to the facts proved, not the subsequent conduct, or status, of the Bishop in the period after the Charges were laid. In other words, just because changed circumstances deprive the Special Tribunal of the opportunity to recommend a particular penalty is not a reason to recommend a more severe sanction than is proportionate in the circumstances.

13. We recommend with respect to:

Count 1, that the respondent be prohibited from functioning in the office of a bishop;

Counts 2, 3 and 7, that the respondent be removed from office; however, it is noted that he has already relinquished the office of Bishop of the Murray;

Counts 4, 5, 6 & 8 that the respondent be rebuked; and

Count 9 that there be no action.

14. The Tribunal regards breaches or interference in Professional Standards protocols as serious failures of duty.

15. We have made an order that publication and dissemination of material in the Statutory Declarations, the Tender Book and the Written Submissions is not to occur without permission of the Tribunal.

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Sir Robert Woods, Kt, CBE
Senior President

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The Most Reverend Dr Phillip Freier
Archbishop of Melbourne

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The Reverend Andrew Sempell
Rector of St James, Sydney

Date: 29th September, 2010.