

CASE NOTES

EDITED BY RUTH ARLOW

Barrister, Deputy Chancellor of the Dioceses of Chichester and Norwich

Driver and Weatherill v Davies

Anglican Church of Australia Special Tribunal, November 2010
Ecclesiastical offence – disgraceful conduct – prohibition – bishop

Two diocesan bishops preferred a charge against the respondent, the Rt Revd Ross Davies, Bishop of the Diocese of The Murray. The respondent was charged with six counts of the offence of disgraceful conduct which at the time of charge was or would be productive of scandal or evil report, two counts of the offence of wilful violation of the ordinances of the diocesan synod and one count of the offence of wilful and habitual disregard of his consecration vows. The most serious of these offences alleged conduct engaged in between March 2002 and September 2008 to prevent the investigation of allegations of serious misconduct against the then Archdeacon of The Murray. Other offences alleged improperly influencing the composition of the Diocesan Council in an attempt to gain a financial advantage, displaying a lack of commitment to the Anglican Church through actions such as not regularly attending or conducting worship in the diocese and repeated displays of anger that were inconsistent with his pastoral role as the bishop of the diocese. In September 2010 the tribunal found all charges proved other than the charge of wilful violation of his consecration vows. Pursuant to section 60 of the Constitution, the tribunal recommended that the respondent be prohibited from functioning in the office of a bishop in respect of the count relating to the archdeacon, that he be removed from office in respect of the counts relating to displaying a lack of commitment to the Anglican Church and improperly influencing the composition of the Diocesan Council in an attempt to gain a financial advantage, and that he be rebuked in relation to the other proven counts. It regarded breaches or interferences in Professional Standards protocols relating to the allegations against the archdeacon as serious failures of duty. In November 2010 the Primate and the Archbishop of Brisbane accepted the recommendation of the tribunal and pronounced the sentences that it had recommended, noting that the respondent had already relinquished the office of Bishop of The Murray. The Primate rejected a submission by the respondent that a Deed of Release and Discharge executed after the tribunal's decision in

September by him and the Administrator of the Diocese were a bar on proceedings before the tribunal. [Garth Blake]

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Re St John the Evangelist, Filey

York Consistory Court: Collier Ch, May 2011

Re-ordering

In the diocese unopposed petition fees were paid by the Diocesan Board of Finance, although the fees for opposed petitions were met by the petitioners. A faculty was granted for the re-ordering of the church, including the plastering of a brick wall, subject to no objection being received after display of the Public Notice. One parishioner made an informal objection to the plastering of the wall. In finding that there was no substance in the objection raised and therefore granting the faculty, the chancellor observed that the single objection had caused significant additional delay and cost for the petitioners and commented that it might be appropriate for petitioners when explaining re-ordering plans also to explain the process involved and the consequences of any objections received. [RA]

doi:10.1017/S0956618X12000506

Re St Nicholas, Radford Semele

Coventry Consistory Court: Eyre Ch, February 2012

Organ – moveable font

The church having been destroyed by fire in 2008, a faculty had been granted for its reconstruction and those works were ready to commence. Two outstanding matters remained: proposals to install a digital organ and a moveable font. As to the organ, the chancellor referred to his judgment in *Re St Nicholas, Warwick* (2010)¹² Ecc LJ 407, in which he had held that those seeking to replace an existing pipe organ with something other than a pipe organ had to discharge a heavy burden, there being a presumption in favour of replacing pipe organs with pipe organs. This was still the case even where, as in the present case, the previous pipe organ had been destroyed, as the presumption in favour of pipe organs resulted from the musical quality and longevity of such instruments. The petitioners' argument that a digital organ would cost less in terms of both capital outlay and maintenance carried little weight. Over time pipe organs were better value for money than organs with a more limited lifespan and the court would not be sympathetic to arguments that it