

**IN THE PROFESSIONAL STANDARDS BOARD
ANGLICAN DIOCESE OF MELBOURNE**

**IN THE MATTER of an application for a clearance for ministry by
REV ZM**

BOARD MEMBERS:	Mr Stephen Wilmoth, President Reverend Chris Appleby Mr Peter Billings
WHERE HELD:	Melbourne
DATE OF HEARING:	On the papers
DATE OF DETERMINATION:	21 November 2019
CASE MAY BE CITED AS:	<i>Professional Standards Committee v Rev ZM</i>
MEDIUM NEUTRAL CITATION:	[2019] PSB (Melb) 3

APPEARANCES

For the Professional Standards Committee	Not applicable
For the respondent	Not applicable

FITNESS FOR OFFICE – application for clearance for ministry — agreed statement of facts and recommendations – National Code of Conduct, *Faithfulness in Service*, paragraphs 8.6 and 8.8 – Acceptance of a gift in breach of standards - condition for education – *Professional Standards Uniform Act 2016*, ss 54 and 81.

The facts are stated below in paragraphs 1 – 13 of the agreed statement.

Held:

The Professional Standards Board accepted that in the circumstances it was appropriate to proceed on the basis of the agreed statement of facts and recommendations.

Medical Board of Australia v Fox [2016] VCAT 408.

The applicant committed misconduct.

The guidelines in the National code as to gifts require that, when offered a gift, a priest should consider its size, the risk of compromise of integrity in accepting it, whether scandal or embarrassment might ensue on acceptance of the gift, its disclosure (if it is substantial) to a supervisor or colleague and if there is any uncertainty, seek advice from a supervisor or colleague.

The Board accordingly directed the Office of Professional Standards to issue the applicant a clearance for ministry subject to the condition that the applicant be required to satisfactorily complete a session of education with and at the discretion of a senior member of clergy in the Diocese of Melbourne approved by Archbishop or the Office of Professional Standards in relation to financial management within the Diocese of Melbourne, including the standards expected under *Faithfulness In Service*.

REASONS FOR DETERMINATION

Mr Stephen Wilmoth, President

Reverend Chris Appleby

Mr Peter Billings

(1) **The Proceeding**

1. This proceeding relates to a referral from the Professional Standards Committee (**the Committee**) to the Board under s 54 of the *Professional Standards Uniform Act 2016* (Melb) (**the Act**)¹ which relevantly provides that unless the Committee is of the opinion that the applicant for a clearance for ministry is unconditionally fit for ministry, it must, pursuant to s 69 of the Act, refer the matter to the Board.
2. The Committee has determined that it was unable to form the opinion that Reverend ZM (**the applicant**) is unconditionally fit for ministry.
3. The Committee asked the Board to determine the matter “on the papers”, without a hearing, on the basis of an agreed statement.
4. The parties jointly submit to the Board that their agreed statement, set out below, contains a carefully and extensively negotiated outcome on which the Board is permitted to rely. The case of *Medical Board of Australia v Fox* [2016] VCAT 408 is cited as authority for that proposition.

(2) **The agreed statement**

5. The agreed statement is as follows in paragraphs 1-32 inclusive.

The applicant’s role and responsibilities

1. During the relevant times of the conduct the applicant was working in the Parish of .. in the Diocese of T, (**the Parish**).
2. The applicant was Chair of the Parish Council and had responsibility to oversee and guide the affairs of the Parish to ensure its day to day responsibilities were fulfilled and, in performing his duties, pay due regard to the mission of the ministry of the Church.
3. The applicant shared financial oversight for the Parish with the Parish Council treasurer and the Parish Council more generally.

¹ Editor’s note: As the matter was referred to the Board prior to the enactment in October 2019 of the *Professional Standards Amendment Bill 2019*, the matter falls to be determined in accordance with the Act as in force prior to those amendments that included amendments to ss 27 and 69.

Work for the dole program

4. As part of his duties, the applicant was responsible for implementing a work-for-the-dole program in the Parish. The work-for-the-dole program is a federal government initiative that pays an employment agency ('employment provider') to utilise a business, organisation or community group ('host organisation') to provide work activities for people that are unemployed. The Parish became a host organisation in 2014 and were paid fees for their participation. The work-for-the-dole scheme was a profitable initiative for the Parish.

Gift of a ciborium

5. In around July 2016, the Parish Executive met in the absence of the applicant. They considered that they would like to provide a gift to the applicant in order to:
 - (a) recognise the long hours put in by the applicant running the work-for-the-dole initiative;
 - (b) acknowledge the considerable amount of funds the parish had received as a result of the work-for-the-dole initiative; and
 - (c) acknowledge the Parish's love and appreciation for the applicant.
6. The Parish Executive considered that a ciborium, which is a communion vessel, was something that the applicant would value and that, considering that the applicant was likely to leave the Parish in the next one to two years, the ciborium could also be a memento of their time at the Parish.
7. After having received a quotation for the ciborium, the Parish Executive raised the proposed purchase with the Parish Council at their September 2016 meeting. The Parish Council agreed to the purchase. As the applicant had access to the Parish Council minutes, it was decided not to include details in the minutes of the meeting.
8. The Parish Council paid \$24,200 (inclusive of GST) for a ciborium which they gave to the applicant as a gift. The funds to purchase the gift were taken from surplus funds that had been received by the Parish from the work-for-the-dole initiative.
9. The applicant accepted the gift of the ciborium.
10. The applicant states that he spoke with his spiritual advisor, [...] from the ... Diocese about the appropriateness of accepting the gift.

The applicant did not seek counsel from his supervisor or a colleague within the T Diocese.

11. The applicant did not contribute any of their own personal funds towards the purchase of the ciborium and accepted the gift without any agreement in place between them and the Parish that they would do so.
12. In late 2017, the applicant was asked by the Bishop of ... to return the ciborium to a representative of the T Diocese and did so.
13. The applicant resigned as Incumbent of the Parish on 28 December 2017.

Investigation in the diocese of T

14. In November 2017, the Professional Standards Office of the Diocese of T commenced an investigation into the applicant's conduct with regard to:
 - (a) the conduct of the work for the dole program; and
 - (b) the gift of the ciborium.
15. In a response to the T Professional Standards Board, dated 28 March 2018, the applicant stated:

I had thought that I had maintained financial integrity and had done my best to uphold my obligations under Faithfulness In Service. When the parish decided that they wanted to purchase a Ciborium for me instead of letting me buy it for myself, I checked the Faithfulness In Service document and disclosed the matter and sought advice from a colleague who was also my supervisor. He did not feel, given the Parish Council's resolve and reasoning, including the desire of the council to be generous given the 'non paid' time involved in and around the parish over the years I had been there and that any gift would be used directly in your priestly ministry, and my willingness to cover its cost (minus the GST that the Parish got back) that there was nothing wrong in accepting the gift. Accepting such a generous gift given the expressed desire of the PC at this time. I also understood that this was also to be viewed as a leaving gift from the Parish at some time in the future when I left.

...the Parish Council and its members can be quite direct and firm in their resolve, and it has only been their refusal to accept payment for or towards the ciborium that had prevented me from doing so. I am still willing, as stated previously, to pay for or contribute to it.

16. The T Professional Standards Committee ultimately considered that the alleged conduct did not constitute examinable conduct under the *Professional Standards Ordinance 2012* (Diocese of T).
17. The matter was then referred to the Bishop of T who considered that the alleged conduct would result in a conditional licence were the applicant to remain in T.
18. On 4 July 2018, the applicant was advised by the Bishop of T that in his view:
 - (a) the applicant's conduct in accepting the ciborium was a personal advantage beyond his stipend or wage and was in breach of standards 8.6 and 8.11 of *Faithfulness in Service*;
 - (b) no formal disciplinary action would be taken against him within the T Diocese but the finding would be noted and would be referred to in any statement of Good Standing provided in the future; and
 - (c) a finding had been made that the actions of the parishioners in making a gift of a ciborium to the applicant was a breach, error or omission of the *Administration of Parish Ordinances Act 2010* (T).

Procedural history in Melbourne

19. In late 2017, the applicant was selected for a role as Priest in Charge of [...] in the Diocese of Melbourne to take effect from 2 January 2018. The applicant's clearance for ministry form was received by the Office of Professional Standards on 13 September 2017 (the previous application).
20. In November 2017 the Director of Professional Standards of the Melbourne Diocese was made aware that there was an investigation in respect of the applicant's conduct occurring in the diocese of T. As such, it was decided that the appointment process in Melbourne should be put on hold until the conclusion of the T matter.
21. At its meeting on 25 July 2018, the Professional Standards Committee decided to refer the previous application for clearance to the Professional Standards Board on the grounds that,
 - (a) in light of the T matter, the Committee was not of the opinion that the applicant is unconditionally fit for the proposed office, licence or position of responsibility; and

- (b) it follows that the Committee is unable to recommend clearance in accordance with s 51 of the *Professional Standards Uniform Act 2016* (Melb) and must refer the matter to the Board pursuant to ss 54 and 69.
22. The previous reference was filed with the Board on 21 June 2019.
23. On 11 June 2019, the applicant applied to the Office of Professional Standards for a Permission to Officiate. The applicant then indicated that he was no longer pursuing his clearance for the role at [...] Parish to which the previous clearance related.
24. On 25 July 2019, the Committee resolved to refer the clearance relating to the permission to officiate to the Board, on the basis that:
- (a) In light of the T matter, the Committee was not of the opinion that the applicant is unconditionally fit for the proposed office, licence or position of responsibility; and
- (b) It follows that the Committee is unable to recommend clearance in accordance with s 54(1) of the *Professional Standards Uniform Act 2016* (Melb) and must refer the matter to the Board pursuant to ss 54(2) and 69.
25. The new clearance reference was signed by the Chair of the Committee on 3 September 2019 and was filed with the Board on 9 September 2019.

Relevant code and standards

26. The applicant was at all relevant times required to conduct himself in accordance with the standards outlined in *Faithfulness In Service*: a national code for personal behaviour and the practice of pastoral ministry by clergy and church workers.

Relevantly, *Faithfulness In Service* includes a section regarding financial integrity, which includes the following standards:

- (a) Standard 8.6 - You are not to seek personal advantage or financial gain for yourself or your family from your position or from a pastoral relationship, beyond your stipend or wage and recognised allowances or deductions;
- (b) Standard 8.8 - You are to avoid situations of conflict between your personal financial interest and your pastoral ministry responsibilities.
27. *Faithfulness In Service* also provides guidelines which illustrate best practice and highlight practical ways to achieve this. In respect of gifts, the guidelines stipulate:

If you are offered or receive a gift, whether monetary or otherwise, from a person from whom you have a pastoral relationship, you should:

- Establish for whom the gift is intended and exercise discretion as to whether the gift should be personally accepted.
- Consider:
 - The size of the gift;
 - The intentions and circumstances of the giver;
 - The risk of your integrity being compromised; and
 - Whether acceptance of the gift would cause scandal and embarrassment if known publicly;
- If it is substantial disclose the offer or receipt to a supervisor or colleague; and
- If there is any uncertainty as to the gift's appropriateness, seek advice from a supervisor or colleague.

28. *Admissions*

The applicant admits that by virtue of the facts described above, he

- (a) did not manage the gift of the ciborium appropriately; and
- (b) accepts that this gift constituted a personal advantage or financial gain for himself from his position, beyond his stipend or wage.

29. The applicant agrees that in retrospect, the proper course would have been to decline a gift of such a size. He agrees he should have sought counselling from his supervisor within the diocese and ultimately declined to accept the ciborium.

30. The applicant admits that this conduct breached the standards he was expected to uphold under the *Faithfulness In Service*: a national code for personal behaviour and the practice of pastoral ministry by clergy and church workers, outlined at paragraphs 26 and 27 above.

31. *Joint submissions on conduct and determinations*

- (a) The parties jointly submit that the applicant's conduct amounts to misconduct within the meaning of s 5(p) of the Act in that his conduct was unbecoming or inappropriate to his role office or position, duties and functions and on its face calls into question whether he should be subject to conditions or restrictions in the exercise of his ministry.
- (b) The parties jointly submit that the Board should make the following final determinations under s 81 of the Act:

- (i) the applicant committed misconduct; as set out at paragraph 3.1 above and
- (ii) the applicant's licence should be subject to a condition requiring him to satisfactorily complete 6 hours of education with a senior member of clergy in the Diocese of Melbourne approved by the Church Authority or Office of Professional Standards in relation to financial management within the Diocese of Melbourne, including the standards expected under *Faithfulness In Service*.

32. The parties jointly submit that the Board should direct the Office of Professional Standards to issue the applicant a clearance for a permission to officiate and subject to the condition referred to in paragraph 31(b)(ii) above.

Editors note: The reasons continue...

(3) **Misconduct**

6. The Board notes from paragraph 8 of the agreed statement that the funds to purchase the gift of the ciborium were taken from surplus funds that had been received by the Parish from the work-for-the-dole program. The status of those surplus funds is not explained. The surplus funds may have been refundable to their provider the Federal Government, or retained for future participation by the Parish in the program, or retained as consolidated revenue for general purposes.
7. The applicant was at relevant times Chair of the Parish Council and shared financial oversight for the Parish with the parish council treasurer and the parish council more generally. See paragraphs 2 and 3 of the agreed statement.
8. There is no suggestion in the material before the Board that the deployment of the surplus funds towards the ciborium's purchase was contrary to the obligations of the Parish in relation to the surplus funds. Even if it were, the ciborium's purchase was made without the applicant's knowledge at the time of purchase.
9. The Board is not told whether the applicant learnt of the amount and source of the funds used to buy the ciborium, but it seems probable that the applicant had, and the Board proceeds on the basis that they had.
10. The question for the Board is whether in all the circumstances there was misconduct by the applicant in accepting the gift of the expensive ciborium, to the cost of which he had not contributed.

11. Paragraph 26 and following of the agreed statement cites the relevant code and standards to which the Board must have regard in assessing the applicant's conduct in accepting the gift of the ciborium.
12. Paragraph 15 of the agreed statement contains the applicant's statement which demonstrates he sought to comply in good faith with his obligations in the *Faithfulness In Service* code. However, the code's guidelines as to gifts, referred to in paragraph 27 of the agreed statement, require consideration, when offered a gift of its size, of the risk of compromise of integrity in accepting it, of whether scandal or embarrassment might ensue on acceptance of the gift, of its disclosure (if it is substantial) to a supervisor or colleague and if there is any uncertainty, seeking advice from a supervisor or colleague.
13. The applicant knew of these guidelines and sought to comply with them. He now admits he did not manage the gift of the ciborium appropriately and accepts that this gift constituted a personal advantage or financial gain for himself from his position, beyond his stipend or wage, and agrees that in retrospect, the proper course would have been to decline a gift of such a size.

(4) Conclusion and Determination

14. Although characterising the applicant's conduct as in the nature of a misjudgment rather than wilful misconduct, the Board nevertheless accepts the joint submission of the parties that the applicant committed misconduct.
15. The Board also accepts that the applicant's licence should be subject to the condition referred to in paragraph 31(b)(ii) save that the words "a session of education with and at the discretion of" be substituted for "6 hours of education with."
16. The Board accordingly directs the Office of Professional Standards to issue the applicant a clearance for a permission to officiate subject to the condition that the applicant be required to satisfactorily complete a session of education with and at the discretion of a senior member of clergy in the Diocese of Melbourne approved by the Archbishop or the Office of Professional Standards in relation to financial management within the Diocese of Melbourne, including the standards expected under *Faithfulness in Service*.

NOTE:

In accordance with the direction of the Professional Standards Board, on 9 January 2020, pursuant to s56(4) of the Act, the Office of Professional Standards granted a conditional clearance for ministry to the applicant.