

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

IN THE MATTER of a complaint against Reverend AMQ

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| BOARD MEMBERS: | Stephen Wilmoth, (President of the Professional Standards Board) Reverend Doctor Richard Wilson Beatrice Melita |
| WHERE HELD: | Remotely by ZOOM |
| DATE OF HEARING: | 25 August 2020 |
| DATE OF DETERMINATION: | 4 September 2020 |
| CASE MAY BE CITED AS: | <i>Professional Standards Committee v. Reverend AMQ</i> |
| MEDIUM NEUTRAL CITATION: | [2020] PSB 3 (Melb) |

FITNESS FOR OFFICE – Misconduct – Conduct Unbecoming – Unwelcome Sexual Advance - Unwelcome Conduct of a Sexual nature – Consumption of Alcohol – Professional Boundaries - Complaint Upheld – Professional Standards Uniform Act 2009 (Melb), s 5

A complaint against the respondent who is a member of clergy, alleging that the respondent had engaged in misconduct against a 19 year old woman who was residing in the respondent’s house and had previously been a victim of sexual abuse, which was known to the respondent. The conduct included an unwelcome sexual advance or unwelcome conduct of a sexual nature whilst the respondent was intoxicated, and was a breach of the Faithfulness in Service (Code of Conduct for Clergy and Church Workers).

Held:

- (1) The Board found the complaint against the respondent constitutes conduct unbecoming and a breach of the Faithfulness in Service and struck out the alternative allegation of sexual misconduct by agreement of the parties;
- (2) The Board makes the recommendations contained in the Determination to the Church Authority pursuant to Section 78 of the Professional Standards Uniform Act 2016.

APPEARANCES:

For the PSC

For the respondent

Counsel

Ms Diana Price

Ms Rachel Ellyard

Solicitors

PSC

Referral by the Professional Standards Committee under s 69 of the Professional Standards Uniform Act 2016 (**the Act**) of a complaint against the respondent for raising a question of fitness for office.

REASONS**1. NATURE OF THE REFERENCE**

- a) On 19 February 2020 the Professional Standards Committee (the “PSC”) determined to refer a complaint to the Professional Standards Board (“the Board”) and did so by its report to the Board of 16 June 2020. The complaint is against AMQ (“the Respondent”) alleging misconduct by the Respondent consisting of sexual harassment of the Complainant, then 19 years old, one night in late 2018. The complaint alleges misconduct pursuant to Section 5 of the Act, being sexual abuse.
- b) [redacted]

THE COMPLAINT

The complainant alleged that the Respondent behaved inappropriately towards her after he became intoxicated, such as by touching her leg, giving her a massage, placing whipped cream over his nipples and by making unwanted sexual remarks.

2. THE RESPONDENT’S CIRCUMSTANCES

- (a) The Respondent is and was at all material times an Anglican Minister in the Diocese of Melbourne. As such he is a “church worker” for the purposes of Section 3 of the Act and amenable to the Board’s jurisdiction.
- (b) The Respondent provided to the PSC a written response to the complaint in which he admitted becoming intoxicated, giving the complainant a massage and placing whipped cream over his nipples. The respondent apologised for his behaviour, but denied it was sexual in nature, and acknowledged that his conduct was “terribly inappropriate” and not consistent with his normal behaviour of recognising boundaries. He also acknowledged that he sprayed whipped cream on himself as a form of “adult humour”. The respondent says he has given up drinking alcohol.

3. THE FORMAL ALLEGATIONS

Two alternative allegations pursuant to Section 5 of the Act were referred to the Board, one of sexual harassment and the other of conduct that is unbecoming or inappropriate of someone in the respondent's position. At a Directions Hearing the parties agreed to provide the Board with a statement of agreed facts. This was done shortly before the Hearing, and included admitted allegations and proposed recommendations which it was submitted the Board should make to the Archbishop. This process also resulted in the parties agreeing to the PSC's withdrawal of the first allegation (sexual harassment) and to the PSC proceeding with an amended allegation of conduct unbecoming or inappropriate, which the Respondent admitted, and an agreement that it is open to the Board to make the following findings of fact:

1. In around mid 2018 the complainant moved into the respondent's household as she was experiencing family hardships
2. The complainant regarded the respondent as a 'safe person' due to his status within the Anglican Church and that the respondent was a parent of a friend of the complainant.
3. The Respondent was aware that the complainant had been sexually abused during her childhood, and that her father had been a Church minister. The respondent was also aware that the complainant had been sexually assaulted by other males in her late teens and early adulthood.
4. As at November 2018 the respondent would regularly have one or two glasses of alcoholic beverages after work. Sometimes the complainant would join the respondent for a glass or two.
5. On one occasion the complainant mentioned to the respondent that she liked the taste of Fireball brand whiskey, and allowed the respondent to taste some that she had purchased. About a week later the respondent bought a large bottle of the same whiskey.
6. On the evening of about 20 November 2018 the respondent's spouse and the eldest child were interstate on a holiday, and the other children were upstairs in their bedrooms. The respondent invited the complainant to share some of the Fireball whiskey he had purchased. They both consumed the whiskey and some Amarula cream liquor in the open plan kitchen/living area of the home.
7. The respondent became intoxicated.
8. The respondent and the complainant were sitting on the same couch. The respondent moved closer to the complainant so that their shoulders and knees were touching.
9. The respondent placed his hand on top of the complainant's thigh, between her hip and knee. The respondent's hand moved upwards towards the complainant's hip, and he kept his hand on the complainant's thigh when she changed position by crossing her legs. The respondent cannot recall placing his hand on the complainant's thigh but does not seek to dispute the complainant's recollection.
10. The complainant initially 'froze' as she did not know what to do, and was worried that if she were asked to leave the household the complainant would have nowhere to live.

11. The complainant got up to get a glass of water from the kitchen as she felt uncomfortable, and wanted to slow her consumption of alcohol.
12. The complainant sat down on a different couch to the respondent to create physical distance between them. The respondent got up off the couch, and sat close to the complainant so that their arms and legs were again touching.
13. The respondent then rested his head on the complainant's shoulder. The complainant felt very uncomfortable and worried the respondent was going to try to kiss the complainant.
14. The complainant got up from the couch to create physical distance between them. The complainant returned her empty water glass to the kitchen area.
15. The complainant again sat down on a different couch to the respondent. The complainant was seated close to the arm rest. The respondent again moved couches to sit next to her, in the small space between the complainant and the arm rest. The complainant had to move over to create space. The respondent again rested his head on the complainant's shoulder.
16. At a point during the period of time they were both in the lounge area, the respondent offered to give the complainant a massage, and then proceeded to give her a massage whilst they were seated on a couch. The respondent placed his hand inside the neck of the complainant's top, so that the respondent's hand was touching the complainant's skin. The respondent moved his hand across the top of the complainant's chest, back and forth from left to right in a figure eight motion. The respondent's hand came close to, but did not touch the complainant's breasts. His hand **did** pass under the complainant's bra straps.
17. The complainant again got up to create physical distance between her and the respondent. The complainant did so by making nachos in the kitchen area.
18. Whilst the complainant was making nachos, the respondent came into the kitchen. The respondent commented that if she wanted boys to be attracted to her she should not eat string cheese in nachos.
19. Whilst in the kitchen the respondent got a can of whipped cream from the fridge and sprayed it on his t-shirt over his nipples and in his mouth. The respondent scooped the whipped cream off his t-shirt and ate it.
20. After the complainant had eaten the nachos, he said good night and went to bed. The respondent knocked on the complainant's door, asked if she was OK and would like to come back to the 'other room'. The complainant said she was OK and the respondent left the room. This was at about 1.45am.
21. The next morning the complainant woke very early, packed up all of her belongings and left the household, as she no longer felt safe.
22. In the days after the event, the respondent sent several text messages to the complainant including:

Hi [REDACTED], really hope it's ok to send you this, but I'm writing to say how very very sorry I am for the other night. I know my words and actions were incredibly inappropriate and would have made you feel terribly uncomfortable and I am absolutely gutted and full of remorse. I've reflected a lot on that night and told [REDACTED] everything. [REDACTED] too is really disappointed in me and really feels for you. [REDACTED] offered to meet with us together so I can apologise to you personally if this would help? At the end of the day I should never have thought having drinks like that with you would be ok. I've never actually had spirits like that that were just so drinkable in such a measure before and found myself drunk far more quickly! I find my recall patchy in parts, but I do know that my guard was completely down and my usual capacity to exercise judgment about my behaviour was really off. I like who you are as a person, and have enjoyed our conversations and your company, and felt compassion and care for you but have always tried to be conscious of boundaries too. I've never ever wanted you to feel anything but cared for and valued for who you are – and always wanted you to feel safe. I feel I have now totally compromised that, and again I just regret this more than I could ever put into words. I am SO sorry!!!

Have to say, and I don't know if you can understand this or not but in my heavily inebriated brain all I thought I was doing in the massage and checking in with you at the end of the night was about demonstrating care for you. For some reason I've just really wanted to be someone who you could be there for as needs be.. to talk through things or make sure you had dinner or stuff from the shops etc.. all of that too. I've just wanted to see you get to a better place. And in all this I've never been unaware of what you wouldn't want physically (I was actually VERY aware of this given how much we'd talked about it so much even on the night!) – my actions weren't about the physical at all, but rather care and connection. But i didn't think at all clearly about how they would have come across to you.. and I can see how my actions would have been perceived, and regardless it was COMPLETELY inappropriate and again I am sorry :(

And I couldn't be more remorseful. In saying this by the way I am not seeking to minimise the seriousness of my behaviour – I just wanted to explain where it was coming from more clearly. I am gutted that I've made your healing harder now, and also impacted your friendship with [REDACTED] I can certainly share with [REDACTED] what I've done and how you would have had to leave because of it if you would like me to? [REDACTED] be angry and disappointed in me but [REDACTED] has every right to be, and I'd rather that than for [REDACTED] friendship with you to be broken. [REDACTED] cares about you heaps as well and I don't want you to lose that nor for [REDACTED] to lose your friendship about my stupid actions. I know it's unlikely you'll ever come around again but if you do you don't have to worry about interacting with me at all as I can imagine the last thing you'd want is for me to be anywhere near you right now and have every reason to be angry and upset with me.

[REDACTED] this is a massive wake up call for me. I'm actually giving up drinking because of it, and [REDACTED] is going to hold me accountable. I don't know what else to say except to again say that I'm terribly remorseful – I, made a really bad judgement call and know I've hurt you and made you feel unsafe, and ask for your forgiveness. You might not be able to, which I fully respect too – but hope it might be possible one day. Again, I'm just gutted and hope you have been able to sort something on the accommodation front, which is another thing for which I feel awful. I hope also that receiving this isn't too upsetting, but knew you deserved an unreserved apology from me and hope that's ok. I'm truly sorry. [REDACTED]

23. The complainant did not respond to any of these messages and has not spoken to the respondent since that night.

4. FINDINGS

The parties jointly invited the Board to find that between 20 and 21 November 2018, the respondent engaged in misconduct, within the meaning of s 5 of the Act, conduct that is unbecoming or inappropriate of someone in the respondent's position, namely

- (a) On about the night of 20 November 2018 the complainant and respondent were alone in the combined kitchen/living area of the respondent's home.
- (b) They both consumed alcohol belonging to the respondent (the Fireball whiskey) and the complainant (the Amarula).
- (c) The respondent became intoxicated.
- (d) The respondent sat close to the complainant, so that their shoulders and knees were touching.
- (e) The respondent placed his hand on the complainant's thigh, although he cannot recall doing so.
- (f) The complainant moved to sit on a different couch to create distance between herself and the respondent, however the respondent moved to sit close to her and rested his head on her shoulder.
- (g) The complainant again moved to sit on a different couch to create distance between herself and the respondent, however the respondent moved to sit close to her and rested his head on the complainant's shoulder a second time.
- (h) The complainant got up to make nachos in the kitchen to create distance between herself and the respondent.
- (i) The respondent followed her into the kitchen and got a can of whipped cream from the fridge. The respondent commented '[w]hy would we just have this in the fridge? Maybe it's for...' before spraying the cream in his nipple area. He scooped the whipped cream off his t-shirt and ate it.
- (j) The complainant said good night and went to bed. The respondent knocked on her door and asked if she would like to come back to the 'other room', which the complainant declined.
- (k) Prior to the complainant making nachos the respondent offered to give her a massage and then proceeded to give her a massage whilst they were seated on a couch.
- (l) The respondent placed his hand inside the neck of the complainant's top, so that his hand was touching the complainant's skin. The respondent moved his hand across the top of the complainant's chest, back and forth from left to right in a figure eight motion. The respondent's hand came close to, but did not touch the complainant's breasts. His hand did pass under the complainant's bra straps.
- (m) The next morning the complainant woke very early, packed up all of her belongings and left the household as she no longer felt safe.

(n) At the time of this incident the respondent was aware the complainant had been the victim of sexual offences committed by other males in her life.

(o) The respondent's conduct was an unwelcome sexual advance or unwelcome conduct of a sexual nature, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

(p) The respondent's conduct breached the Faithfulness in Service National Code.

The amendments to the second allegation are contained in particulars (b), (e) and (k) above.

5. The diligence of both Counsel for the parties in providing to the Board the Statement of Agreed Facts, Admitted Allegations and Proposed Recommendations obviated the need for the Board to hear evidence from the complainant, the Respondent, or at all.
6. The Board accepts the PSC's withdrawal of the first allegation and the amendments to the second allegation, and makes the findings of fact which it is submitted it should make.
7. In doing so, the Board is satisfied that the conduct admitted by the Respondent constitutes, rather than sexual harassment, conduct that is unbecoming or inappropriate of someone in their position. Although the complainant at the time of the incident was not a minor, being 19 years of age, or in the Respondent's care in loco parentis, the complainant was living in the Respondent's house as a boarder akin to being a member of the family.
8. Although consumption of alcohol by the Respondent may at least to some extent explain the nature and degree of his inappropriate behaviour, such behaviour constitutes, in the circumstances, in the Board's opinion, a startling departure from accepted or appropriate conduct in an objective sense, and there is no suggestion the Respondent has ever otherwise behaved similarly.
9. The Board therefore treats this incident as an aberration, and notes the Respondent's admissions and the apologetic, even contrite, statements that have been made. It accepts the submission made by the respondent's Counsel that they are not unfit for ministry in the broad sense.
10. The necessary safeguards against any further transgression by the Respondent should be met by the Board making the following Recommendations, in which both counsel acquiesced at the Hearing.

RECOMMENDATIONS

1. That the Respondent be reprimanded;
2. That the Respondent be made subject to the following conditions for 24 months;
 - (a) That the Respondent be required to attend professional standards training conducted by the Diocese of Melbourne regarding professional boundaries, pastoral relationships and conduct;

- (b) That the Respondent be required to attend ongoing counselling with **William Wainwright** or a suitably qualified professional at intervals determined by that professional; and
 - (c) That the Respondent be required to be supervised by a member of the clergy experienced in the supervision and formation of ministers, to be appointed by the Diocese of Melbourne;
3. That in the event of the Respondent's being appointed to any new role, office or position or performing any new function, as the case may be, the conditions referred to in order 2 should attach to that new appointment for the balance of the said period of 24 months.
 4. That the Respondent make a formal written apology to the complainant, to be provided to the PSC for forwarding to the complainant;
 5. That the Regional Bishop be informed via the Archbishop of the agreed facts, findings and recommendations made by the Board.

