

**THE JUDICIAL COMMITTEE OF THE
ANGLICAN CHURCH IN AOTEAROA,
NEW ZEALAND AND POLYNESIA**

UNDER Title C, Canon IV of the Canons of the Church

BETWEEN THE RIGHT REVEREND TE KITOHI WIREMU
PIKAAHU
Appellant

AND TE RŪNANGA WHĀITI
Respondent

AND BETWEEN THE VENERABLE KATENE ERUERA and THE
VENERABLE DOCTOR LYNDON DRAKE
Appellants

AND TE RŪNANGA WHĀITI
Respondent

Date: 30 October 2024

Appearances: B Dickey and TeUranga Royal for the Appellants
M K Mahuika and T N Hauraki for the Respondent

In attendance: the Rev'd Canon Michael Hughes as Secretary

Decision: 12 November 2024

DECISION OF THE JUDICIAL COMMITTEE

[1] In each appeal the matter to be determined is the validity of a Te Rūnanga Whāiti decision. In the first, the decision on 8 August 2023 to suspend Bishop Te Kitohi Wiremu Pikaahu (Bishop Kito) from all roles representing Te Pīhopatanga o Aotearoa.

[2] In connection with the second, connected appeal, the issue is the validity of the consequential decision of Te Rūnanga Whāiti concerning the status of Te Taitokerau representatives attending the General Synod Te Hīnota Whānui (GSTHW) on 19 to 23 May 2004.

Issues

[3] The issues for determination by the Judicial Committee are:

- (a) Whether the Judicial Committee has jurisdiction to review representation decisions by or on behalf of Te Pīhopatanga o Aotearoa (or any of the other two tikanga).
- (b) Whether the motion of Te Rūnanga Whāiti dated 8 August 2023 to suspend Bishop Kito from all roles representing Te Pīhopatanga o Aotearoa is valid.
- (c) Whether the motion of Te Rūnanga Whāiti dated 8 February 2024 to alter the representatives' status of Te Taitokerau representatives at General Synod is valid.

Church Structure

[4] The Anglican Church in Aotearoa, New Zealand and Polynesia is structured with a written constitution and is divided into three separate significantly self-governing tikanga. Tikanga Māori, Tikanga Pākehā and The Tikanga of the Diocese of Polynesia.

[5] Its constitution provides that it is made up of Te Pīhopatanga o Aotearoa, Dioceses in New Zealand, and the Diocese of Polynesia.

[6] Part D of the Constitution/Te Pouhere provides for its governance. Clause 1 provides Te Pīhopatanga o Aotearoa with the ability to structure itself in such manner as it from time to time determines:

1. Within this Church Te Pīhopatanga o Aotearoa has responsibility for provision of ministry to those who wish to be ministered to within tikanga Māori, and for the promotion of mission within that Tikanga.

Te Pīhopatanga has power to structure and organise itself in such manner as it shall from time to time determine.

[7] Clause 4 establishes Te Rūnanganui o Te Pīhopatanga o Aotearoa as the representative governing body for Te Pīhopatanga o Aotearoa. The relevant provisions are:

In order to give effect to these provisions in Te Pīhopatanga o Aotearoa there shall be a representative Governing Body or Te Rūnanganui o Te Pīhopatanga o Aotearoa, consisting of representatives of the three Orders within Te Pīhopatanga o Aotearoa, and any decision of such representative Governing Body shall be assented to by a majority in each Order including Te Pīhopa.

PROVIDED THAT *Te Rūnanganui o Te Pīhopatanga o Aotearoa may make provision that will enable such representative Governing Body to meet and conduct its business where the office of Te Pīhopa o Aotearoa is vacant or Te Pīhopa o Aotearoa is unable to be present or otherwise unable or unwilling to act.*

[8] Clause 7 permits Te Rūnanganui to make regulations “within the limits and scope of its responsibilities” and provides a mechanism for appeal for persons aggrieved by any act or decision of Te Rūnanganui o Te Pīhopatanga o Aotearoa:

Te Rūnanganui o Te Pīhopatanga o Aotearoa may within the limits and scope of its responsibilities, exercise all such powers and make all such Regulations, not inconsistent with this Constitution or with any Canon or Regulation of the General Synod / te Hīnota Whānui, as may be necessary for the order and good government of the church in Te Pīhopatanga o Aotearoa.

PROVIDED *always that any person or persons aggrieved by any act or decision of Te Rūnanganui o Te Pīhopatanga o Aotearoa in any matter may appeal to the General Synod / te Hīnota Whānui or to any Board or Court of Appeal established by the General Synod / te Hīnota Whānui in that behalf and the General Synod / te Hīnota Whānui or such Court of Appeal shall finally decide such appeals.*

[9] Te Pīhopatanga o Aotearoa has structured itself by establishing a Standing Committee called Te Rūnanga Whāiti. There is no express provision governing Te Rūnanga Whāiti in the constitution or canons, but it acts in an analogous way to the Standing Committee of GSTHW.

[10] It, like the Standing Committee of GSTHW or of a Diocese, is responsible for the business of Te Rūnanganui between its biennial sessions and acts as to Te Rūnanganui when that is not in session.

[11] Te Pīhopatanga o Aotearoa is organised into Hui Amorangi. The establishment of Hui Amorangi is provided for in clause 5 of Part D of the constitution.

...5. In order to give effect to these provisions within Te Pīhopatanga o Aotearoa, Te Pīhopatanga may establish representative Governing Bodies or Hui Amorangi consisting of representatives of the three Orders and any decision of such Governing Body shall be assented to by a majority in each Order in that body.

PROVIDED THAT Te Rūnanganui o Te Pīhopatanga o Aotearoa may make provisions that will enable such representative Governing Body or Hui Amorangi to meet and conduct its business where the office of Pīhopa. is vacant or te Pīhopa. is unable to be present or otherwise unable or unwilling to act.

The Historical Process for Hui Amorangi “Representation” at GSTHW

[12] In 1997 a Standing Resolution was passed by Te Rūnanganui which reads:

Standing Resolution of Te Pīhopatanga o Aotearoa, 1977

2. A resolution to create the Office of

TE PUNGA O AOTEAROA

And to make provision for the election of

NGA PĪHOPA. O TE PĪHOPA. TANGA O AOTEAROA

NOTING that Te Pīhopatanga o Aotearoa has responsibility for provision of ministry to those who wish to be ministered to within tikanga Māori, and for the promotion of mission within that Tikanga, and that Te Pīhopatanga may make such regulations as it considers necessary and appropriate for making any nomination of a person to be a Pīhopa. within Te Pīhopatanga o Aotearoa (providing that the regulations comply with the provisions of the constitution/te Pouhere).

TE RŪNANGANUI NOW RESOLVES:

1. *The senior bishop of Te Pīhopatanga o Aotearoa shall be known as Te Punga o Aotearoa.*
2. *Te Punga o Aotearoa shall carry out and exercise the Episcopal ministry and jurisdiction of Te Pīhopatanga o Aotearoa and:*
 - a) *shall share collective responsibility with all Pahoā for Episcopal ministry within Te Pīhopatanga o Aotearoa.*
 - b) *shall convene and preside over te Rūnanganui o te Pīhopatanga o Aotearoa and te Rūnanga Whāiti and may convene other bodies associated with te Pīhopatanga.*
 - c) *shall represent te Pīhopatanga o Aotearoa nationally and internationally; and*
 - d) *shall have a special responsibility to represent tikanga Māori in relationship with other tikanga of te Hahi Mihinare/the Anglican Church in Aotearoa, New Zealand and Polynesia.*
3. *The Primate/te Pīhopa. Matamua shall convene and preside over, or shall appoint a commissary to convene and preside over, any electoral college sitting for the purpose of nominating te Punga o Aotearoa. Such electoral college shall consist of those persons entitled to vote in te Rūnanganui o te Pīhopatanga o Aotearoa which, subject to the requirements of this resolution, may determine its own process of consultation, procedure, decision-making and nomination.*
4. *The term of office for te Punga o Aotearoa shall be a period of seven years from the date of assuming the duties of that office, provided that an extension to the term of office may be determined by resolution of te Rūnanganui o te Pīhopatanga o Aotearoa.*
5. *If the office of te Punga o Aotearoa falls vacant by reason of the death or resignation of the incumbent, or if the holder of the office is absent from Aotearoa or is otherwise unable to act, then the powers and functions of te Pīhopa. o Aotearoa shall be performed by the Pīhopa. Amorangi able and willing to act who is the senior of nga Pīhopa. Amorangi, with seniority being determined by the date of episcopal ordination.*
6. *There shall be Pīhopa. Amorangi with collective responsibility as bishops in the ministry of te Pīhopatanga o Aotearoa, each with jurisdiction in one of the Hui Amorangi; who for the present are to be known as Te Pīhopa. o Te Tai Tokerau, Te Pīhopa. o Te Manawa o te Wheke, Te Pīhopa. o Te Tairāwhiti, Te Pīhopa. o te Upoko o te Ika and Te Pīhopa. o te Waipounamu.*

7. *Te Punga o Aotearoa shall convene and preside over, or shall appoint a Commissary to convene and preside over, any electoral college sitting for the purpose of nominating a Pīhopa. Amorangi. Such electoral college shall consist of those persons entitled to vote in that Hui Amorangi which, subject to the requirements of this resolution, may determine its own process of consultation, procedure, decision-making and nomination.*
8. *When an electoral college meets for the purpose of nomination a person to be a bishop in Te Pīhopatanga o Aotearoa, the name of a person, who shall be a priest or a bishop, may be proposed by a person of any order who is present and entitled to vote, and shall be seconded by a person of another order who is present and entitled to vote. No person shall be validly nominated to be a bishop unless that person receives a majority of the votes of each order represented in the electoral college and unless the final ballot shall be taken by secret ballot.*
9. *Members of te Rūnanga Whāiti shall attend and have the right to speak at any electoral college sitting for the purpose of nominating a Pīhopa. Amorangi. When the electoral college has completed the final ballot to nominate a person to be a Pīhopa. Amorangi the members of Te Rūnanga Whāiti shall meet the tautoko i te hiahia o te Hui Amorangi.*
10. *The administrator of te Pīhopatanga o Aotearoa shall act as Secretary of any electoral college within te Pīhopatanga o Aotearoa and shall be responsible for counting the votes cast by secret ballot.*
11. *Every nomination of a person to be a bishop in te Pīhopatanga o Aotearoa shall be submitted for sanctioning in accordance with the provision if clause D12 of the Constitution/te Pouhere.*
12. *Prior to the nomination of a person to be a Pīhopa. exercising episcopal ministry in Te Pīhopatanga o Aotearoa, Te Rūnanganui shall be satisfied that there is an appropriate endowment and proper provision for the stipend, accommodation and allowances of the bishop.*

Transitional arrangements

TE RŪNANGANUI RESOLVES:

1. *On the retirement of Rt Revd Whakahuihui Vercoe as te Pīhopatanga o Aotearoa, a Hui Amorangi electoral college shall be convened for nominating a person to be Pīhopa. o Te Manawa o te Wheke.*
2. *When the process of nomination and sanctioning for a Pīhopa. Amorangi for Te Manawa o te Wheke has been completed, the Primate/te Pīhopa. Matamua shall proceed to convene an electoral college for the purpose of nominating a person to be te Punga o Aotearoa.*
3. *The location of Te Ohanga, the office of the Administrator and Staff, would be a matter to be decided upon by Te Rūnanganui after the nomination of a person to be te Punga o Aotearoa.*

[13] Also in 1997 Te Rūnanganui passed another Standing Resolution, (the second 1997 resolution), promoting the application of tikanga Māori into Te Pīhopatanga o Aotearoa. That, as relevant, provides:

That Te Rūnanganui:

1. *Reaffirms the importance of clause D1 in the Constitution of the Church:*

“Ka whai mana Te Pīhopatanga ki te whakatu, ki te whakarite, ki te whakakaupapa i ana whakahaere katoa i nga wa e rite ana.”

“Te Pīhopatanga has power to structure and organise itself in such manner as it shall from time to time determine.”
2. *Reaffirms the importance of adhering to the values of tikanga Māori in the life and witness of Te Pīhopatanga.*
3. *Acknowledges that tikanga Māori is values-oriented, not rules-based, more akin to the broad laws of the New Testament as distinct from the prescriptive rules of the Old Testament or of the canon law developed over the centuries the life of the Church.*
4. *Acknowledges without being exhaustive, the importance of whanaungatanga, mana, manaakitanga, aroha, mana tupuna, wairua and utu as fundamental principles or values of tikanga Māori.*
5. *Confirms that tikanga Māori principles are to be the guiding principles in dispute resolution matters arising in the life of Te Pīhopatanga and urges upon all who minister in and work for Te Pīhopatanga the importance of mediation and of achieving consensus decisions rather than resorting to courts and tribunals to resolve disputes.*

Background Facts to the appeals

- (a) The appellant, Bishop Kito, is Te Pīhopa / The Bishop of Te Pīhopatanga o Te tai Tokerau.
- (b) The respondent, Te Rūnanga Whāiti, is the Standing Committee of Te Rūnanganui o Te Pīhopatanga o Aotearoa. Te Rūnanganui is the representative synod of Te Pīhopatanga o Aotearoa established under Part D, clause 4 of the Constitution / Te Pohuere of the Anglican Church in Aotearoa, New Zealand and Polynesia.

- (c) In October 2023, Bishop Kito was unable to attend Te Rūnanganui because, he said, as Chair of Te Rūnanga Whakawhanaunga i ngā Hahi Aotearoa, he was required to attend the 15th Christian Conference of Asia General Assembly in Kottayam, India on 27 September to 4 October 2023.
- (d) On 30 May 2023, Bishop Kito sent a formal apology by email to the Ven. Ruihana Paenga with his explanation for not being able to attend Te Rūnanganui. This was sent following a phone call Bishop Kito made earlier that day to enquire about the dates of Te Rūnanganui.
- (e) On 8 August 2023, Te Rūnanga Whāiti convened a hui at Te Pā o Te Amorangi in Ōtautahi (Christchurch). At that meeting, and unbeknownst to Bishop Kito, Te Rūnanga Whāiti discussed his reasons for not intending to attend Te Rūnanganui and passed a motion to suspend Bishop Kito of “all roles representing Te Pīhopatanga o Aotearoa”. This motion is set out in full below at paragraph 19.
- (f) Two days later, on 10 August 2023, Te Rūnanga Whāiti sent a letter to Bishop Kito to inform him of their motion and decision to suspend him. The motion indicated “the ongoing role of Te Pīhopa. o Te Tai Tokerau in creating an impaired relationship” and “the diminishment of the mana and oranga ake of Te Pīhopatanga o Aotearoa and Te Pīhopa. o Aotearoa” as the reasons for the suspension. The letter went on to note that:
 - (i) Te Rūnanga Whāiti had considered but did not accept the reasons for Bishop Kito’s non-attendance at Te Rūnanganui 2023; and
 - (ii) Te Rūnanga Whāiti had considered “similar actions” undertaken by Bishop Kito and Te Hui Amorangi ki Te Tai Tokerau in recent years that have “injured and undermined the unity and oranga ake of Te Pīhopatanga o Aotearoa”. In particular, the non-attendance of Bishop Kito and Te Tai Tokerau at Te Rūnanganui in 2019.

[14] Insofar as the second Te Tai Tokerau appeal is concerned:

- (a) Pursuant to Title B Canon 1 Clause 1.2.2 on 2 December 2023 Te Pihopatanga o Te Taitokerau elected Ven. Katene Eruera and Ven. Dr Lyndon Drake, Mrs Norma Evans, Mr David Tapene and Ms Serena Williams as the clergy and laity General Synod Te Hīnota Whānui GSTHW representatives for Te Pihopatanga o Te Taitokerau.
- (b) On 8 February 2024 Te Rūnanga Whāiti passed a resolution as follows:

The suspension of the Rt. Rev. Te Kitohi Pikaahu remains in place, awaiting resolution as outlined in previous correspondence. Te Rūnanga Whāiti asks the Archbishop to include a delegation of observers from Te Pihopatanga o Te Tai Tokerau at the upcoming Te Hinata Whānui General Synod in order to Manaaki the Bishop of Tai Tokerau, and to ensure the rohe and iwi of the Hui Amorangi are present.

*Moved by Pierre Henare
Seconded by Merekaraka Te Whitu
Carried Unanimously*

[15] Te Pihopatanga's concerns relate to Bishop Kito and not generally to the members of Te Hui Amorangi o Te Tai Tokerau or the representatives nominated by them to attend GSTHW 2024.

[16] Those persons were included in the 2023 Runanganui and as observers in the Te Pihopatanga delegation at GSTHW 2024.

[17] The relationship between Bishop Kito and the Runanga Whaiti was seen by the Runanganui as being "impaired" with his failure to appear at the Runanganui meeting in October 2023 seen as the latest symptom. He had also failed to appear at the 2019 Runanganui meeting which had been seen by Te Runanganui as causing significant disruption to that meeting.

[18] Title B Canon 1 clause 1.2 provides for the representation of Te Pīhopatanga in GSTHW

1.2 **Representatives of Te Pīhopatanga o Aotearoa**

1.2.1 *In accordance with clause 5 of the Fundamental Provisions and Part C clause 4 of the Constitution / te Pouhere, Te Pīhopatanga o Aotearoa shall be represented in the General Synod / te Hīnota Whānui in each of the orders of bishops, clergy and laity.*

1.2.2 *The representatives of each order shall be elected by their respective orders in Te Pīhopatanga in such manner as Te Pīhopatanga may determine. Te Rūnanganui o Te Pīhopatanga may provide for each Hui Amorangi to provide for the election / appointment of an alternate clerical representative and an alternate lay representative each of whom shall be entitled to attend any meeting of the General Synod / te Hīnota Whānui in the place of a clerical or lay member as the case may be who is prevented from attending such meeting.*

1.2.3 *Te Pīhopa o Aotearoa shall in the calendar year preceding each ordinary session of the General Synod / te Hīnota Whānui advise the Primate / te Pīhopa Mātāmua of the number of members of each order who shall represent Te Pīhopatanga o Aotearoa at the next ensuing session of the General Synod / te Hīnota Whānui. One of the representatives from each Amorangi shall where possible be a youth representative, as defined by that Tikanga.*

1.2.4 *The Administrator or Secretary of Te Pīhopatanga o Aotearoa shall as soon as practicable, and if possible, at least two calendar months before the date fixed for the commencement of a session of the General Synod / te Hīnota Whānui, notify the General Secretary in writing of the names and addresses of the members of each order who are proposed to represent Te Pīhopatanga o Aotearoa at that forthcoming session of the General Synod / te Hīnota Whānui.*

The appellants categorise this as a ground up approach, but whether or not that is the case, it is the approach which tikanga Māori have adopted to place its representatives before General Synod.

[19] The committee is aware that for many years, possibly as many as 27, the process employed with Te Pīhopatanga to appoint its representatives for General Synod Te Hīnota Whānui GSTHW has involved nominations from each of the Hui Amorangi.

[20] The adopted process, used over many years, has been nominations from each Hui Amorangi who are in effect allowed to nominate from themselves, “their” representatives. In terms of the canonical provisions, it is Te Pīhopatanga who appoints representatives for itself as a whole, but the process has devolved nominations to each Hui Amorangi. That is the means by which Te Pīhopatanga has organised itself to arrive at a decision as to who will represent it at General Synod Te Hīnota Whānui.

[21] By its decision at a meeting on 8 August 2023 Rūnanga Whāiti decided after much discussion to remove Bishop Kito’s ability to represent Te Pīhopatanga

[22] The actual motion passed was as follows:

It was moved:

Acknowledging our love and deep ties to the people and pastorates of Te Tai Tokerau, and the Kotahitanga sought by those who have gone before us and the hope that was placed in Te Pīhopatanga o Aotearoa and Te Pīhopa. o Aotearoa; and

Due to the ongoing role of Te Pīhopa. o Te Tai Tokerau in creating an impaired relationship and the diminishment of the mana and oranga ake of Te Pīhopatanga o Aotearoa and Te Pīhopa. o Aotearoa.

That we suspend Te Pīhopa. o Te Tai Tokerau, The Right Reverend Te Kitohi (Kito) Wiremu Pikaahu, from all roles representing Te Pīhopatanga o Aotearoa and inform General Synod Stand Committee of our decision and ask for their support; and

That this suspension will be in place until the relationship is restored.

Moved Ven. Mere Wallace ***Seconded*** Ema Weepu ***CARRIED*** (save two abstentions none against).

[23] The letter dated 10 August 2023 advised:

The meeting had considered the formal notice received from both Te Pīhopa. o Te Tai Tokerau and the Rev. Christine Payne (PA to Te Pīhopa.) that Te Pīhopa. o Te Tai Tokerau and Te Hui Amorangi ki Te Tai Tokerau would not be attending Te Rūnanganui o Te Pīhopatanga o Aotearoa, 2023.

After considerable discussion, deliberations and presentation of the evidence Te Rūnanga Whāiti do not accept the facts behind the reasons given for non-attendance. The meeting also considered similar actions undertaken by Te Pīhopa. and Te Hui Amorangi in recent years that have injured and undermined the unity and oranga ake of Te Pīhopatanga o Aotearoa. Based on the nature of the actions taken, and despite numerous attempts to mediate and reconcile with Te Pīhopa., including offers to talk after the non-attendance at Te Rūnanganui in 2019, it is now clear that the relationship of Te Pīhopa. o Te Tai Tokerau to Te Pīhopatanga o Aotearoa is impaired.

The meeting considered that the relationship could only be restored if Te Pīhopa. o Te Tai Tokerau and Te Hui Amorangi ki Te Tai Tokerau showed that they could uphold the mana and orange ake of Te Pīhopatanga o Aotearoa and Te Pīhopa. o Aotearoa in good faith and spirit. The meeting decided that suspension of the representation of Bishop Pikaahu was an appropriate and measured response at this stage.

In taking this action Te Rūnanga Whāiti are aware of the impact of our decision and wish to offer any pastoral care that is appropriate. Know that all are in our prayers and remain in our love.

The reasons for excluding Tai Tokerau GSTHW representatives were and remain unclear. Te Rūnanga Whāiti acknowledges that no fault or complaint was or is made against those representatives, and effectively that they were excluded from full representation as a consequence or side-wind of their decision in relation to Bishop Kito.

[24] There was no clear and express communication with Te Tai Tokerau representatives after Te Rūnanga Whāiti decided to change their status.

The Judicial Committee

[25] Title C Canon IV constitutes the Judicial Committee and sets out its purpose and jurisdiction. Clause 1 provides:

WHEREAS it is provided in the Constitution / te Pouhere of the Church that *any doubt which shall arise in the interpretation of the Constitution / te Pouhere for the time being of this Church shall be submitted for final decision to the General Synod / te Hīnota Whānui or to some tribunal established by it in that behalf:*

AND WHEREAS it is provided that *any person or persons aggrieved by any act or decision of Te Rūnanganui o Te Pīhopatanga o Aotearoa or any diocesan synod or of the Synod of the Diocesan of Polynesia may appeal to the General Synod / te Hīnota Whānui or to any board or court of appeal established by the General Synod / te Hīnota Whānui established for that purpose and the General Synod / te Hīnota Whānui or such court of appeal shall finally decide such appeals:*

AND WHEREAS it is desirable that all doubts which may arise in the interpretation of any canon or statute already passed, or hereafter to be passed by the General Synod / te Hīnota Whānui or by Te Rūnanganui o Te Pīhopatanga o Aotearoa or by any diocesan spread or by the Synod of Diocese of Polynesia, shall be submitted for that decision by a tribunal set up in that behalf by the General Synod / te Hīnota Whānui.

NOW THEREFORE there is hereby established as such tribunal, board or court of appeal as the case may be and for all or any of the foregoing purposes of Part G clause 3, Part D, clause 3, Part E clause 7 of the constitution / te pouhere and Part F clause 7 of the Constitution / te Pouhere to the exclusion of the General Synod / te Hīnota Whānui a body to be known as the Judicial Committee.

[26] The jurisdiction of the Committee is defined in the Canon, and the Committee can only determine matters falling within the terms of the Canon.

[27] In a decision of 6 March 2003, the Hill decision, the Judicial Committee ruled that resolutions passed by Te Rūnanganui on 6 and 7 September 2002 were invalid because proper process was not followed. It said in part:

Those within Tikanga Māori have agreed upon a representative system of decision making, the balances within which were not met by the process followed. In the circumstances the rights of people within Hui Amorangi to representation within Te Rūnanganui were interfered with and the record reflecting a subsequent agreement on substantive issues by all present does not cure the problem created when a different group from that called to meet is involved in the decision making.

[28] It went on further to determine:

Each Tikanga within the Church has considerable latitude as to how it organises itself subject to the Constitution / te Pouhere agreed to voluntarily by all , but the Judicial Committee is unable to accept the submission that the rules are not to be followed by Tikanga Māori other than in a loose and general sense, and that in Tikanga Māori the constitutional and other governing rules are subject to overriding customary influences.

Any group, including Te Pīhopatanga o Aotearoa requires an appropriate process and form when important decisions are made, particularly when they go to the composition of and voting within a representative governing body such as Te Rūnanganui.

[29] In another previous decision of the Judicial Committee, dated 18 April 2015, the motion 30 decision, the committee described its jurisdiction this way:

That jurisdiction can be quite simply described, in terms of the Canon as:

- (a) *First Preamble – resolution of “doubts” in the “interpretation” of the Constitution;*
- (b) *Second Preamble – appeals against the acts or decisions of Diocesan Synods, Hui Amorangi and Te Rūnanganui, but not General Synod;*
- (c) *Third Preamble – resolution of “doubts” in the interpretation of the Canons and Statute passed by Diocesan Synods, Hui Amorangi, and Te Rūnanganui including General Synod.*

Jurisdiction

Respondents’ Position

[30] The respondent takes the position that the events which occurred and decision made amounted to Te Pīhopatanga deciding its representatives. It submits that being appointed as a representative is both a privilege and that the position carries significant responsibilities. It says the appointing party must have confidence that the representative is willing and able to speak on its behalf and the representative must in turn reflect and advance the interests of the appointing party. It says that the 1997 resolutions are not true standing resolutions and that there is ongoing discussion as to how Pīhopatanga should operate.

[31] It submits that the 1997 resolution does not provide for representation based on Hui Amorangi but rather implies an obligation on all parties to collaborate, something which Te Pīhopatanga says the appellants have failed to do. It submits that the Judicial Committee does not have jurisdiction to interfere with its decision and to the extent that it may have jurisdiction, that should be exercised with deference to the views of Te Pīhopatanga which must in the end have confidence in those who are representing it.

[32] It submits that natural justice considerations do not apply to representation decisions and consequences flowing from such decisions should not affect the essential nature of the discretion being exercised by Te Pīhopatanga.

[33] The respondent says that Te Pīhopatanga's concerns relate to Bishop Kito and not generally to members of Te Hui Amorangi o Te Taitokerau.

[34] It also submits that members of Te Hui Amorangi o Te Taitokerau were included in both Rūnanganui 2023, and as observers in the Te Pīhopatanga delegation to General Synod 2024 despite Bishop Kito not being appointed to represent Te Pīhopatanga. It says that the decision not to appoint Bishop Kito as a representative of Te Pīhopatanga was because the relationship between him and the Te Rūnanga Whāiti had become impaired. Bishop Kito's failure to attend the Rūnanganui meeting in October 2023 is described as simply the latest symptom of that impaired relationship which included his non-attendance at Te Rūnanganui in 2019.

[35] Mr Mahuika submitted:

- (a) Given the nature of Te Pīhopatanga's discretion to appoint representatives, the Judicial Committee does not have the jurisdiction to interfere with Te Pīhopatanga's decisions.
- (b) To the extent that the Judicial Committee may have jurisdiction, that jurisdiction should be excused with deference to the views of Te Pīhopatanga, which must ultimately have confidence in those being appointed to act on its behalf.

[36] Mr Dickey submitted:

- (a) With respect to its first decision of Te Rūnanga Whāiti, Bishop Kito is aggrieved because his ability to continue certain roles internal and external of Te Pīhopatanga o Aotearoa has been taken from him by the decisions and his mana diminished accordingly.

- (b) With respect to the second decision of Te Rūnanga Whāiti Ven. Katene Eruera and Ven. Dr Lyndon Drake are aggrieved because their rights to full representation at the General Synod/Te Hīnota Whānui were diminished to the extent that they could only participate as observers and lost their ability to influence any decision as their voting rights were taken from them.
- (c) Te Rūnanga Whāiti acts as a Standing Committee and in the place of Te Rūnanganui o Te Pīhopatanga o Aotearoa when Te Rūnanganui is not in session.
- (d) Both prerequisites of clause 1 of Title C Canon IV being met jurisdiction exists and the parties may appeal to the Judicial Committee.
- (e) There is nothing in the Canons which precludes the Judicial Committee from hearing and making determinations on matters of representation with Te Pīhopatanga o Aotearoa.

Discussion -jurisdiction

[37] We consider that the words of the Second Preamble to the Canon are clear, and that Bishop Kito, Ven. Katene Eruera and Ven. Dr Lyndon Drake come within the terms of the Canon. The nature of Te Pīhopatanga's discretion to appoint representatives (as discussed elsewhere in this decision) does not affect the Judicial Committee's jurisdiction to hear the appeals, but relates instead to the merits of the appeals. Further, the decisions under appeal are not decisions about appointing representatives but rather about removing previously appointed or nominated persons.

[38] The Judicial committee has twice previously ruled it has jurisdiction to consider process issues which impact on decisions made within Te Pīhopatanga.

[39] For these reasons we are satisfied we have jurisdiction to consider the appeals.

Whether the Suspension of Bishop Kito is Valid

[40] The Judicial Committee accepts that pursuant to the constitution and canons earlier referred to Te Pīhopatanga is entitled to chose the method by which it elects representatives and that it has a broad discretion in how it does that, subject to the provisions of Title B Canon 1 clause 1.2 (supra).

[41] But we observe that the removal of representatives is a different process from that of appointing, and requires a fair process consistent with natural justice and Tikanga.

[42] Bishop Kito was and is entitled to attend General Synod Te Hīnota Whānui GSTHW in his capacity as a bishop, but the process adopted resulted in the removal of Bishop Kito as part of the representative group from Te Taitokerau as part of the representatives of Te Pīhopatanga.

[43] The 8 August decision was made, according to the certified minutes, under an agenda heading of Te Rūnanganui 2023.

[44] The agenda previously circulated for that meeting contained no reference which would enable Bishop Kito to be aware that under that heading, his continued ability to represent Te Pīhopatanga was to be considered.

[45] The respondents acknowledged to the Judicial Committee that the heading was at best “opaque”. Whether intentionally or not, it gave no notice to Bishop Kito about what was to be considered. He was not advised of the concerns, although inferentially that there were concerns must have been known to him, and he was not provided with particulars of the nature of his attitudes and/or behaviours which caused those concerns. If he had been made aware that his future as a Te Pīhopatanga representative was very much to be considered, and his potential removal as a representative considered, it may have been possible for him to rearrange his obligations so as to attend.

[46] The appellants suggest that the Te Taitokerau members were excluded from the meeting, but the confirmed minutes make it clear that they were present for all of the extensive discussions but excluded from the voting.

[47] There is no material from Te Rūnanganui to suggest that this “process” was one which was consciously adopted – the process adopted, of not providing notice of intention to consider this in the agenda; not providing the bishop with details of the concerns which he could respond to; discussing it in his absence and failing to provide an opportunity for him to be heard, are all breaches of basic natural justice principles.

[48] The process failed to reflect the Tikanga set out in the second 1997 resolution, including whanaungatanga, mana, manaakitanga, aroha, mana tupuna, wairua and utu

[49] The process adopted was simply unfair.

[50] That is not to say that Te Pīhopatanga may not determine who is to represent it, it is plainly entitled to do that in terms of the constitution and canons. But the process by which it goes about removing representatives must be fair. It is not an unfettered discretion as to process.

[51] The appellants represent the decision-making relating to Bishop Kito was a disciplinary process. The church has an express process for discipline as is set out in Title D, and contains considerable process safeguards. There is no suggestion that process was used. If this was in fact a disciplinary process it miscued significantly. If it was genuinely a process to resolve representation issues, it was an unfair process and the decision cannot be upheld.

[52] As discussed elsewhere, the effect of the decision was expressly to remove Bishop Kito from roles in which he represented Te Pīhopatanga. The Committee was told of letters written to other parties, that is to say bodies outside the immediate church within New Zealand, which had the practical effect of removing Bishop Kito’s ability to act.

[53] In particular, Bishop Kito was very well-regarded within the indigenous bishops group and in fact had been elected its chair. His appearance at that group was not at the direction of and as a representative of Te Pīhopatanga, but rather his right as an indigenous bishop. His election as chair was not within the gift of Te Pīhopatanga. But the results of their intervention following the decision was that he felt obliged to resign. Other appointments impacted were his membership of the Māori Council of Churches, and as a trustee of the Saint Stephens Trust Board. Both of those positions are appointments of General Synod albeit on the nomination of Te Pīhopatanga, and GSSC has delegated the Maori Council of Churches appointment to Whaiti.

[54] These examples are provided by the appellant as indications of an effort to take away from Bishop Kito appointments which were not within the power of Te Rūnanga Whāiti and as also as an indication of a disciplinary aspect to its behaviour.

Te Tai Tokerau Representatives – The Second Appeal

[55] The position in relation to the second appellants and the Te Taitokerau “representatives” is even more stark. Like Bishop Kito they were given no notice of the possibility of Te Rūnanganui considering changing the status of their nominations. They were given no notice of fault or reasons, there being none. They were not provided with any opportunity to comment on the proposal and the effect of the decision made was to unilaterally change a process which had been agreed and acted on for many years for the appointment of representatives from their rohe.

[56] The issues identified as problematic in relation to Bishop Kito are equally problematic in connection with the Te Taitokerau lay and clergy representatives. The decision to change their status from representatives to observers deprived them and Te Taitokerau of the ability to speak and vote at General Synod – to participate in the proceedings rather than simply observe.

[57] But there is no suggestion of any reprehensible conduct of any sort by the Te Tai Tokerau representatives, unlike the position relating to Bishop Kito.

[58] On 8 February 2024 Te Rūnanga Whāiti passed a motion:

The suspension of the Rt. Rev. Pikaahu remains in place, awaiting resolution as outlined in previous correspondence. Te Rūnanga Whāiti asks the Archbishop to include a delegation of observers from Te Pīhopatanga o Te Tai Tokerau at the upcoming Te Hinota Whānui/General Synod in order to manaaki the bishop of Te Tai Tokerau, and to ensure the rohe and iwi of the hui amorangi are present.

Nature of the Decisions

[59] The appellants characterise the decisions of Te Rūnanga Whāiti as being essentially disciplinary in nature, removing the ability of each of the appellants to act in ways they had hitherto been able to, diminishing their mana, and having clear adverse disciplinary effects. They say that these were disciplinary decisions without the benefits available to persons under the church's provisions for discipline, contained in Title D. They impaired the ability of Bishop Kito to carry out his full range of duties and obligations as a bishop, and remove the ability of the Te Tai Tokerau representatives to sit in synod and to speak and to vote.

[60] The respondents characterise the decisions as decisions as to who may represent Te Pīhopatanga, something they plainly have the right to determine under the Constitution and canons.

[61] They were decisions which impacted on existing positions and/or expectations, and those affected had the right to expect a fair process.

[62] What occurred deprived the impacted parties of knowledge that it was occurring; of the ability to attend and address any concerns, of the ability to be heard, [The process for changing their status was unfair and improper. The decision changing their status to one of observers was unfair and is set aside.

Result

[63] The decision of Te Rūnanganui of 8 August 2023 to end Bishop Kito's ability to represent Te Pīhopatanga is set aside

[64] The decision of Te Rūnanganui of 8 February 2024 that representatives of Te Tai Tokerau may attend GSTHW only as observers is set aside.

Ancillary Orders

[65] We are asked to make a number of ancillary orders.

[66] Firstly we are asked to direct that Bishop Kito is restored to his positions and roles both within Te Pīhopatanga o Aotearoa and in external organisations affected by the respondent's decision and secondly we are asked to reinstate the active participation of Te Tai Tokerau representatives in GSTHW.

[67] We do not consider such orders are necessary. The decisions previously made by the respondent are set aside, meaning the status quo as existed prior to them reverts. Bishop Kito's status is as it was, as is that of the Te Tai Tokerau representatives. No other orders to that effect are needed.

[68] We are asked to direct a comprehensive mediation process in accordance with the second 1997 resolution of Te Pīhopatanga to address the disputes and reconcile the parties. As we indicated during the hearing, we do not consider our powers extend to such a direction, but we consider mediation as suggested is highly desirable, if not essential. We invited the parties to mediation prior to the hearing, but neither side accepted. But all continue to express a willingness to mediate. We are acutely aware that our decision will not resolve the ongoing issues between the parties.

[69] Tikanga and the express provisions of the second 1997 resolution strongly suggest mediation as appropriate and even necessary as a way to restore relations, mana, and trust, to and between all of the parties.

[70] We are also asked to direct the respondent to take necessary steps in respect of external stakeholders to remedy its invalid decisions and ensure that Bishop Kito remains in good standing with those entities.

[71] We consider such a direction is beyond our power. Further, such a step would at present indicate to third parties a resolution of issues which our decision does not achieve. Our decision is a determination that Rūnanga Whāiti failed to follow fair processes rather than it reached a decision which may not have been open had proper process been followed. We do not determine who should represent Te Pīhopatanga or who should not. We simply determine that processes relating to the removal from positions must be within the constitution and canons, comply with natural justice, and be fair.

[72] Regrettably nothing we have said determines the issues between the parties which remain. They clearly have to be resolved for the good of all.

[73] Finally we record that at the start of the hearing an observer supporting Te Tai Tokerau raised the propriety of the involvement of one of the members of the Committee, apparently on the basis of whanau, whakapapa, or rohe connection with the respondent or Archbishop Tamihere. She also expressed concern about the makeup of the Committee absent consultation with Te Tai Tokerau. The Committee was satisfied there is no conflict involved and no issue with the makeup of the Committee. Neither matter was taken up by the appellants after it was raised.

Costs

[74] We are asked to award costs. At present we reserve the issue of costs. If costs are pursued the appellants are to file and serve written submissions within 14 days of the date of our decision, with the respondent having 7 days to respond. The submissions must not exceed 5 pages. We will then determine the issue on the papers.

Members of the Committee

Bishop Richard Ellena

Judge Chris Harding (chair)

Rev Pania Houkamau-Ngaheu

Justice Walton Morgan

Rev Joel Rowse

Mr Alex Twaddle

Signed for and on behalf of the Committee

A handwritten signature in black ink, appearing to be 'CJ Harding', written in a cursive style.

CJ Harding (Chair)