

PRESIDENTIAL RULING #28

I have been requested by a Minister of the Word in the West Australian Synod ('the Minister') to make a Presidential Ruling regarding specific aspects of the manner in which a complaint against her has been dealt.

I note that the same persons constitute the Synod of Western Australia and the Presbytery of Western Australia (the only presbytery within the Synod). It is also relevant to note that By-law 5.2.1 of the By-laws made by the Synod of Western Australia, reads as follows:

"5.2.1 The Synod will appoint a Standing Committee in accordance with Regulations 3.5.43-51. The Presbytery has determined that the Synod's Standing Committee will fulfil any tasks of a Presbytery Standing Committee."

(I note that the reference to Regulations in this By-law refers to the numbering in the previous edition of the Regulations and that the corresponding Regulation in the current edition is Reg 3.7.4.1.)

I have received a statement from the Minister in her request for the Ruling, and also statements from the Moderator / Chairperson of Presbytery, the General Secretary of the Synod / secretary of the Presbytery and the Standing Committee of the Synod which is also the Presbytery Standing Committee. There does not appear to be a dispute as to the material facts in respect of which the ruling is sought. Several dates quoted by the Moderator differ from the dates quoted consistently by the Minister, the General Secretary and the Standing Committee and the dates of meetings of the Standing Committee quoted in extracts from minutes of the Standing Committee(s) that have been supplied. In this Ruling, I refer to dates as quoted by the latter persons rather than the dates quoted by the Moderator. The difference in dates does not appear to be material to the issues on which my Ruling is sought.

The Minister is the wife of the Moderator of the Synod / Chairperson of the Presbytery. I have not seen the written complaint but have been advised that the Moderator / Chairperson of Presbytery is named in or referred to in the complaint.

The Minister has requested a Presidential Ruling on the action of the Standing Committee of the Presbytery of Western Australia. I presume that she has not seen the minutes of the relevant meetings. Some relevant decisions were made by the Standing Committee as Standing Committee of the Synod. She specifically requests a Ruling on the action of the Standing Committee of the Presbytery of Western Australia in:

1. acting on a formal complaint that was not addressed to the Chair of Presbytery as required by Reg 5.4.1;
2. rescinding the decision to appoint Rev Marie Wilson as Acting Chairperson of the Presbytery for the complaint when the complaint had already been actioned;
3. referring the complaint against her to the Synod of Victoria and Tasmania;
4. a denial of due process to a minister of the Presbytery;
5. a denial of natural justice by a further breach of the confidentiality of the complaints process.

I respond as follows:

- 1. acting on a formal complaint that was not addressed to the Chair of Presbytery as required by Reg 5.4.1;**

The written complaint against the Minister was handed to the General Secretary on 23 April 2013. The Minister was on sick leave from 22 April 2013 until 13 May 2013. The General Secretary consulted with the Ex- Moderator and the Immediate past Moderator and legal advice was obtained. Before the General Secretary went on leave on 12 May, she advised the Ex Moderator that she recommended that the Standing Committee meet and direct that the complaint be directed to the Synod Committee for Counselling under Reg 5.4.1(b).

Reg 5.4.1 provides 2 alternative processes for dealing with a complaint against a Minister that is not a complaint of sexual misconduct. Usually complaints will be made to the chairperson of the Presbytery under Reg 5.4.1(a). However a complaint may be dealt with under Reg 5.4.1(b). Ministers are responsible to both their Presbytery and Synod in matters of discipline (clause 15 of the Constitution). The question whether it is appropriate for a complaint to be dealt with under Reg 5.4.1(b) is a matter to be decided by the Moderator, the Synod or the Standing Committee. If it is not considered to be appropriate, the complaint could be re-directed to the chairperson of the Presbytery.

I rule that the Regulation does not require a complaint to be addressed to the chairperson of the Presbytery and the complaint in this instance was not invalid because it was addressed to the General Secretary and referred to the Standing Committee.

2. rescinding the decision to appoint Rev Marie Wilson as Acting Chairperson of the Presbytery for the complaint when the complaint had already been actioned;

The complaint was handed to the Minister and a copy was given to the Moderator by the Acting General Secretary on 20 May 2013 and a meeting of the Standing Committee was called by the Ex Moderator for 22 May 2013. The Moderator in his statement to me states

- (a) that he advised the Acting General Secretary that the Ex Moderator had no authority to act, but
- (b) that he agreed to call the meeting of the Standing Committee and
- (c) that prior to the meeting he contacted Rev Marie Wilson to ascertain her availability and preparedness to act in the role of chairperson of Presbytery for a complaint with which the Moderator had a conflict of interest and she agreed to accept appointment.

At the Standing Committee meeting on 22 May, the Moderator presented a copy of the complaint (in a sealed envelope) to the Standing Committee and advised that it was a complaint that he could not deal with.

The minutes of the Standing Committee of 22 May 2013 record:

"The Moderator introduced the meeting advising that he had received a complaint, that he was conflicted in it, and he had approached Rev Marie Wilson requesting her to act as the chair of Presbytery in this complaint Reg 5.4.1(b) and 5.4.3(c)."
The Moderator stated this will allow the complaint to be dealt with at the simplest level allowing for the acting Chair of Presbytery to seek to resolve the matter offering three options: dismiss, mediate, refer to Committee of Counselling.
*Standing Committee **agreed by consensus** to request Rev Marie Wilson to act as Chairperson of Presbytery in the matter of this complaint."*

The Standing Committee then dealt with another complaint made by the Moderator and agreed to reconvene on 24 May 2013.

The Moderator advised in his statement that he met with Rev Marie Wilson the next day, advised her of the Standing Committee decision, provided her with a copy of the complaint and asked her to proceed in acting as chairperson for the complaint

In her letter to me requesting the Ruling, the Minister advised:

"On Thursday 23 May 2013 Marie contacted me to advise that she would be acting with regard to the complaint and would like to arrange a meeting."

The minutes of the reconvened meeting on 24 May included a record of the following decision:

*"It was agreed to withdraw our previous decision to appoint an acting Chairperson of Presbytery if the Rev Marie Wilson has not acted on the matter. The Moderator acknowledged he had been heard in the matter. **Passed by agreement.**"*

I rule that it was competent for the Standing Committee acting under the Constitution and Regulations of the Church and the By-law referred to above, to 'withdraw' the previous decision and the preliminary contact by Rev Marie Wilson with the Minister did not prevent it from doing so.

I note that I have been advised that:

- (a) the Standing Committee had not seen the complaint when it met on 22 May and at least some members of the Standing Committee were not aware of the reference to the Moderator in the complaint;
- (b) the Moderator was present throughout the meeting of the Standing Committee on 22 May and was present at the reconvened meeting on 24 May until legal advice was received from HWL Ebsworth that it was inappropriate for him to be present

2. referring the complaint against her to the Synod of Victoria and Tasmania

After considering the advice of Philip Battye, Partner, HWL Ebsworth Lawyers, Melbourne, the following decisions were made by the Standing Committee at its meeting on 24 May 2013 in respect of the complaint against the Minister and also another complaint against another minister:

"Sitting as the Standing Committee of the Presbytery:

- (1) *Pursuant to Clause 70(a) of the Constitution of the Uniting Church in Australia the Presbytery of Western Australia transfers to the Synod of Western Australia all of its powers and responsibilities to deal with the two complaints before it and all related matters.*

Passed by consensus.

Sitting as the Standing Committee of the Synod:

- (2) *Pursuant to Clause 70(a) of the Constitution that the Uniting Church in Australia, the Synod of Western Australia consents to the transfer of powers and responsibilities by the Presbytery of Western Australia to deal with the two complaints and all related matters as referred by the Presbytery to the Synod.*
- (3) *The Standing Committee noted the agreement of the Synod of Victoria and Tasmania as advised by the Acting General Secretary.*
- (4) *Pursuant to Clause 70(d) of the Constitution of the Uniting in Australia, the Synod of Western Australia transfers to the Synod of Victoria and Tasmania all of its powers and responsibilities to deal with the two complaints and all related matters as had been referred to it by the Presbytery of Western Australia.*
- (5) *In all matters arising from the two complaints the Standing Committee authorised Rosemary Hudson Miller to act as the General Secretary, and to inform the General Secretary of the actions of the Standing Committee on her return.*

Passed by consensus."

I rule that the transfer of powers and responsibilities to deal with the complaint against the Minister to the Synod of Victoria and Tasmania was in accordance with the Constitution and valid.

3. a denial of due process to a Minister of the Presbytery.

The Minister's submission regarding due process is based on her understanding that the complaint must be processed under Reg 5.4.1(a) by Rev Marie Wilson as acting Chairperson of Presbytery, and if necessary under Reg 5.4.3. I have disagreed with this submission in making rulings in 1 and 2 above.

When a complaint is processed under Reg 5.4.1(b), the only process requirements specified in the Regulations are those contained in Reg 5.4.1(b) and Reg 5.5.1 relating to the Committee for Counselling. A decision has not yet been made by the Synod or its Standing Committee under Reg 5.4.1(b).

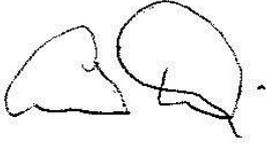
In my opinion there has not been a denial of due process to date. Having regard to my above rulings, I conclude that this issue does not raise any further matter within Reg 3.6.4.3(a)(ii) on which I should rule.

4. a denial of natural justice by a further breach of the confidentiality of the complaints process.

In the circumstances of this case the General Secretary decided to consult with the Ex-Moderator and the immediate past Moderator. It was agreed that it was desirable that the matter be considered by the Standing Committee and that legal advice should be obtained. I am of the opinion that, in order for the Standing Committee to give proper consideration to the matter, it was necessary for them to see or have specific knowledge of the complaint. I note that when this occurred at the meeting on 24 May 2013, they withdrew their earlier decision.

I am not convinced that the conduct of the General Secretary, the Ex-Moderator, the immediate past Moderator or other members of the Standing Committee breached the Constitution, Regulations or By-laws or the Code of Ethics and Ministry Practice. I conclude

that this issue 5 does not raise any further matter within Reg 3.6.4.3(a)(ii) on which I should rule.

A handwritten signature in black ink, appearing to read 'Rev Dr Andrew Dutney', written in a cursive style.

Rev Dr Andrew Dutney
President
19 July 2013

Confirmed by the Assembly Standing Committee, July 2013.