

Presidential Ruling No. 23

Introduction

Two (2) requests for a Presidential Ruling pursuant to Regulation 3.6.14 have been received, arising out of the same fact situation. The situation which gave rise to the requests originally centred around the decision to fill a vacancy in a congregation in the Synod of South Australia. In particular, questions have been raised regarding the actions of the Presbytery ("the Presbytery") and the Pastoral Relations Committee of the Presbytery ("the PRC").

The first request dated 10 June 2003 was received from Owen Davis, a member of the 9th Assembly and a member of the Presbytery.

Mr Davis requested a ruling on the following questions:-

1. Was it within the responsibilities and power of the Pastoral Relations Committee of the Presbytery of Mount Lofty to request the Presbytery to make a decision "whether or not to approve placements of people in same gender relationships within the bounds of the Presbytery"?
2. Was it within the responsibilities and power of the Mount Lofty Presbytery to resolve "That the Presbytery adopt the policy that the ministers who are in same gender relationships be not appointed to placements within the Presbytery bounds" and to adopt the policy that it did?
3. Is a Council able to make decisions which are contrary to the doctrine of the Church, whether or not the Assembly has passed a specific resolution to define the doctrine in question?

4. Was:-

(a) the advice of the Assembly General Secretary contained in the fax message of 19 May 2003 to the Chair of the Mount Lofty Presbytery (the advice) and relied on; and

(b) the interpretation by the Assembly General Secretary of the decisions of the Assembly and the Assembly Standing Committee contained in the advice he gave,

within the right and power of the Assembly General Secretary to give, when that right and power are given to the President?

5. Does the advice of the Assembly General Secretary accurately set out the position of the Uniting Church regarding the responsibility and authority of a Presbytery to make decisions and to adopt policy concerning the placement within its bounds of those Ministers who are living in same-sex relationships?

6. What is the standing of the document entitled Current Policy on Homosexuality, dated 15 September 1997?

In particular:-

(a) Has it been formally adopted by either the Assembly or the Assembly Standing Committee by the proper processes and procedures of the Uniting Church?

(b) Does it accurately and unambiguously set out the Uniting Church's present policy on homosexuality and the ordained ministry?

(c) If Current Policy on Homosexuality has been properly adopted was the ASC defining new doctrine for the Uniting Church, and, if so, was it entitled to do so?

The second request for a ruling came from the Moderator of the South Australian Synod.

The Moderator at the request of officers of the affected congregation sought a ruling on the validity of the actions taken by the Mount Lofty Presbytery in relation to the appointment of Ministers within the Presbytery who are living in same-sex relationships, with particular attention to:-

* Whether or not Mount Lofty Presbytery has acted properly within the limits of its authority, taking into account the action of Synod, through its Placements Committee, in recommending the names for consideration, with no objections being raised by Presbytery through its Pastoral Relations Committee ("PRC"), before the Joint Nominating Committee ("JNC") began its work.

* The adequacy of the process as it was undertaken by the PRC and the Presbytery, which led to Mount Lofty Presbytery adopting the restriction on placement of Ministers/Deacons on the grounds of sexuality and living arrangements, a restriction not exercised, to the best of our knowledge elsewhere in the SA Synod of the Uniting Church in Australia.

Because they arise from the same fact situation, it is intended that the requests be answered in a single ruling.

Background

The following series of events, using dates where relevant, can be extracted:-

1. January 2003-Joint Nominating Committee ("JNC") constituted to commence process for filling placement in the congregation.
2. Placements Committee recommended the name of the three (3) ministers to the JNC.
3. Conversation takes place between JNC and Minister "X".
4. 16 April 2003 - Decision made by the JNC to seek a meeting of the congregation to propose that Minister "X" be called. Prior to the proposal being taken to the congregation, the JNC asked the PRC to agree to the name of Minister X going forward to the congregation.
5. 22 April 2003 - Meeting of the PRC to consider the name of Minister "X" going forward to congregation. After discussion, the PRC decided to convene a special meeting of the PRC to consider the matter.
6. 29 April 2003 - At the special meeting the PRC decided to refer to the Presbytery the question "whether or not Presbytery supports a person in a same gender relationship being placed within its bounds".
7. The Presbytery convened a special meeting by notice stating that its business was to consider:-

"in principle, whether or not to approve placements of people in same gender relationship within the bounds of the Presbytery."

8. 19 May 2003 Meeting of the Presbytery at which it resolved:-

"that the Presbytery adopt the policy that Ministers who are in same gender relationships be not appointed to placement within the Presbytery bounds."

By way of further background to the above, it should be noted that:-

9. Minister "X" was recommended to the JNC by the Placements Committee.

10. According to a report from the JNC, the JNC considered that Minister X “demonstrated a spirituality, theology and philosophy of mission that could fit easily and excitingly within” the congregation.

11. The JNC also reported that the profile of Minister “X” listed another person of the same gender as part of the Minister’s basic family unit and during conversations with the PRC, the Minister agreed that this information should be provided to the congregation.

For the purposes of this ruling it is assumed that the PRC was acting through the delegated authority of the Presbytery to fulfil the Presbytery’s role in the procedure (per Reg 2.7.5 (d)).

Role of the Presbytery

The functions of the Presbytery in a placement to be filled by call of a congregation are:

- (i) To appoint at least two persons to the JNC (Reg 2.7.16 (a) (i));
- (ii) To comment to the JNC on the appropriateness of the names of ministers recommended by the Placements Committee to fill the vacancy (Reg 2.7.16 (i));
- (iii) To agree to proceed to call (Reg 2.7.16 (l)); and
- (iv) To induct the minister (Reg 2.7.19)(a)).

In the case on which the rulings are sought the JNC which was appointed, included two members of the Presbytery.

No comment was apparently made by the Presbytery or the PRC to the JNC about the suitability of any of the 3 persons proposed to the JNC.

The PRC received a request under Regulation 2.7.16 (l) which it considered at its meeting on April 22nd. The PRC convened a special meeting for April 29. At that meeting it did not act on its delegated authority either to agree, or refuse to agree, to the proposed call. Instead, it decided to ask the Presbytery to decide, as a matter of principle or policy, whether or not to approve placements of people in same gender relationships within the bounds of the Presbytery.

The Presbytery met on May 19 and adopted the policy that ministers who are in same gender relationships be not appointed to placements within the bounds of the Presbytery.

Subsequent Action of the PRC

Subsequent to the meeting of Presbytery on 19 May 2003, the PRC met on 27 May 2003, 24 June 2003, 22 July 2003 and 26 August 2003, before it was advised at its meeting of 23 September 2003 that Minister "X" had withdrawn from the process.

No further decision was made by the PRC in relation to the proposed call of Minister "X" to the placement in the congregation at any of the meetings of May, June, July or August. The Chairperson of Presbytery has advised that the PRC "informally acknowledged" the resolution of the Presbytery referred to above, and felt bound by that decision. At its meeting on 27 May, it received a letter from the JNC expressing concerns. The PRC noted that the letter raised some valid points which needed to be raised in other councils of the Church. A subsequent meeting referred to the request for a Presidential ruling as an appeal.

The Presbytery meeting of September 1 reminded the PRC and the Candidates Committee that they "are bound by the May resolution" of the Presbytery.

Identifying the principal issue in the 2 Requests

The actions and decisions of the Presbytery and the PRC raise issues regarding the governance or polity of the Church that in this instance is principally set out in Church Regulations.

The Uniting Church is governed by interrelated councils – a 'conciliar' church. Its good governance depends on the councils, congregations, Church bodies that have been given specific responsibilities, ministers and lay members recognising and fulfilling their respective responsibilities, and when doing so, giving heed to other councils and bodies within the Church which have related or relevant responsibilities (Refer section 15 of the Basis of Union).

What are the relevant responsibilities relating to placement of a minister who is living in a same gender relationship?

1. The first issue is whether a minister is eligible for placement.

a. A minister is recognised as such for the whole of life unless that recognition is withdrawn (Reg 2.4.1).

b. A minister will be designated as not available for placement

i. if the Placements Committee so determines either on the recommendation of or after consultation with the Presbytery that has oversight of the minister; or

ii. pursuant to any determination of the Committee for Discipline (Reg 2.4.8).

There is no suggestion that Minister "X" had been designated not available for placement pursuant to Reg 2.4.8.

c. Minister "X" was recommended to the JNC by the Placements Committee after considering the placement profile and the list of ministers eligible for a new placement.(Reg 2.7.16(f)).

That being the case, neither the Presbytery nor any other council or body within the Church could properly act in a way which in effect:-

- denied the recognition of Minister "X"; or

- regarded Minister "X" as not eligible for a new placement.

2. The Placements Committee, the JNC, the Presbytery (or its PRC acting under delegated authority from the Presbytery), the congregation and the minister each have responsibilities in the process leading to placement of a minister in a congregation. Each must fulfil their own responsibility, heeding, rather than disregarding, the manner in which the others fulfil their responsibilities. The responsibility of each requires consideration of the particular placement and the individual minister. The responsibility cannot be fulfilled by policy or 'in principle' decisions which preclude consideration of individuals, notwithstanding that sometimes people may prefer to make that type of decision rather than a difficult decision regarding a person.

In the case in question, the PRC apparently acted under a misapprehension that an 'in principle' or policy decision was required on the question that it put to the Presbytery whereas what was required was a decision on the specific matter – namely whether Presbytery or its PRC agreed with the proposed recommendation of the JNC to the congregation that it proceed to call Minister "X" to the placement.

The Presbytery likewise apparently acted under the misapprehension that a 'policy' decision determined the matter and was binding on its PRC.

In the event, there does not appear to have been a decision made by either the Presbytery or its PRC on the question whether it agreed to the proposed recommendation of the JNC to the congregation that it proceed to a call of Minister "X" to the placement in the congregation. Neither the Presbytery (nor its PRC acting under delegated authority) has fulfilled this specific responsibility under Reg 2.7.16(I).

3. The Presbytery was in error in purporting to make a policy regarding placements that was apparently presumed to remove the need for proper consideration of the recommendation from the JNC. "Congregations and Councils of the Church who wish to state a sexual ethic may do so ... providing that ...such statements do not prevent the consideration on a case by case basis of individuals." (ASC minute 03.69.04) Such statements provide guidelines for committees in the exercise of their responsibility. However it is not permissible for such statements to function as a fixed rule that prevents a committee from considering particular cases as they arise, and preempts that consideration.

When the Church process requires a decision whether a particular minister should be appointed to a particular placement following recommendations from a Placements Committee and JNC who, along with the minister, have carefully and prayerfully undertaken their responsibilities, the purported determination of a policy as a fixed rule is a wrongful exercise of the Presbytery's specific and limited responsibilities in the placement process. The members of the Presbytery (or its PRC) that has the responsibility of making the decision whether to agree with the recommendation of the JNC, must not be fettered in, or deterred from, fulfilling their individual and collective responsibilities by a prior 'policy' decision of the Presbytery.

Mr. Davis' submissions

Mr Davis' submissions related to the Presbytery's determination of the policy against placement of any Ministers who are living in same gender relationships. He submitted:-

"1. The Presbytery had no power under the Constitution to consider and decide the matter because it involved doctrinal issues and thus was a matter for the Assembly.

2. The business before the meeting did not accord with the received doctrines, tradition and teaching of the Uniting Church.

3. It is not correct to say there is a policy vacuum on the matter and thus the Presbytery was able to consider the business before it and make a determination with regard to it – the Uniting Church already has a doctrine, one received at the time of Union.”

I have already expressed my conclusion that the Presbytery was in error in presuming that its decision of 19 May 2003 was sufficient to end consideration of the suitability of Minister X for placement in a congregation within the Presbytery. My reasons for coming to this conclusion differ from those offered in Mr Davis' submission.

The consideration of applicants for candidature, ordination and recommendations of Ministers for particular placements will on occasion require the Presbytery to give consideration to doctrine as well as a range of other matters. It is appropriate that the Presbytery, or its PRC, should consider these matters during the consideration of the particular candidate, Minister or congregation. In doing so, the Presbytery is not encroaching on the “determining responsibility” of the Assembly “in matters of doctrine, worship, government and discipline”(para 38 of the Constitution).

Mr. Davis is seeking a Presidential Ruling that clarifies or confirms the doctrine of the Church insofar as it relates to the acceptability or suitability of persons who are living in same gender relationships for ministry in the Church. While I understand his concern, clearly a Presidential Ruling should not be used for this purpose. Clarification or confirmation of doctrine is a matter for the Assembly. It would not be appropriate or in the interests of the Church for the President to pre-empt the study and discussions which will be undertaken over the next 2 years in preparation for further consideration of these matters by the next meeting of the Assembly.

Answers to the questions on which rulings are sought

My ruling is therefore that the questions be answered as follows:-

To Mr. Davis' questions:-

1. No, for the reasons that I have given in this ruling and not for the reasons given by Mr Davis in his submission.
2. No, for the reasons that I have given in this ruling and not for the reasons given by Mr Davis in his submission

3. I consider that I should confine my ruling to the specific issue raised by the decisions and actions of the Presbytery and its PRC. I should not rule on this question that is phrased more generally.

4, 5 and 6. Having regard to my answers to the first 2 questions and to decisions of the Assembly and its Standing Committee that have been made subsequent to this matter arising in the Presbytery, I consider that it is not necessary or in the interest of the Church that I answer these questions.

To the Moderator's question(s):-

The Presbytery and its PRC did not act properly.

President

March 2004