
THE 2007 ANNUAL CHURCH & CHARITY LAW™ SEMINAR

Toronto – November 7, 2007

Fair Play in Action – Towards Effective Discipline within the Church

By **Suzanne E. White, B.A., LL.B.**

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CIRCUMSTANCES GIVING CAUSE FOR
DISCIPLINE

- The goal is restoration. However, this is not always possible
- A member of the church shall be deemed to be under the discipline of the church if any of the following circumstances occur
 - a) A member has evidenced unethical or immoral conduct or behaviour that in the opinion of the board of elders is unbecoming of a Christian contrary to biblical principles

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- b) A member's conduct, in the opinion of the board of elders, evidences an unwillingness to either comply with, adhere to or submit to the authority or procedures set out in the church constitution herein
- c) A member has wronged another member and has not resolved such wrong through the mechanism for dispute resolution set out above

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- A primary concern of church discipline is to avoid judicial intervention in an internal process
- Look to church documents – constitution, manuals, policies, etc., before beginning the process
- Fairness is the yardstick to measure all the steps to be taken
- There are significant differences in whether a civil or criminal type proceeding is called for
- The presiding officer(s) may benefit from legal advice. However, it is beneficial to limit the number of legal advisors

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- NATURAL JUSTICE RULES/DUTY OF FAIRNESS**
- Involves a set of procedures designed to:
 - Ensure that decisions made by a body are fair
 - Those affected are given an opportunity to meaningfully participate in the decision-making process
 - Also includes the requirement to be free of bias, actual or perceived

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- VARIATION IN APPLICATION OF NATURAL JUSTICE RULES**
- Type of organization
 - Specific membership rights or privileges
 - Impact of termination on the member (individual circumstances)

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IMPLICATIONS OF TERMINATION

- Embarrassment
- Loss of enjoyment of privilege or right
- Deprivation of economic or property rights

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EVOLUTION OF THE LAW

- A number of cases have considered the application of the rules of natural justice or “duty of fairness” to decisions by NPO’s involving discipline and termination of members

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COURT JURISDICTION TO INTERVENE

- 19th Century: English Courts readily intervened in decisions by clubs and associations to expel members
- First half of 20th Century: Courts would only intervene in the decision-making of an organization where expulsion of a member caused a corresponding deprivation of a property right

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APPLICATION OF NATURAL JUSTICE RULES

- Law has evolved to make fairness requirements variable and dependent on individual circumstances
- Unless the fairness rules are prescribed by statute, decision-makers must make their own set of rules
- In NPO context, these rules are generally found in by-laws and/or policies

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COMPONENTS OF DUTY OF FAIRNESS – MEMBERSHIP CONTEXT

- Content of notice
- Extent of participation rights
- Right to counsel
- Written reasons
- Unbiased tribunal
- Appeal rights

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WHAT LEVEL OF FAIRNESS SAFEGUARDS WILL COURTS IMPOSE?

- Notice
- Right to a Hearing
- The Right to Counsel
- Written Reasons for Decision
- Unbiased Tribunal
- Appeal Rights

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RULES OR NO RULES

- Where rules exist, the organization must follow them. Courts will generally look no further, provided no bad faith
- Where by-laws are silent, the organization must observe the rules of natural justice which the Supreme Court of Canada in *Senex*, stated represents “supplementary law”

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SPECIFIC EXCLUSION OF NATURAL JUSTICE RULES

- If by-law drafted with an exclusionary clause, *Lee* case suggest that such a clause would be unenforceable as being contrary to public policy
- *Posluns v. Toronto Stock Exchange et.al.* [1968] S.C.C. left the door open to a contrary conclusion is suggesting that by-laws could expressly exclude the rules of natural justice

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THE SIXTEEN STEPS OF CHURCH DISCIPLINE

Procedure for Discipline

1. No allegation giving rise to disciplinary action against a member pursuant to the preceding paragraph shall be considered by the church unless such allegation is first set out in a signed written statement given to the board of elders indicating the nature of the allegation and providing an explanation of the basis upon which the allegation is made

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2. If the board of elders determines on a preliminary basis that the written allegation is without merit, then the allegation shall be deemed to be invalid and no further disciplinary action against the member shall be proceeded with

3. If the board of elders determines on a preliminary basis that the written allegation warrants further investigation, the then allegation shall be referred in writing to the board of elders and board of deacons (referred to as the "church board") for a hearing and the member against whom the allegation is made (referred to as the "subject member") shall be deemed to be under the discipline of the church

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4. To ensure that the remedial ministry of church discipline to the subject member and to the congregation is completed, any request or notice of withdrawal from membership in the church by the subject member while under discipline shall not become effective until after the discipline proceedings provided for herein have been finalized

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5. The church board shall as soon as possible convene a hearing to further consider the allegation. The subject member shall be given fourteen (14) days written notice (which period of time shall include the date of mailing but shall exclude the date of the hearing) by registered and regular mail at his or her last known address, of the date, time and place at which the hearing will be held as well as his or her right to attend such hearing and be heard. The notice shall briefly explain the nature of the allegation and advise the subject member that the allegation will be considered by the church board at that hearing

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6. The subject member shall be entitled to attend the hearing to listen to the details of the allegation made and to respond thereto. The hearing shall be conducted as an inquiry by the church board and the chairperson of the board of deacons shall act as the chairperson of the church board. The hearing shall not be open to the public nor to members or adherents of the church. However, the subject member shall be entitled to be accompanied at the hearing by two members of the church who may act as observers during the hearing but who shall not participate

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7. Both the subject member and the church board may call any witnesses or evidence that is relevant to the allegation being made. No party to the hearing shall be represented by legal counsel

8. There shall be an equal allocation of time for presentations by both the church board and the subject member. The church board may designate a time limitation on the hearing, provided that such limitation is applied equally to the presentation by both the church board and the subject member and provided further that notice of such limitation of time is given to the subject member in the written notice by which the subject member was given notice of the hearing

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9. All evidence presented before the hearing shall be kept confidential, except such summary facts that the church board determines needs to be given to the membership of the church at a subsequent meeting of members

10. At the end of the hearing, the church board shall convene in private to deliberate on the evidence presented. A two-thirds majority vote by the members of the church board present at the hearing shall be required to conclude that the allegation is true, failing which the allegation will be deemed not be proven with the result that the subject member shall no longer be subject to disciplinary proceedings by the church and shall be reinstated as a member of the church in good standing

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11. In the event that the church board determines that the allegation is true, then the church board shall determine the appropriate disciplinary action to be implemented with the intent of both protecting the integrity of the ministry of the church and restoring the subject member into fellowship pursuant to the principles set out in Luke 17:3 and Galatians 6:1

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12. The church board may implement any disciplinary action in relation to the subject member that it deems appropriate, including but not limited to the removal of the subject member from positions of leadership or teaching within the church, the prohibition of offending conduct or behaviour, the requirement that an apology be given, the requirement that the subject member evidence an attitude of submission to the authority of the church or a spirit of contrition or the termination of membership. Termination of membership in the church, however, will be deemed appropriate only where, in the opinion of the church board, no other reasonable alternative disciplinary action is available

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13. The chairperson of the church board shall send written notification to the subject member of the decision made by the church board by registered and regular mail addressed to the subject member at this or her last know address within ten (10) days of a decision having been made together with a succinct summary of the reasons therefore

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14. The decision by the members of the church board on all matters of discipline shall be final and binding. In the event that the decision of the church board is to terminate the subject member's membership in the church, then the subject member shall automatically cease to be a member of the church upon the date that the decision by the church board is made

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15. No pronouncement on matters of discipline by the church shall be made unless given orally from a prepared text at a members meeting and only after careful and sober consideration has been made by the church board to avoid, as much as possible, undue or unnecessary embarrassment to the subject member or other prejudicial consequences to either the subject member or to the church as a whole

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16. A member of the church who has been disciplined or whose membership has been terminated shall not be barred from public worship services unless his or her presence is disruptive to the peaceful proceedings of the public worship service as a determined in the sole opinion of the church board; in which event such individual agrees that he or she may be removed from such public worship service without the necessity of legal action, whether or not such individual is at that time a member of the church

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