

# **EVANGELICAL LUTHERAN CHURCH IN CANADA MANUAL RE DISCIPLINE OF ROSTERED MINISTERS**

- **Guidelines Re Grounds for Discipline of Rostered Ministers**
- **Rules for Synod Investigating Committees**
- **Rules for Synod Committees on Discipline**

Amended by National Church Council  
March 6, 2004  
(Changed from Ordained Ministers to Rostered Ministers)

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# **EVANGELICAL LUTHERAN CHURCH IN CANADA MANUAL RE DISCIPLINE OF ROSTERED MINISTERS**

## **GUIDELINES RE GROUNDS FOR DISCIPLINE OF ROSTERED MINISTERS**

These guidelines describe the suggested grounds for which ordained and lay diaconal ministers, hereafter referred to together as rostered ministers, may be subject to discipline according to the practice of ELCIC and the Synods. Their purpose is juridical: to assist in the processes of consultation, discipline, and appeals. These Guidelines are separate from various procedures and guidelines which may be established by ELCIC or a Synod to deal with matters such as alleged sexual abuse or harassment and which are intended to ensure compliance with civil law and to provide a pastoral response.

**Grounds for discipline of rostered ministers are as follows:**

1. **Preaching or teaching in conflict with the faith confessed by the ELCIC** shall be grounds for discipline of rostered ministers.
2. **Conduct unbecoming a rostered minister** shall be grounds for discipline of rostered ministers. Kinds of behaviour which are incompatible with the character of the ministerial function include:
  - a. **Conviction of a Criminal Offense**

Society has placed a high premium upon the role of law in regulating the rights and duties of individuals. This includes laws that define certain conduct as a criminal offense. The commission of an indictable offence, in the absence of some reasonable explanation for such conduct, is conduct unbecoming a rostered minister and grounds for discipline.
  - b. **Membership in Organizations**

No rostered minister shall belong to any organization that in its documents, rites or practices contradicts the Gospel of salvation through faith in Jesus Christ.
  - c. **Confidential Communications**

Rostered ministers shall respect a confidential confessional communication and may not disclose such communication, except with the express permission of the person involved, or where required by law, or in order to prevent the commission of a crime.
  - d. **Relationship to Family**

Rostered ministers, whether married or single, are expected to uphold Christian ideals of marriage in their public ministry as well as in private life.

A rostered minister's spouse and children, are to be regarded by the minister with love,

respect, and commitment.

Any departure from this normative behaviour shall be considered conduct unbecoming a rostered minister. Such departure might include any of the following:

- (i) Separation or divorce that occurs without consultation with the synodical bishop's office and without the rostered minister taking appropriate action on any agreement reached in such consultation. Each case of separation or divorce must be considered pastorally.
- (ii) Desertion or abandonment of spouse or children.
- (iii) Abuse of spouse or children.
- (iv) Repeated failure to meet legally determined family support obligations.

**e. Sexual Matters**

Adultery, promiscuity, the sexual abuse of another, or the misuse of counseling relationships for sexual favors or other advantage would constitute conduct unbecoming a rostered minister.

**f. Substance Abuse**

Misuse of alcohol or mind-altering substances impairs the ability of a rostered minister to perform the duties of the office with full effectiveness. The failure to embark on an effective treatment program or to follow through on treatment and abide by the terms of such treatment and the consequent impairment of performance is conduct unbecoming a rostered minister.

**g. Fiscal Responsibilities**

Rostered ministers are expected to conduct their fiscal affairs in accordance with ethical and legal requirements. Among those fiscal activities which shall be considered conduct incompatible with the character of the ministerial office are:

- (i) indifference to or avoidance of legitimate and neglected personal debts;
- (ii) embezzlement of money or improper appropriation of the property of others; and
- (iii) using the ministerial office improperly for personal financial advantage.

3. **Willful disregard or violation of the functions and standards established by ELCIC for** rostered ministry shall be grounds for discipline of rostered ministers. Functions and standards for ordained ministry are found in the ELCIC Constitution, Article VII and the ELCIC Administrative Bylaws, Part III; Functions for lay diaconal ministry are found in the ELCIC Constitution, Article VIII and the ELCIC Administrative Bylaws, Part III.1.

4. **Willful disregard of the constitution, administrative bylaws or enactments of ELCIC or the Synods** shall be grounds for discipline of rostered ministers.

# **EVANGELICAL LUTHERAN CHURCH IN CANADA MANUAL RE DISCIPLINE OF ROSTERED MINISTERS**

## **RULES FOR SYNOD INVESTIGATING COMMITTEES**

### **A. Definitions**

“Complainant” is the person or persons who lodge a Complaint against a rostered minister which, if proven, could result in discipline of the minister.

“Complaint” is the written description of the allegations made against a rostered minister which, if proven, could result in discipline.

“Respondent” is the rostered minister who is the subject of a Complaint which, if proven, could result in discipline of the rostered minister.

### **B. Establishing the Need for an Investigating Committee**

B1. Rostered ministers shall be subject to discipline for:

- a) preaching and teaching in conflict with the faith confessed by the ELCIC;
- b) conduct unbecoming a rostered minister;
- c) willful disregard or violation of the functions and standards established by the ELCIC for rostered ministry; and
- d) willful disregard of the constitution, administrative by-laws, or enactments of the ELCIC or the Synod.

B2. The synodical bishop, upon becoming aware of circumstances that might subject a rostered minister to discipline as outlined in the proceeding Rule, shall investigate such matters, shall consult with the minister and shall seek to deal with such circumstances.

Should these endeavors not be resolved to the satisfaction of the synodical bishop, the synodical bishop may censure or admonish the rostered minister either privately or before the synod council, or may initiate a Complaint against the rostered minister, to be dealt with in the manner set out below.

B3. A Complaint against a rostered minister which could lead to discipline must be specific and in writing, subscribed to by a Complainant, and may be made by one or more of the following:

- a) a majority of the members of the congregational council of the congregation of which the rostered minister is under call, submitted to the synodical bishop;
- b) a majority of the voting members of the congregation of which the rostered minister is under call, submitted to the synodical bishop;
- c) a majority of the members of the governing body to which the rostered minister is accountable (if the minister is not under call from a parish) submitted to the synodical bishop;
- d) at least 10 rostered ministers of the synod on whose roster the rostered minister subject to the Complaint is listed, submitted to the synodical bishop; or
- e) the synodical bishop.

Upon receipt of a proper Complaint under this Rule B3., the synodical bishop shall immediately proceed to appoint an Investigating Committee to investigate the Complaint and shall arrange the first meeting of the Committee and provide each member of the Committee with a copy of all written material provided to the synodical bishop by the Complainant and the Respondent.

### **C. Temporary Suspension of the Respondent**

If, upon investigation by the synodical bishop, but before a recommendation has been made by a Committee on Discipline, obvious heresy or flagrant immorality of an rostered minister is apparent to the synodical bishop, or if a rostered minister shall have admitted guilt or absconded, or if the circumstances are such that, in the opinion of the synodical bishop, the congregation, the Synod or the ELCIC would suffer injury if the rostered minister continued to exercise the office of the rostered ministry during the progress of disciplinary procedures, the synodical bishop may immediately suspend the rostered minister from the office of the ministry until the Complaint has been fully and finally decided by the synod council. Each such suspension shall be reported to the next meeting of the synod council.

In the event a rostered minister is suspended from the office of ministry, the congregation or other employing agency shall continue to pay the salary and benefits until the matter is resolved by the Committee on Discipline.

### **D. The Investigating Committee: Preliminary Matters**

D1. The Investigating Committee shall be composed of two rostered ministers and two lay members of the synod appointed by the synodical bishop.

D2. The Investigating Committee must be seen to be impartial and without bias toward either the Respondent or the Complainant. No person may serve on the Investigating Committee who:

- a) has any substantial prior knowledge of the matters to be reviewed by the Investigating Committee;
- b) is related to either the Respondent or the Complainant;
- c) was, or is a member of a congregation served by the Respondent; or
- d) was, or is, a member of a congregation where the Complainant are members.

Should such a person inadvertently be appointed to an Investigating Committee, such a person shall declare the conflict and withdraw immediately from the Committee so that another person may be appointed.

D3. The Investigating Committee shall choose one of its members to serve as chairperson and one of its members to serve as its secretary. The chairperson shall be responsible for chairing the meetings of the Committee, arranging for all meetings of the Committee, arranging for interviews with all necessary persons in the course of the investigation, communicating with the synodical bishop and all parties involved in the investigation. The secretary shall be responsible for keeping accurate summary of all meetings and interviews and for correspondence resulting from the investigation.

D4. The expenses of the Investigating Committee shall be the responsibility of the synod. The expenses of the Complainant shall be borne by the Complainant and the expenses of the Respondent shall be borne by the Respondent.

#### **E. The Work of the Investigating Committee**

E1. A quorum for a meeting of the Investigating Committee shall be all four members.

E2. The Committee shall review the Complaint, any responses to the Complaint by the Respondent and shall plan for how it will conduct the investigation. In conducting the investigation the Committee shall make such inquiries as the Committee deems appropriate.

E3. The Committee shall arrange interviews with the Complainant and with the Respondent. Interviews should be scheduled in such a way as to maximize the use of time for the Committee while minimizing awkwardness for both the Complainant and the Respondent.

E4. As a courtesy to the parties, the actual interviews should be carefully planned. The questions to be asked and follow up questions should be considered by the Committee.

#### **F. The Investigating Committee: Determination, Report, and Post-Hearing Matters**

F1. For the purpose of reaching its determination, the Investigating Committee shall meet without the presence of any person who is not a member of the Committee other than its own attorney.

F2. The Investigating Committee shall determine whether or not there are reasonable and probable grounds to believe that the Respondent should be subject to discipline. The report of the Investigating Committee shall be in writing, shall outline the evidence it heard, and shall indicate the conclusions of the Committee.

F3. At least three members of the Investigating Committee must concur with a determination

that there are reasonable and probable grounds to believe the Respondent should be subject to discipline.

- F4. If the Investigating Committee determines that there are no reasonable and probable grounds to believe the Respondent should be subject to discipline, it shall report this finding to the synodical bishop, who shall inform the parties involved. In such circumstances all documentary and physical evidence submitted to the Investigating Committee shall be returned to the party who presented it.
- F5. If the Investigating Committee determines that there are reasonable and probable grounds to believe the Respondent should be subject to discipline, the synodical bishop shall convene a Committee on Discipline as soon as possible, but not later than 60 days after the report of the Investigating Committee is submitted, to hold a hearing with respect to the matter. In such circumstances all documentary and physical evidence in the possession of the Investigating Committee shall be forwarded to the Committee on Discipline by the Investigating Committee together with the report of the Investigating Committee.
- F6. Upon completion of its report, the file and records of the Investigating Committee shall be maintained in the synod office for safekeeping.
- F7. If a Committee on Discipline is convened, representatives of the Investigating Committee shall present the report of the Investigating Committee to the Committee on Discipline and may participate in any hearing conducted by the Committee on Discipline.

# EVANGELICAL LUTHERAN CHURCH IN CANADA MANUAL RE DISCIPLINE OF ROSTERED MINISTERS

## RULES FOR SYNOD COMMITTEES ON DISCIPLINE

### A. Definition of Terms

“Complainant” is the person or persons who lodge a Complaint against a rostered minister which, if proven, could result in discipline of the minister, and includes the Investigating Committee.

“Complaint” is the written description of the accusations made against a rostered minister which, if proven, could result in discipline.

“Respondent” is the rostered minister who is the subject of a Complaint which, if proven, could result in discipline of the minister

### B. Committee on Discipline—Preliminary Matters

B1. If the Investigating Committee determines that there are reasonable and probable grounds to believe a rostered minister should be subject to discipline, the synodical bishop shall convene a Committee on Discipline as soon as possible, but not later than 60 days after the report of the Investigating Committee is submitted, to hold a hearing with respect to the matter. In such circumstances all documentary and physical evidence in the possession of the Investigating Committee shall be forwarded to the Committee on Discipline by the Investigating Committee together with the report of the Investigating Committee.

B2. A Committee on Discipline shall consist of seven members appointed by the synod council.

The national bishop of the ELCIC shall be asked to nominate one rostered minister and one lay person from outside the synod involved to serve on the Committee on Discipline. In addition three rostered ministers and two lay persons from within the synod shall be appointed to the Committee on Discipline.

B3. The Committee on Discipline must be seen to be impartial and without bias toward either the Respondent or the Complainant. No person may serve on the Committee on Discipline who:

- a) has any substantial prior knowledge of the matters to be reviewed by the Committee of Discipline;
- b) is related to either the Respondent or the Complainant;
- c) was or is a member of a congregation served by the Respondent; or

d) was or is a member of a congregation where the Complainant are members.

Should such a person inadvertently be appointed such a person shall declare the conflict and withdraw immediately from the Committee so that another member may be appointed.

B4. The Committee on Discipline shall choose as its chairperson one of its members who was a nominee of the national bishop of the ELCIC, and shall choose one of its members to serve as its secretary. The chairperson shall be responsible for chairing the meetings of the Committee, arranging for all meetings of the Committee, and shall fix a time and place for the Committee on Discipline to hold a hearing to consider the Complaint. The secretary shall be responsible for keeping a record of the proceedings of the Committee, for putting together the final written report of the Committee, and for all correspondence necessary to support the work of the Committee.

B5. The quorum for a meeting of the Committee on Discipline shall be six members.

B6. The expenses of the Committee on Discipline shall be the responsibility of the synod. The expenses of the Complainant shall be borne by the Complainant and the expenses of the Respondent shall be borne by the Respondent.

### **C. The Hearing Before the Committee on Discipline.**

C1. The Respondent shall be entitled to a full hearing before the Committee on Discipline, but the Committee on Discipline may refuse to consider evidence that clearly has no bearing upon the Complaint or that is unduly cumulative.

C2. The Respondent, the Complainant, and the chairperson of the Investigating Committee shall be given at least ten days notice in writing of the time and place and date of the hearing.

C3. The hearing before the Committee on Discipline shall commence at the time and place set forth in the notice issued pursuant to Rule C2, unless in the opinion of the chairperson of the Committee, after consultation, if practical, with the parties involved or their representatives, an emergency such as snowstorm, flood, or airline strike, necessitates a postponement or change of site of the hearing.

C4. In the proceedings before Committee on Discipline there shall be a presumption of innocence in favor of the Respondent. Among other things this requires that:

- a) the Committee shall reach its finding and recommendations solely on the basis of the evidence presented at the hearing before the Committee;
- b) the Complainant and/or the Investigating Committee have the burden of proof as provided in Rule C18; and
- c) the evidence presented at the hearing, as well as the entire process before the Committee, shall be in conformity with the requirements of the constitution of the Synod and constitution and the administrative by-laws of the ELCIC and these Rules,

- including specifically the due process requirements set forth in Rules D1 through D5.
- C5. The hearing shall not be open to the public unless both the Complainant and the Respondent agree to a public hearing.
- C6. The Investigating Committee shall, through its representatives, present the report of the Investigating Committee to the Committee on Discipline, and may present evidence, call its own witnesses and question witnesses.
- C7. In the hearing:
- a) the Respondent, the Complainant and the Investigating Committee may each be represented by not more than two representatives who may present or assist in the presentation of the evidence;
  - b) the Committee on Discipline may permit attendance by a limited number of other persons, with the consent of both the Respondent and the Complainant, or as may be otherwise determined by the Committee on Discipline;
  - c) while testifying a witness may be accompanied by a spouse and by a friend or advocate; and
  - d) witnesses shall be permitted in the hearing only when testifying.
- C8. Persons permitted to attend the hearing under Rule C7.b. and c. shall not have any role in the proceedings, unless specifically authorized by an additional rule adopted by the Committee on Discipline in a particular case.
- C9. A verbatim record of the hearing shall be made by an audio or video tape recording or by a stenographer or a court reporter.
- C10. Following the presentation of its report by the Investigating Committee, the Complainant and the Respondent may, but need not, make opening statements. Such opening statements shall be limited to no more than one hour per side. The Complainant shall be entitled to make the first such opening statement.
- C11. The Investigating Committee and/or the Complainant may first call witnesses, including the Complainant if appropriate, to present evidence in support of the Complainant. They may also present documentary evidence in support of the Complainant.
- C12. After the Complainant and the Investigating Committee have had the opportunity to call witnesses and to offer any documentary evidence, the Respondent may call witnesses and offer documentary evidence.
- C13. After the Respondent has called witnesses and offered documentary evidence, first the Complainant and the Investigating Committee, then the Respondent may call witnesses and offer documentary evidence for the purpose of rebuttal.
- C14. The Respondent has the right to testify or to remain silent.

- C15. Whenever a witness (including the Respondent or the Complainant) testifies, the party who has called the witness shall first question the witness, following which the other party may question the witness on any matter relevant to the Complaint. Then the party calling the witness may again question the witness, but only with respect to new matters which arose during the other party's questioning of the witness. A representative of a party, in lieu of the party, may question any witness. Committee members may also question the witness for the purpose of clarification.
- C16. The Complainant and/or the Investigating Committee and the Respondent or their representatives may, but need not, present closing statements. Closing statements shall be limited to no more than one hour per side. The Respondent shall make the first closing statement. The Complainant and the Investigating Committee shall be entitled to make the final closing statements.
- C17. The rules of evidence and other rules used in formal judicial proceedings shall not necessarily apply to the hearing. Testimony or documentary evidence shall not be excluded merely because it would be excluded under such formal rules. For example, evidence shall not be excluded merely because it is hearsay, although individual members of a Committee on Discipline may choose to give hearsay evidence little or no weight or importance.
- C18. The Complainant and the Investigating Committee shall have the burden of proof. The Committee on Discipline shall not find that any allegation contained in the Complaint is true unless the Complainant and/or the Investigating Committee has proven that it is true by a preponderance of the evidence. An allegation has been proven true by a preponderance of the evidence if the Committee, after weighing all of the evidence presented at the hearing, believes that more likely than not the allegation is true.
- C19. At any time during the hearing the Committee on Discipline may decide to meet in-camera session for deliberations, either with the participation of the parties to the Complaint and their respective representatives, or without the participation of such parties.
- C20. If the Respondent and the Respondent's representative should fail to appear at the scheduled hearing before the Committee on Discipline, the Committee, after making a record that the Respondent was given notice of the date, time and place of the hearing, and other information relevant to the Respondent's absence of which the Committee has knowledge, may either:
- a) proceed to hear the testimony and evidence offered by the Complainant and render its written decision; or
  - b) adjourn the hearing to a rescheduled date, if the Committee concludes that the absence is justified.

#### **D. Due Process in Discipline Proceedings.**

- D1. The Committee on Discipline shall afford the Respondent due process in discharging its

responsibilities.

D2. “Due process” means:

- a) the right to be given specific written notice of Complaint;
- b) in the case of the Respondent, the right to testify in person or to remain silent;
- c) the right to call witnesses;
- d) the right to introduce documentary evidence concerning the Complaint;
- e) the right to confront and cross-examine all witnesses;
- f) the right to a hearing closed to the public unless both the Complainant and the Respondent agree to a public hearing;
- g) the right to a written decision of the Committee on Discipline; and
- h) the right to be treated with fundamental procedural fairness.

D3. “Fundamental procedural fairness” means:

- a) avoidance by Committee members of written communications to or from either Respondent or Complainant without copy to the other;
- b) avoidance by Committee members of oral communications with either the Respondent or the Complainant outside of the presence of the other;
- c) maintaining decorum during the hearing;
- d) allowing both the Complainant and the Respondent to present their cases without unnecessary interruptions;
- e) keeping a verbatim record of the hearing, either made by audio or video tape recording or a stenographer or court reporter;
- f) allowing both the Complainant and the Respondent to be accompanied at the hearing by a representative (who may, but need not, be an attorney) who may also participate in the proceedings;
- g) impartiality of the Committee which consider the Complaint; and
- h) the right to be treated in conformity with the governing documents of the Synod or the ELCIC.

D4. “Due process” and ‘fundamental procedural fairness’ shall be defined without regard to how these concepts may be defined in secular civil or criminal proceedings. “Due process” and “fundamental procedural fairness” shall mean nothing more and nothing less than what is provided in Rule D2 and Rule D3, respectively.

D5. Once a Complaint against a person has been considered by a Committee on Discipline, that person shall not be required to answer that Complaint again except if a different but related Complaint is laid.

## **E. The Committee on Discipline: Determination, Report, and Post-Hearing Matters**

E1. For the purpose of reaching its findings of fact and recommendations, the Committee on Discipline shall meet without the presence of the Respondent, the Complainant, their representatives or any other person who is not a member of the Committee, other than the attorney of the Committee on Discipline.

- E2. When the Committee on Discipline has determined by the preponderance of the evidence (as defined in Rule C18) the Respondent should be subject to discipline, it shall recommend the appropriate disciplinary action. Otherwise the Committee shall recommend the dismissal of the Complaint.
- E3. At least six members of the Committee on Discipline who were present during the hearing when all evidence was presented to the Committee must concur with the determination that the Respondent should be subject to discipline.
- E4. The Committee on Discipline shall report its findings and recommendations in writing. The report shall be in two parts:
- a) Findings of Fact: In this part, the Committee shall set forth what it has found to be the relevant facts—that is, what it believes to be the truth of the matter.
  - b) Recommendation: In this part, the Committee shall state whether, based upon the evidence, it believes the Respondent should be subject to discipline and, if so, what discipline the Committee recommends be imposed on the Respondent. When making such determination the Committee should ensure that the recommendations are:
    - measurable (that it will be clear when the discipline is complete),
    - that there is a time line attached to the discipline (with a clear process for extensions),
    - that it is clear who will supervise compliance with the discipline, and
    - that there are specific consequences made for non-compliance by the Respondent with the discipline.
  - c) The disciplinary actions which the Committee on Discipline may recommend are:
    - private censure and admonition by the synodical bishop;
    - censure and admonition by the synodical bishop before the synod council;
    - suspension from the office and functions of the rostered ministry by the synod council for a designated period or until there is satisfactory evidence of repentance and amendment; or
    - removal from the roster by the synod council.
- E5. The Committee on Discipline shall file its written findings and recommendation to the synodical bishop, the Complainant and the Respondent within 15 days from the time the Committee completed the hearing. The synodical bishop shall report the findings and recommendations of the Committee on Discipline to the next meeting of the synod council and shall advise the synod council of any action taken by the synodical bishop as a result of such recommendations. The synod council may take action to suspend the Respondent from the office and functions of the rostered ministry or to remove the Respondent from the roster in accordance with the recommendations of the Committee on Discipline; may reject such recommendations; or may refer such recommendations back to the Committee on Discipline for further review and recommendation.
- E6. The action of the synod council to suspend the Respondent or to remove the Respondent from the roster may be appealed to the Court of Adjudication by the Respondent within 45 days of the Respondent receiving written notice of the action of the synod council.

In addition the Complainant may appeal the action taken by the synod council to the Court of Adjudication only with respect to whether or not due process was followed by the Committee on Discipline in dealing with the Complaint or to introduce new evidence which was not available prior to the conclusion of the hearing conducted by the Committee on Discipline.

- E7. In event of an appeal, the chairperson of the Committee on Discipline shall furnish the record on appeal (as defined in the rules of the Court of Adjudication), to the Court of Adjudication and certify the completeness and accuracy of such record.
- E8. The synod council shall review any findings and recommendations of the Court of Adjudication and may take such action as may be appropriate in light of such findings and recommendations.
- E9. In the event there is no appeal, 75 days after giving the notice referred to in Rule E6, the chairperson of the Committee on Discipline shall make the following disposition of the material which would have constituted the record of appeal:
- a) documentary and physical evidence and the transcript of the proceedings of the Committee on Discipline shall be forwarded to the synod office for safe keeping; and
  - b) the synodical bishop shall keep the findings and determination of the Committee of Discipline in a confidential file.