

What are the judicial processes in the church courts?

The Code of the church (II 4.02.d) states as one of the powers of Session the obligation to “*exercise discipline on erring members and restore membership after discipline has been exercised*”. The Session’s power of discipline extends even to its own members.

There is an expectation that this discipline will be exercised on principles of natural justice and any perceived failure to do so is a basis for appeal to higher courts.

The Presbyterian Church has set up five basic procedures that enable all members in the church to be heard in the courts of the church if they so wish. These are Appeal, Dissent and Complaint, Petition, Overture and Reference. Among these is a procedure to meet the need of anyone wishing to bring a matter before an appropriate court.

The problem is to know which procedure to use and then to follow the steps correctly.

It is important to follow these processes laid down to avoid a technical challenge, which may result in delay or dismissal of the matter. Any person wishing to follow one of the procedures listed below should become familiar with the relevant section of the Code. The appropriate references are shown.

However the Code lays a clear responsibility on the officials of the church courts, especially moderators and clerks, to assist and advise any member who intends to take one of these courses of action.

The Code contains samples of the correct formats for following these procedures.

What part do elders play when church courts exercise a judicial role?

In Sessions elders exercise the dominant role but there should be an expectation that the Moderator, being a minister with all the appropriate training in Presbyterian polity, will advise the Session on the correct procedures. It is the elders that make the final decisions as Moderators only have a casting vote and do not have a deliberative vote.

In higher courts, about half the members would be expected to be elders and they have an equal role with

ministers in deciding the justice of issues raised at meetings.

1. What are the principles of natural justice that judicial decisions of church courts must be based on?
2. What problems might an appellant encounter in the pursuit of their case and what advice might a clerk or moderator give in these instances?

What is involved in a dissent, complaint and appeal?

Dissent (Code II 3.35-41) A dissent is the most basic of the appeal processes of the church. It is a clear indication of disagreement with a decision of a church court and involves the recording of a personal objection in the minutes of the meeting. It is a course of action only available to those members who have voted against a particular motion.

If they wish they may have their reasons for dissent recorded in the minutes with their names, but the reasons given must respect the rights of the court and other individuals. The court has the power to reject inappropriate reasons.

Dissent frees the members involved from any blame that may follow the decision, but they remain under an obligation to comply with the decision until it is altered or withdrawn.

Appeal and Complaint (Code II 3.42-60) An appeal is a signed document submitted by a person who was at the bar of the house at the time the decision was made and it is designed to bring a decision under the review of a higher court.

Persons intending to appeal must seek leave to appeal at the time of the decision and the court is required to inform them of this obligation.

A complaint is a signed document submitted for the same reason by a person who was a member of the court and who was not at the bar of the house at the time of the decision. The member complaining must have dissented at the time of the decision with the words "I dissent and protest for leave to complain".

The formal document of appeal or complaint must be submitted within ten (10) days of the meeting to the Clerk of the court whose decision is being challenged.

The document must contain the reasons for appeal or complaint. These reasons must include ***at least one*** of the following:

- Irregularity in the proceedings of the court,
- refusal of reasonable indulgence in the conduct of the case,
- reception of irrelevant evidence,
- refusal to receive relevant evidence,
- mistake or injustice in the judgment,
- undue haste in proceeding to judgment,
- judgment against the evidence,
- judgment against the weight of evidence, and
- denial of natural justice.

Persons appealing or complaining have the right to receive copies of all relevant papers including full sets of minutes if necessary.

It is the responsibility of the appellant or the complainant to see that all necessary documents have been forwarded prior to the hearing in the higher court.

A court whose decision is being complained or appealed against may go ahead with its decision in the meantime if it wishes but, in doing so, it assumes all responsibilities that may result. Nevertheless the courts are obliged to protect the rights of all parties.

What are the procedures for hearing an appeal or complaint?

Following the presentation of the written documentation by the appellant or complainant, it is forwarded to the Clerk of the higher court.

A date is set for the hearing, although cases forwarded to the NSW General Assembly are dealt with, in the first instance, by a Conciliation Committee which seeks a negotiated resolution to the problem in an informal climate. The parties then have to decide whether they wish to proceed. If they do, the case is heard by the Assembly in a formal hearing.

All courts of appeal may place a matter in the hands of a committee for enquiry and report.

In a hearing in any court, all parties are called to the bar of the house. The appellant or complainant is

heard first and the persons appointed by the court to respond are heard next. Questions may then be asked by members of the court.

All parties are removed from the bar and the court considers its findings. The court of appeal has a range of options. It can sustain or dismiss the appeal/complaint as a whole or it can alter the original decision in any way that it sees fit.

The parties are then recalled to the bar of the house and they are informed of the findings. The moderator asks both parties if they acquiesce.

Both parties have a right of appeal and should indicate their intention to do so with the words. "***I do not acquiesce and I protest for leave to appeal.***"

The sustaining of an appeal does not necessarily mean that the decision of the original court is reversed. The Court of Appeal has the right to return the matter to the lower court for reconsideration.

The dismissal of the appeal or complaint indicates approval for the decision of the lower court.

3. What is meant by being "at the bar of the house"?

**Elders
Association**



The Elder and the Judicial Responsibility of Church Courts - Dissent, Appeal and Complaint.

In this study:

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- What part do elders play when church courts exercise a judicial role?
- What is involved in a dissent, complaint and appeal?
- What are the procedures for hearing an appeal or complaint?