

Response from CPD Lawyer Kevin Boonstra re: MCB Clause 2.3.3

From: Kevin Boonstra <kboonstra@kuhnco.net>
Sent: March 2, 2023 10:29 AM
To: Erin Knott <erink@pacificdistrict.ca>
Subject: RE: Legal Advice - Model Church Bylaws

Hi Erin:

I've now had a chance to review and consider this. There are a couple of issues.

1. Nature of the Investigation and Consistency with Discipline/Restoration Policy

I assume that the board would only impose a suspension for serious matters (which would include any investigation of criminal conduct by the police). In the Discipline and Restoration Policy, there are a number of specific matters, some criminal and some not, that would give rise to church discipline.

The draft wording doesn't indicate what an "investigation" is. Your email refers to investigations by the police, but there may also be situations where an internal investigation is warranted, but the police and/or crown counsel are not proceeding with a criminal investigation or charge.

That said, the Discipline and Restoration Policy for Members indicates that internal investigations that "ecclesiastical law permits proceedings on the presumption of innocence." This is not a very strong statement (i.e. it doesn't say that there is a requirement to presume innocence), but suspension of membership while an investigation is proceeding (either internal or external) is arguable inconsistent with this presumption. (I couldn't find the same presumption referenced in the discipline policy for official workers.)

I'd suggest revising the wording of the proposed section 2.3.3(b) as follows:

- b) *a member who is suspended from active membership at the discretion of the Board due to an accusation or allegation of serious misconduct that is the subject of an investigation by the church, the District or a secular authority, or*

2. What happens at the end of the suspension?

The revisions don't deal with what happens if the investigation results in no charges/disciplinary action. I'd suggest a new section 2.3.3.2.2 as follows:

2.3.3.2.2 In respect of a member suspended under section 2.3.3(b), the Board shall consider whether to return the member to Active Member status as the first meeting of the Board following the completion of all relevant investigations, provided that such investigations have not resulted in a finding or charge of criminal conduct or conduct that could result in discipline.

3. What happens if the investigation takes a long time?

Under section 2.5(d) of the model bylaws, once a member is not in good standing for 12 months, the member ceases to be a member. This presumably means that a member under discipline for a period of 12 months or longer, or a person whose membership is suspended because of an investigation for 12 months or longer, automatically ceases to be a member. You might consider making an exception from that for lengthy investigations (for example, where a charge is laid by crown counsel but is not dealt with for a long time). This could be accomplished by revising section 2.5(d) as follows:

d) upon having not been a member in good standing for 12 consecutive months, except where the sole reason for not being in good standing is a suspension from active membership under section 2.3.3(b) and the investigation(s) referred to in that section have not completed.

Kevin