

## **Comments on Flow Chart - Handling Child Abuse Matters**

The flow chart endeavours to follow the steps as outlined in *ks 91* at page 109. It incorporates additional steps to enable the elders to maintain confidentiality where Caesar's laws make provision for privilege or exemption from reporting laws.

Elders receive information about child abuse matters in either of two ways; (1) When an accusation is made against the alleged molester, or (2) when the molester approaches an elder and confesses. Following the outline on page 109 of *ks 91* the elder who receives this information from either source approaches the Presiding Overseer (3) and a meeting of elders is held (4).

We have inserted an additional step (3a) that has already been instituted with Child abuse matters, that is, for the elders to contact the Society before taking any action at all. The Legal Department, and or Service Department can advise the elders on how they should approach the accused, if it is not a confession. They may also be able to give some general advice in handling these cases at that time.

At the meeting of the body of elders, the elder hearing the accusation or confession will give sufficient information to the body of elders present (having in mind the principle of confidentiality referred to in *ks 91* in the last paragraph on page 79) so that they can determine whether a disfellowshipping offence has been committed and whether there is a confession (6), or the matter can likely be established at the mouth of two or three witnesses (8) or if there are serious questions raised (5).

If there are serious questions but no indication that the matter can be established at the mouth of two or three witnesses, the body of elders present at the time assign two brothers to investigate the allegations.(7) These elders will report back to the body of elders.

If the allegations can now be established by two or three witnesses, by confession, or by sufficient circumstantial evidence, one of the elders, preferably the Presiding Overseer will contact the Society's Legal Department (or Service in some cases) to see if there are any reporting laws applicable.

The Society will determine if there are reporting laws applicable in that state or territory, and whether or not there are exemptions for ministers of religion and/or protection by way of ecclesiastical privilege which might. The Society will need to know whether or not there was a confession to determine this question, but they will not need to know the name of the person. In this way, the officers of the Society, at this point of the procedures, do not need to be practicing lawyers and could, therefore, be the brothers on the Service desk, providing the Legal Department can give them clear guidelines to enable them to apply the various state laws. This would not be difficult in Australia.

If the Society advises the elders to report the matter to the secular authorities, the elders assigned to investigate the matter, or the person who received the confession, should advise the

accused that they are under obligation to make the report (12). They should then do so (13), making a full written report for the files (14).

At this stage, all the have knowledge of the bare details of the case, but the matter may not have been full investigated in detail by a committee. In this way, what the elders have is hearsay, except in the case of confession where the hearer has first hand knowledge. This may be of some benefit in claiming confidentiality under privilege where privilege is based on confession only. The secular authorities are now aware of the matter, either from the report made by the elders (13), or by a report from a third party (25).

A committee is then appointed to handle the matter (11), either after the report is made, or if there is no legal obligation to report.

If the information came by way of confession, either initially (2), or during the investigation (7), or even at a later stage, the Judicial Committee (and in fact all the elders) will keep strict confidentiality where ecclesiastical privilege is available. They will do this unless privilege has been breached by reproof before all onlookers (20), that is, where, for example, the molester is repentant and apologises before the family of the victim and receives counsel or reproof in their presence, or where a letter is written to another body of elders in the congregation to which the molester moved (22). In many cases, but perhaps not all, if the molester moves from a state without reporting laws to one that has reporting laws, the new body of elders could now need to check with the Society (9) as to their liability.

If privilege has been waived by a breach of confidentiality (28), as, for example in (20) and (22), then the Chairman of the Committee will again check with the Society to ascertain their legal obligations before disclosing information to the authorities.

Where the elders make the appropriate brief report to the body of elders (19), announce a disfellowshipping without stating the cause, or send a disfellowshipping notice to the Society (21), it would be appropriate to try, where ecclesiastical privilege is available, and claim that these actions are part of our confessional ritual.

Thus, in Australia, where there is no confession, there is no ecclesiastical privilege (24), and the only circumstances under which privilege can be claimed is where there is legislation making that provision and there is a confession, is when privilege has not been waived by such disclosures as reproof before onlookers (20), and the letter according to the instructions given in the March 14, 1997 (May 1, 1997 in Australia) letter to all elders (22).

The final step before giving information, handing over records, or testifying in court should be to check with the Society, preferably with the legal department, if the branch has one.