

CHAPTER V

DISCIPLINE

PART I: The Nature, Purpose and Scope of Discipline

1. **Scriptural Character:** Any institution or society which is to function effectively must be well ordered: it must have recognised means of correcting aberrations which threaten its integrity. This is true pre-eminently of the Church of Jesus Christ whose witness in the world depends so intimately on the godly behaviour of its members. If the membership of the Church constitute “an epistle of Christ, known and read by all men”, care must be taken that what is exhibited is a life-style consistent with and authenticated by the word and example of Jesus Christ. Christians have a duty of mutual encouragement and watchfulness to ensure that the obedience of faith is maintained and that any whose conduct may bring reproach upon the name of Christ may be warned, corrected and recalled to conduct becoming the faith. The processes of warning, correction and restoration are what are usually described under the heading of discipline.

2. **Aims:** The ultimate and overriding aim of discipline is always the glory of God. The immediate aim as it concerns the Church is its own purity before God, that the Church have the purity and “chasteness” that belong to the Bride of Christ. As it concerns any person who may be the subject of Church discipline, the aim is evangelical, redemptive, restorative. In loyalty to Christ and in the spirit of love, effort is made to win the erring to repentance and to restore to the fellowship of the Church. So assurance of the continuing love of God is conveyed to the penitent, for there is no security in love which is morally indifferent, and there is no security in love which does not desire and seek the purifying of those to whom it is directed.

3. **Administration:** Discipline is part of the function of ministers and elders as those called to bear rule in the Church of Christ. It must be administered in the spirit of loving concern for the recovery of any that are “out of the way”. Distress and sadness there may be, but there ought never to be a spirit of bitterness. Those who endeavour to apply discipline must always remember that the important thing is not the winning of an argument but the making safe of one who has become endangered and whose predicament also menaces the fellowship of the faithful. There is no place for a spirit of rivalry in any disciplinary process. That a spirit of meekness and fear should characterise those embarking on a disciplinary action the apostle emphasises: “Consider thyself also in the flesh”. No-one dare indulge a “holier than thou” attitude. The hurt of one Christian is the hurt of all and directs all to the only effective Healer, our Lord Jesus Christ.

4. **With whom it deals:** Church discipline is concerned with those who belong to the Church as baptised or communicant members. Besides, the Church has a duty to all and specially to those in regular attendance at worship services, to testify “of righteousness, temperance and judgment to come”, but this is not strictly within its disciplinary function.

5. ***With what it deals:*** Discipline is Biblically based and this implies that no action or conduct can be regarded as censurable unless it is so declared in Scripture. The consciences of people cannot be bound by anything but by the word of God who alone is Lord of the conscience. Nor does every breach of Biblical principle justify formal disciplinary action by the Church, for the purpose of discipline is not to pry into the privacy of each person and family. Only such misbehaviour as brings open reproach on the name and cause of Christ and occasions public scandal is to be matter of discipline. Public teaching and pastoral counselling will remind all concerned of the need to maintain godliness of life in private. Discipline is concerned with what obtrudes into public life.

6. ***Private Conference:*** The need of formal process may be obviated by private counselling by pastor and ruling elder where breach of Christian conduct has not been flagrant and has not become common knowledge to the prejudice of the Christian fellowship. This procedure accords with our Lord's counsel recorded in Matthew 18:15 and is often effective in disarming resentment and resistance and in winning the errant one to repentance and carefulness of conduct.

7. ***Time Limit:*** Inquisitorial procedure is further discouraged by recognition of a limit of time. To be effective discipline should be applied without undue delay and it is generally accepted that it is not helpful or edifying to initiate a case after the lapse of five years, unless the alleged misconduct was of a very flagrant nature or is being repeated. (See *The Form of Process* I.4).

8. ***Finality of Judgments:*** Due regard must always be had to the delicacy and difficulty attending processes of discipline. Mishandled cases can cause more damage and scandal than the alleged misconduct which originated them. Church courts are liable to mistaken judgments but the principle must be acknowledged that once a final decision has been pronounced in proper form the case cannot be re-opened except on the presentation of new evidence of which the responsible Court was not aware. (In the case of courts under the General Assembly, the decision is final if it is not complained or appealed against). In the ultimate analysis judgment must be left to the Most High. In the human situation there are dangers of miscarriage either way, but when the case has been finalised the finality of jurisdiction for this present time has to be accepted.

9. ***Different from civil procedure:*** The difference between Church discipline and the judicial proceedings of the State is highlighted by the fact that the Church is concerned with the moral and spiritual well-being of its members. Act XXVIII, 1978 of the General Assembly draws attention to this. "It should be recognised that Church discipline is not precisely of the same order as civil, and the Church cannot therefore divest itself of the responsibility of ascertaining facts and their relevance. No proceedings or judgment of a civil (or criminal) court can be regarded as a substitute for due ecclesiastical process, though such judgments may help in determining whether a process is required. Church courts must form their own judgments independently of proceedings in other courts".

PART II: *General Procedures Applicable in all Church Courts*

1. ***Jurisdiction:*** When allegations of misconduct against a member of the Church arise the necessary enquiry and procedure must be undertaken by the Church court which has immediate pastoral responsibility for the person concerned. In most cases this is the Kirk Session of the congregation to which the member belongs. In the case of a minister it is the Presbytery of which he is a member or to which he is accountable by Act of Assembly, and in the case of a Probationer, the Presbytery to which he is responsible. If the alleged misconduct involves more

than one person belonging to different congregations, the Kirk Sessions concerned must agree as to which will deal with the matter. The intervention of superior courts may be necessary if the Sessions cannot agree, but the time lapse involved in such cases could be prejudicial to the interests of good discipline. If one of the people against whom allegations are made is a minister, the Presbytery concerned must take up the case and in due course advise the Kirk Session having responsibility for the other person(s).

2. **Preliminary Action:** When information that seems to necessitate disciplinary action is brought before a Church court certain issues must first be settled:

(1) Does the information conveyed allege conduct injurious to the Christian fellowship?

(2) Has the information come from a reliable source?

(3) Is this the court that should take action or should the information be passed to an inferior or superior court?

3. **Notification:** Once a Church court has decided that the information given to it requires formal action on its part it must, prior to discussing the substance of the case, notify everybody concerned and require them to attend a meeting of the court to be held at a specified time and place. In fixing time and place due regard must be had to the convenience of those required to attend. Among those who should be required to attend are not only the person(s) accused but those who make the accusation, those who may be deemed to bear witness to the allegation and any named by the accused person whom he is persuaded can bear witness on his behalf.

4. **Rumour or Fama:** In some cases it is not possible to specify accusers at whose instance allegations are to be investigated. The court may be aware of public rumour detrimental to the good name of the Church involving someone under its pastoral care. It may decide that the vindication of truth and honour require it to act. Sometimes, the person concerned, having become aware of injurious rumours, may request investigation by the court in hope of vindicating his character. The investigation of rumour (or *fama* as it is called) is notoriously difficult because though rumour may be rife people may be unable or unwilling to bear relevant testimony. But the undoubted difficulty does not absolve the Church court from endeavouring to arrive at the truth.

5. **Citation:** The method by which Church courts require the attendance of people involved in a disciplinary process whether as accused, accusers or witnesses is called *citation*. There are two kinds of citation (Act XXVII, 1978).

(1) One is delivered openly in the court to those involved who are present at the time when it is resolved to cite. This is known technically as a *citation apud acta* and the fact of it being pronounced should be duly minuted. This citation is peremptory and does not have to be repeated as all present are aware that it has been issued.

(2) The other citation is a formal written summons requiring attendance at a Church court, and delivered to the person named or to his/her dwelling and the fact of its being so delivered duly certified. Such certification may be made by someone appointed by the court to deliver the citation or by use of Registered Mail or recorded delivery using the facility which involves official notice from the Post Office that delivery to the address has been made. When the Court is ready to proceed with the case and has been satisfied that all citations have been duly delivered it calls all parties concerned before it.

6. **Second and Third Citation:** If a person duly cited in writing does not appear at the time and place specified, a second citation should be served in the same manner as the first and if the second citation proves fruitless a third should be issued.

7. **Contumacy:** It may be that a person duly cited, either *apud acta* or three times in writing, fails to appear or to give a satisfactory reason for non-appearance. In such a case he is liable to censure for contumacy. Contumacy is deliberate defiance of the authority of a Church court. If it occurs in a case before a Kirk Session, it requires reference to Presbytery owing to its gravity.

8. **Trial in Absence:** Though persistent failure to appear when duly cited makes an accused person liable to censure for contumacy, this non-appearance need not prevent the court considering the evidence before it and coming to a verdict on the original accusation.

9. **Initiation of Process:** A process of discipline is usually initiated when information alleging misconduct by someone under the direct care of the court is submitted and the person submitting the information is expected to formulate and present a charge of misconduct. But even if this person refuses to press the charge the court may decide that there is a case to answer and so formulate the charge itself. This is, in some respects, similar to the investigation of a *fama* noted above (4).

10. **Confession:** It may happen that a person who has knowledge that a charge of misconduct is to be brought against him or that a *fama* concerning him is about to be investigated, comes voluntarily to the court to confess to conduct offensive to Christian standards. On the other hand such a person may appear to demand that the court investigate a *fama* prejudicial to his good name.

11. When a person appears before the Court to make confession as noted above, the Court must carefully consider not only the nature and extent of the confession — whether or not it covers the total accusation — but also the state of mind of the person confessing. If what is confessed requires censure this should be tenderly and compassionately applied. If the court is persuaded of the penitence of the confessor, it may also ministerially in the name of Christ absolve the offender from the scandal of his sin (see III.2.27 below).

12. **Notice to Accused:** Before actually considering a charge of misconduct with a view to reaching a verdict the court must inform the person accused of the nature of the charge, of the evidence on which it is based, and of the witnesses who are to give testimony. This must be given in good time so that the person concerned has adequate time to prepare his defence and to give notice of witnesses whom he may wish to be cited by the court.

13. **Attendance of Witnesses:** It is obvious that courts of the Free Church of Scotland can only bring moral suasion to bear on people outside the Church to attend as witnesses. In the case of those who belong to the Church the Court can require their attendance under pain of being regarded as contumacious if three citations be refused.

14. **Objections as to Relevancy:** At the very commencement of formal proceedings and before any witnesses are heard the person accused may object to what is called the relevancy of the charge as stated. The essence of such an objection is the claim that the conduct referred to in the charge is not, in fact, in breach of a principle of Scripture.

15. **Competency of Witnesses:** The person accused may also at the initial stage object to the competency of witnesses. He may be able to demonstrate that some witnesses do not understand the charge, or are known to be prejudiced against him. If the court is not satisfied as to the reliability of witnesses cited, they should be dismissed.

15.1 **Criteria of Competency:** The basic requirements of competent witnesses are:

- (1) Capacity: that they are able to understand the facts to which they bear testimony.
- (2) Honesty: that they can be relied on to give objective testimony.
- (3) Opportunity: that they were in a position to witness the facts they testify.

16. **Record of Testimony:** It is important that the testimony given by a witness and his responses to questions are accurately and fully written down and the account subsequently read and subscribed by him. To accomplish this the court may deem it necessary to appoint a competent person as assistant to the clerk. If a witness cannot write, this fact should be noted and the deposition signed by the Moderator.

17. **Taking of Proof:** Proceedings throughout must be orderly and allow each interested party to state their case fully. It should allow also for the cross-examination of witnesses. Witnesses are dismissed when their examination is finished.

18. **Determination of Decision:** When the Court has heard all the evidence submitted, it proceeds to review the whole case with a view to a decision. It is important that the decision be arrived at solely on the basis of evidence already heard. New evidence may not be introduced at this point. Before commencing this review the court temporarily dismisses parties and if the meeting is in private they must vacate the room. Parties who are otherwise members of the court must also withdraw at this stage. "Parties" includes accusers and accused and they are recalled to hear the judgment of the court.

19. **Dissents from Decision:** When the Court has come to a decision any member who has listened to the pleadings and whose conscience is aggrieved by the decision may there and then register a dissent, or a dissent and complaint. Dissent and complaint will prevent the carrying out of the Court's judgment. Parties are then recalled and so informed and cited *apud acta* to appear before the Superior Court. There is no occasion for any further citation provided the fact of the citation *apud acta* is duly minuted.

20. **Dissent and Appeal from Decision:** When the judgment of the Court is announced to parties recalled it is competent for any one of them to register dissent and appeal to the Superior Court. Such appeal will prevent the carrying out of the judgment of the Court and parties will be cited *apud acta* to appear before the Superior Court.

21. **Guidance to Parties:** At all stages parties should be guided by the court as to correct procedure and their rights. When therefore judgment is announced with the information that a complaint has been lodged, parties should be informed of the possibility that the complaint may be abandoned. This may affect decision on their part to appeal.

PART III: *Processes which are the responsibility of the Kirk Session*

1. **Procedures in Minor Cases.**

1.1 **Initiation of Process:** It is normally the duty of the Kirk Session to initiate a process of discipline affecting the membership of the congregation apart from the minister. Membership includes baptised and communicant members who adhere to the congregation.

1.2 **Private Counsel :** As noted in I.5 not every breach of Christian standards necessitates formal disciplinary action by the Kirk Session. Single acts of misdemeanour which are not in themselves or by attendant circumstances both excessively grave and public may best be dealt with by private counsel by minister or elder so as to elicit from the person concerned an acknowledgement of wrong, a confession of sorrow, and a promise to avoid repetition of the error. Among lapses that may be dealt with in this way are single occasions of alcohol or drug abuse, violation of the Lord's Day, theft and intemperate speech or behaviour. It still remains that circumstances may so aggravate single acts of the transgressions listed as to render more formal process appropriate and necessary.

1.3 **Admonition:** When with regard to the kind of transgressions listed above it is deemed fitting to cite a person to a meeting of Kirk Session, or when a person voluntarily presents himself before the Session admitting either guilt or the veracity of rumour alleging guilt, it is sufficient that he be formally admonished or rebuked by the Moderator of Session. If the Session is persuaded that the person concerned is penitent and resolved to avoid such action in future, no suspension from sealing ordinances need be imposed.

1.4 **Formal Process:** If the Kirk Session have information of, or there is public rumour of, breaches of Christian behaviour of the type referred to in 1.2 above and the person concerned professes innocence when privately met by minister or elder, the Kirk Session must proceed to a formal process. This involves formulating distinctly the charge of misbehaviour. This, together with the names of witnesses and a note of any other documentary or material evidence to be considered, must be furnished to the person accused. He must also be cited to appear before the Session on a date which will allow time for him to prepare his defence and establish contact with witnesses whose testimony may be helpful to him. He may request the Kirk Session to cite these witnesses to appear.

1.5 **Objections as to Relevancy:** A person cited to answer such an accusation may object that what is laid to his charge is not, in fact, a breach of Biblical requirement. This is known as objection to the relevancy of the charge and obviously this objection must be given priority of consideration. If this objection is overruled, the case may proceed. Objection may then be raised as to the sufficiency of the evidence to establish the validity of the charge and this objection must be carefully considered. If the first objection is sustained the case must be dismissed. If the second objection is sustained the charge must be withdrawn. But if the Session is convinced of the relevancy of the charge and of the sufficiency of the evidence, they resolve how to deal with the person concerned. Usually in the case of these breaches of good order a rebuke by the Moderator suffices, but only if the Kirk Session is satisfied with regard to the penitence and promise of amendment on the part of the transgressor. In the stress of the moment this may not be forthcoming and the Session may allow time for reflection. But if after due reflection there is still no expression of sorrow or promise of amendment, the Session may suspend the person concerned from sealing ordinances.

1.6 **Recurrence of Offence:** If a person formally rebuked but not suspended from sealing ordinances under the procedures noted above appears to breach the profession and undertaking given, or is reported to have committed the same or a similar offence, he should be duly cited to appear before the Session when, if deemed guilty after due process, he must be suspended from sealing ordinances.

1.7 **Condition of Restoration:** It is not uncommon for a Session to put a limit of time upon a suspension from sealing ordinances. But restoration to privileges is not to be deemed automatic upon the expiry of the time indicated. Restoration is always to be based on the Session's conviction of the genuine repentance and amended life-style of those concerned.

1.8 **Time Limit:** The "five-year rule" referred to in I.7 has special reference to the kind of misdemeanour dealt with thus far. In cases of a more heinous nature the Kirk Session must weigh very seriously the necessity or otherwise of initiating action.

2. *Procedures in More Serious Cases.*

2.1 **Necessity for Formal Process:** There are actions which, even in their single occurrence, if laid to the charge of a member of the Church, bring the Church of Christ into public disrepute. Most frequently they involve breaches of the seventh commandment. Such actions, when duly

brought to the attention of the Kirk Session, necessitate formal process on its part. This does not prevent personal and private interview by the minister and/or elder as a first step. Such interview may indeed help to simplify formal procedures before the Kirk Session.

2.2 *Caution in Entertaining Accusations:* In the nature of the case accusations of overt breach of the seventh commandment are difficult to pursue when no child has been conceived. This fact obliges the Kirk Session to be very cautious about entertaining such accusations. There must be considerable *prima facie* circumstantial evidence and/or a very widespread public sense of scandal.

2.3 *Censurable Actions:* Whilst some forms of behaviour which occasion public opprobrium may not be in themselves blameworthy, they may be sufficiently imprudent and injudicious as to warrant private admonition. On the other hand some actions which fall short of actual sexual union, may be as offensive as illicit union, and therefore equally censurable.

2.4 *Awareness of Outcome:* The Kirk Session must bear in mind from the commencement of a process dealing with allegations of fornication or adultery, or actions equally censurable, that the outcome where guilt is deemed to have been established must be suspension of the guilty from sealing ordinances.

2.5 *Confession:* It may happen that persons who have engaged in illicit sexual union are so stricken in conscience that they voluntarily appear before the Kirk Session to confess their sin and seek absolution from the scandal. In such cases the Kirk Session may conclude that they have virtually already suspended themselves from sealing ordinances without formal sentence of the Session. In such cases the Kirk Session, in granting absolution, should consider whether suspension should there and then be terminated, or whether the maintenance of good order in the community requires that suspension be continued for a time.

2.6 *Ante-nuptial Fornication:* Voluntary appearance before the Kirk Session of the kind referred to in the preceding paragraph is most likely when the confession made is of ante-nuptial fornication. This, though a grievous violation of God's law, is less heinous than casual or promiscuous indulgence in sexual intercourse. In such cases the Kirk Session must take all the known circumstances into account and regulate the course of discipline by what they see to be required for the good of the parties, the honour of Christ, the purity of the Christian fellowship and the edification of the Church. These considerations will determine the frequency of conference with those concerned, the method of applying rebuke — whether public or private — the duration of suspension and the time of pronouncing absolution and restoration of privilege.

2.7 *Investigative Committee:* When an accusation of moral misconduct is brought to the attention of the Kirk Session — either by a person or persons accusing, or by a known *fama* — they should make preliminary enquiry as to the facts before formulating a specific charge. This may be most effectively done by the appointment of a committee to interview people concerned and to make a preliminary assessment of the evidence. The committee should report to the Session the facts as made known to them so that the Session may decide whether to prepare a formal charge. Alternatively the Kirk Session may require the accuser(s) formally to specify the charge and detail the evidence.

2.8 *Notice to Accused:* If the Session resolve that there is a case to answer and are prepared to formulate a charge or entertain a charge formulated by others, they must proceed in terms of II.12 above by duly notifying the accused person of the charge, supplying a note of the evidence and the names of witnesses and citing the accused to appear in due course before the Session.

2.9 *Objection to Relevance:* Objection may be entered against the relevancy of the charge, and/or the sufficiency of the evidence, and this must be disposed of before further proceedings ensue (see III.1.5).

2.10 *Rights of Accused:* It is necessary to recognise that though in some cases people may so co-operate with the Kirk Session as not to require formal citation to ensure their appearance, no one can be censured for non-attendance unless a regular citation has been duly received. Similarly, though it may happen that evidence given to a Committee may be unchallenged by the person accused who may be willing to submit to the judgment of the Session, in any case of difficulty it is necessary to proceed according to strict rules of citation and examination. No member of the Church can be deprived of his privileges except by the establishment of his guilt with reference to a relevant charge proved by competent evidence before a competent Court and by means of a regular and fairly conducted trial.

2.11 *Jurisdiction:* Some charges of moral delinquency involve more than one person, for example, a charge of fornication or adultery, and in such cases it is proper to deal with both parties at the same time before the same Kirk Session. If one of the persons involved is a minister or probationer, the procedure indicated in II.1 applies.

2.12 *Cases involving more than one Session:* It is obvious that in cases involving a plurality of Kirk Sessions it is best that agreement be quickly reached between them as to which will deal with the case. By long-standing practice in the case of fornication the Kirk Session which is responsible for the pastoral care of the woman deals with it. Where Kirk Sessions cannot agree as to which should be responsible for the disciplinary process they must each refer the case to the Presbytery and if necessary onwards to Synod and General Assembly, until the Court is reached which can issue directions to both Sessions. The delay involved in such procedures cannot but be prejudicial to the interests of all concerned and this underlines the importance of Kirk Sessions agreeing among themselves as to which Court is to entertain the case.

2.13 *Citation:* The Kirk Session which is to proceed with a case involving people from other congregations must inform the Sessions concerned and request them to cite their members to appear before it on a specified date. This procedure applies also to the citation of witnesses.

2.14 *Examination of Absent Witnesses:* When it is ascertained that a witness cannot attend, the following procedure is in order. The Session may appoint someone to interview the witness. This person will be accompanied by a member of Session and by the accused person or someone nominated by him. The testimony of the witness and the answers to questions put by those interviewing will then be recorded (duly attested in writing and or on tape) and this record will be considered by the Kirk Session when dealing with the case with a view to coming to a judgment.

2.15 *Overseas Witnesses:* If a witness cannot attend because of residence overseas the rules for procuring evidence should follow the general arrangement which obtains in the State Courts, of which a note is given in an appendix to this chapter.

2.16 *Voluntary Confession:* In any case where, prior to the birth of a child, one person voluntarily appears before the Kirk Session confessing to the sin of fornication and naming the partner, it is deemed best to delay formal proceedings until after the birth of a child. This procedure enables the Kirk Session to exercise great caution when investigating such a confession which is not in due course followed by a birth.

2.17 *Naming of Father:* It is required that a woman who confesses to have committed the sin of fornication or adultery with regard to the birth of her child, shall name the father that he may also be subject to the discipline of the Church. If the woman refuses to name the father she

is deemed to be contumacious. If she claims not to know who the father is, the advice of Presbytery must be sought.

2.18 *Assessment of Character and Evidence:* In bringing an accusation against a man, a woman is required to furnish some *prima facie* evidence in support of her accusation, especially if the man denies the accusation. In such cases the character of the woman and the man is of great importance and must be duly considered by the Kirk Session.

2.19 *Co-accused outwith Free Church:* If a woman confessing guilt names as father a man who does not adhere to the Free Church of Scotland, the Kirk Session must endeavour to obtain confirmation of the fact from him, and this information should be given to the Kirk Session or ruling body of the congregation to which he belongs — if indeed he adheres to any Church fellowship. Only after a serious effort has been made to obtain confirmation of the woman's averment can the Kirk Session consider the propriety of absolving her from the scandal of her sin.

2.20 *Oath of Purgation:* In an extreme case a man who wishes to protect his innocence in face of an accusation may request to take a very solemn oath in presence of the Kirk Session. This is called the *Oath of Purgation* and is to be resorted to only in very serious circumstances and never without the authority of Presbytery. No court should press any person to take this oath: they should consent to a persistent request only after the solemnity of the act has been duly emphasised and recognised. (The suggested text of the oath appears in the *Form of Process* IV:7).

2.21 *Recording of Documents and Evidence:* When a formal trial before a Kirk Session is begun all documents admitted must be listed in the record and kept *in retentis*. The statements of witnesses and their answers to questions must also be recorded and kept *in retentis*. It is permissible and may be expedient for a Kirk Session to record these proceedings in a separate minute book but this action must be authenticated by reference in the ordinary minute book. The same rules apply to the keeping of the separate record as to the ordinary.

2.22 *Objections to Admissibility:* As noted in II.15 objection may be entered as to the admissibility and credibility of witnesses. The Session must consider such objections and either sustain or overrule them.

2.23 *Cross-examination:* An accused person has the right to cross-examine witnesses testifying against him, always subject to the Session's agreement as to the relevance of the questions in cross-examination.

2.24 *Solemn Assurance:* People giving evidence before a Kirk Session may be required to give a solemn assurance that they will speak the truth, that they have no malicious motive and are not knowingly biased. Such solemn assurance is accepted as equivalent to an oath, and all evidence received should be given on that understanding.

2.25 *Censures:* When a Kirk Session concludes that an accusation of improper conduct has been proved, they may come to a judgment as to the censure appropriate in the case. Censures vary in their gravity according to the nature of the offence committed. Four distinct types of censure are identified:

(1) ***Admonition*** is the lightest form of censure and involves affectionate counselling against sin and exhortation to more careful and worthy conduct.

(2) ***Rebuke***, which is a more serious censure, may be administered before the Kirk Session or the congregation.

(3) ***Suspension from privileges***, that is, denial of access to the Lord's Supper and to the privilege of baptism of an offender's child, sometimes referred to as the Lesser Excommunication may be imposed for a stated time or indefinitely according to the disposition at the time of the person adjudged to be at fault. Even in the case of a fixed term of suspension, restoration to

privileges is not automatic, but depends on the Session being persuaded that the offender is truly penitent.

(4) **Excommunication** is the gravest censure and is applied only where the offender is deemed utterly recalcitrant and defiant. It is commonly referred to as the Greater Excommunication and involves the removal of the offender's name from the Communion Roll and the declaration that he/she is no longer a member of the Church of Christ. Yet even so, this censure is intended to awaken the conscience of the offender so that he/she in penitence may seek the mercy of God and in due time be restored to the fellowship of the Church of Christ. This censure cannot be pronounced on a Kirk Session's sole authority. It requires the authority of Presbytery (see *Form of Process* VIII).

2.26 Suspension from Office: While an accusation of improper conduct is being investigated by the Kirk Session it is held that the person concerned should not partake of Church privileges. An office-bearer charged with misconduct must relinquish the duties of office. Even in the earlier stages of investigation prior to the formulating of a charge, he should consider himself relieved from duty. This relinquishment of duty, though usually referred to as suspension from office, is not in fact a censure. It is merely recognition of what is appropriate in the circumstances.

2.27 Absolution and Restoration: When a Kirk Session deems it proper to restore to privileges a person deprived in accordance with its decision, it declares him to be absolved from the scandal of his sin. In pronouncing absolution the Church acts ministerially in the name of Christ. The Church does not arrogate to itself the power to forgive sins, this being a prerogative of God alone. But by the authority of Christ the Church gives assurance of His pardon to those who in true penitence seeks it from Him.

2.28 Reference to Presbytery: Before pronouncing judgment in cases of extreme gravity coming before them, a Kirk Session must refer them to the Presbytery for advice. In the past these cases included, incest, adultery, a third instance of fornication, flagrant heresy or schism, contumacy, a woman's professed ignorance of the paternity of her child and any case requiring pronouncement of the Greater Excommunication. In present circumstances there should be included charges relating to homosexual behaviour, child abuse falling short of actual incest and serious marriage breakdowns. A request by any accused person to take the Oath of Purgation must also be referred to Presbytery.

2.29 Presbytery Instructions: All such references when resolved upon should be accompanied with a citation *apud acta* to bring all parties before the bar of Presbytery, but Presbytery should, in addition, notify parties which it may wish to appear. As Presbytery usually refers the matter back to the Kirk Session with instructions or with authority for the Session to proceed as it deems just and proper, failure of anyone to appear in obedience to the citation *apud acta* is usually overlooked. Cases referred back to a Kirk Session must be dealt with according to instructions given by Presbytery, or in default of instructions according to the procedures noted above.

2.30 Baptism of child of person under discipline: A request for the baptism of a child, one of whose parents is the subject of discipline, should be dealt with at the discretion of the Kirk Session. It may be possible to grant the request on the responsibility of the other parent, or of a sponsor adjudged suitable by the Kirk Session.

2.31 Fugitive from Discipline: If a person who is subject to a disciplinary process or is under suspension absconds he is deemed to be a fugitive from discipline and his name may be removed from the Communion Roll.

2.32 *Dealing with Defiant:* If a person in the course of a disciplinary process behaves in a disrespectful or defiant manner the Kirk Session may suspend the process until he is brought to a better frame of mind.

2.33 *Lawyer as Friend:* No lawyer is allowed access in that capacity to a meeting of Kirk Session dealing with a case of discipline. On the understanding that no payment of fee or expenses is involved the person whose conduct is being questioned may be allowed to have a friend sit with him but not to take part in the proceedings. In very special circumstances the Kirk Session may allow a friend to act for the person concerned.

2.34 *Charges against an Office-Bearer:* If an accusation of misconduct or a rumour to that effect concerning an Elder or Deacon is before the Kirk Session, a preliminary effort must be made to ascertain what weight should be accorded to it. This will involve interview by the minister and at least one elder of those making complaint or of those thought to have knowledge of the facts underlying a rumour. The office-bearer concerned should at an early stage be informed of the accusation and of the result of the preliminary enquiry. If he is able to demonstrate that the accusation is false or frivolous or that the rumour is groundless, the enquiry should be terminated. If he cannot do so and his explanations do not satisfy the Kirk Session, then formal procedure as indicated above must be initiated. At this stage the office-bearer will be relieved of the duties of his office. If after due procedure the accusation or rumour is held to be well founded he may be suspended from Church privileges and this involves suspension from office, or he may be excommunicated and this involves deposition from office, or he may be suspended from office for a period without being deprived of Church privileges.

2.35 *Degree of Publicity:* It is within the discretion of the Kirk Session to determine what degree of publicity should be given to a judgement passed upon an office-bearer. The Session must take account of the degree of publicity attending the offence and assess what will contribute to general edification.

2.36 *Reponement:* Though it very rarely happens, it is allowable that a deposed office-bearer may be reinstated when there is evidence of genuine repentance and it is deemed that his reinstatement could best serve the interests of the congregation.

SUMMARY

This is merely a check list for procedures. It is not detailed and the section references are not exhaustive.

Where accusations or public rumour of misconduct are brought to the attention of the Kirk Session:

1. The minister and/or elder should interview the member concerned. If they are satisfied that there is no case to answer, the matter is terminated. If a minor misdemeanour is confessed, it may suffice to counsel the person concerned to more careful behaviour in future. If the case appears more serious, the person may be invited to meet the Kirk Session and there be admonished (see I.6; III.1.2).

2. If the information received indicates that there is serious public scandal, the soundness of the information must first be checked. The member concerned should be acquainted with the information, and if this leads to a confession of guilt he should be brought before the Kirk Session and a formal judgment pronounced (see II.2; III.1.3).

3. If the member concerned denies the allegations but the information received appears to support them, then all parties must be cited to appear before the Kirk Session. The alleged of-

fender must be informed of the nature of the evidence and of the witnesses who will be called (see II.3; III.1.4).

4. The Kirk Session must formalise any charge and must be sure that the offence is censurable on Scriptural grounds (I.5; III.1.4).

5. Due time must be given for the appearance of parties. The accused person may require witnesses in his support to be cited by the court. When the case is being formally tried he may cross-examine witnesses (see II.12; III.2.23).

6. The Kirk Session, having heard all parties and considered all evidence, should come to such judgment as suits the gravity of the case (see III.2.25).

PART IV: *Processes which are the Responsibility of the Presbytery*

1. *Review Procedures.*

1.1 ***Complaints and Appeals:*** Presbytery must deal formally with cases of Complaint or Appeal from decisions of a Kirk Session. Parties should have been duly cited *apud acta* by the Kirk Session at the time when complaint or appeal is entered. Though it is the responsibility of complainants and appellants to secure the necessary extracts of minutes and forward them to the clerk of Presbytery with reasons attached, it is usually considered acceptable if all papers are transmitted by the clerk of Session to the clerk of Presbytery. This, however, does not relieve the complainants or appellants of the need to ensure that documents have been duly forwarded.

1.2 ***Review of Procedures:*** If the matter which has occasioned a complaint or appeal be one which would in due process come before Presbytery in any case, Presbytery need not critically review the actual procedure in Session except in so far as it may appear appropriate to censure the complainant and/or appellant.

1.3 ***Authority of Session:*** Presbytery is to have due regard to the proper authority of a Kirk Session in dealing with matters rightly within its jurisdiction, and should be very careful to avoid actions which might be deemed to prejudice or undermine the authority of the Kirk Session. Only when the interests of justice so dictate should Presbytery interfere with the actions of the Kirk Session.

1.4 ***Correction of Errors:*** Should a Presbytery in reviewing a case brought before it by complaint, appeal or reference, perceive errors of judgment on the part of the Kirk Session they should give clear instruction as to how these are to be corrected. If admonition of ministers and elders concerned is deemed appropriate, this may be done in private.

1.5 ***Censure of Parties:*** If a Complaint or Appeal is judged frivolous or is deemed to be evidence of a litigious spirit, Presbytery may direct the Kirk Session to censure those concerned, even in a case where the Appeal is sustained.

1.6 ***Sisting of Procedure:*** Whilst an Appeal or Complaint is pending in regular form before a higher Court the decision of the Kirk Session may not be put into effect.

1.7 ***Matters necessarily referred to Presbytery:*** A list has already been recorded III.2.28 of cases which must be referred by Kirk Session to Presbytery. In these cases, though a Presbytery is entitled to assume that parties have been cited *apud acta* and so should be present, it may be in the best interests of all concerned that Presbytery itself cite parties afresh to appear on a specified date, if Presbytery is resolved to carry the case through to a termination. This action is not necessary if Presbytery resolves, as is usually claimed best, simply to give instructions to the Kirk Ses-

sion as to how it should proceed. In this way the responsibility of the Kirk Session is fully acknowledged.

1.8 **Removal of Censures:** Censures imposed by a Kirk Session upon instruction by Presbytery cannot be removed by the Kirk Session except by authority of the Presbytery.

2. **Processes Originating in Presbytery.**

2.1 **Responsibility for Ministers and Probationers:** Ministers who are members of Presbytery are subject to the discipline of the Presbytery which is the court having primary jurisdiction over them. This rule applies also to resigned ministers resident within the bounds of the Presbytery (Act XIII, 1990). It applies also to Probationers resident within the bounds. Ministers who have resigned their charges and are resident outwith the bounds of any Presbytery of the Free Church of Scotland remain under the jurisdiction of the Presbytery within whose bounds they last resided (Act XVI, 1994).

2.2 **Concern in Discipline:** However distasteful and distressing it may be for a Presbytery to initiate a process against one of its ministers, the overriding consideration must be the honour of Christ and the purity of His Church. No serious allegation against a minister's conduct that breaches Biblical norms and impinges the good name of the Church, is to be overlooked.

2.3 **Caution in Discipline:** On the other hand, as by the very nature of his work a minister is vulnerable to accusations of misconduct, a Presbytery must exercise great care and prudence before itself originating or encouraging others to originate a formal process.

2.4 **Allegations not necessarily requiring formal process:** It may happen that allegations made to Presbytery against a minister do not relate to immoral conduct but to doctrinal pronouncements by him deemed to be unsound, or to practices that are deemed prejudicial to the good order and peace of the Church. In such cases the Presbytery must be careful to assess the knowledge and understanding and the known and avowed principles and motives of those who make the allegations, before taking any formal action. Obviously, early conference with the minister concerned is desirable, and he must be kept informed of all actions to be taken by Presbytery in the matter. In considering the allegations laid before it, Presbytery may conclude that: (1) though there appears to be some substance in the allegations they do not amount to charges relating to errors vitally prejudicial to the faith; (2) these minor errors do not appear to be stubbornly maintained or to be assiduously spread with a view to corrupt people; (3) nor indeed are the errors alleged being widely accepted and supported. If these are the conclusions of Presbytery their action must aim at calming and soothing the passions aroused. Conferences may be arranged to achieve the renouncing of even minor errors, and the procurement of understanding and reconciliation where there has been a degree of alienation. The aim is to reclaim from error rather than to eject any from the fellowship. The advice of other Presbyteries may be sought and if the time-lapse involved will not exacerbate the situation reference may be made to Synod and General Assembly.

2.5 **Presbyterial Visitation:** Complaints against a minister brought to the notice of Presbytery may relate to a series of acts of negligence or other unsuitable actions, and be indicative of a breakdown in relations between minister and people. In such a case the Presbytery should arrange a visitation of the congregation concerned.

The visitation will aim to discover whether the matters complained of are of long-standing or of recent occurrence. If of long-standing, enquiry will be made as to why the matters are now being brought before Presbytery. Enquiry will also be made as to whether those aggrieved took opportunity to explain their grievances to the minister and whether they sought the advice and possible intervention of other ministers before formalising complaints to Presbytery, and the results

of such personal actions will be considered. When all the information available has been duly weighed by Presbytery, it will endeavour by advice to minister and people, and even by rebuke of errors where discerned, to restore harmony and overcome any hindrances that may have arisen to the continuance of a profitable ministry of the Word in the congregation. Should such an outcome not be possible, and Presbytery be persuaded that though no formal charges can be laid against the minister there is a degree of incompatibility between minister and congregation that is unlikely to be overcome, it may proceed according to Act I, 1990.

2.6 *Right to a Libel:* What has been set out so far is what Presbyteries do by way of precognition, that is enquiry, before formalising a specific charge against a minister. This is to ensure that no formal proceedings are initiated rashly and all that properly can be done to avoid such action is done. Nevertheless, it has to be recognised that a minister who feels aggrieved by matters raised affecting him or by any investigation proposed by Presbytery has the right to demand that he be formally charged with offensive conduct before he will agree to discuss the matter with members of Presbytery. The formal charge is designated a Libel, the form of which is explained in 2.8 below. Though this is undoubtedly the minister's right, it is usually regarded as more becoming the spirit of the gospel that he is willing to hold frank discussion with members of Presbytery.

2.7 *Libel in less serious cases:* In view of the foregoing it can be seen that a formal Libel may be required even to deal with charges which, if proved, do not necessarily involve the imposition of high censure.

2.8 *Libel:* It has been established by long practice that no judicial process of a serious kind can be carried out against a Minister or a Probationer, except by the use of what is called a Libel. This is a document consisting of three parts, and forming a regular syllogism. The first, or major, proposition sets forth the nature of the alleged offence, declares its contrariety to the Word of God and the laws of the Church, and indicates the kind of consequences which ought to follow from it. The second, or minor, proposition asserts the guilt of the Minister or Probationer, specifies what are believed to be the leading facts involving guilt, and particularises time, place and other circumstances. This proposition may contain one or more counts of indictment. The third part connects the major and minor propositions together and thereby deduces the conclusion that the Minister or Probationer, as guilty of the offence mentioned in the major proposition, ought to be subjected to the consequences indicated provided the minor proposition be made good either by confession or by adequate evidence. It is of great importance that care be taken to frame the Libel with accuracy so as to avoid grounds for questioning its relevancy. It is required that in every case before a Libel is adopted it is submitted to the Law Agent of the Church (Act VI, 1912). A Libel must be signed by the party or parties prosecuting, and a list of witnesses and documents adduced in support of the charge embodied in it must be appended to it.

2.9 *Grounds for proceeding to libel:* There are three distinct grounds which justify or require a Presbytery to adopt or frame a Libel. Unless at least one of them is present the law of the Church forbids a Presbytery to initiate a formal process even to the extent of citing the minister concerned. The three grounds are:

- (1) A written and signed statement lodged by some person charging a minister with immoral conduct or heresy, providing some *prima facie* evidence and undertaking to frame a Libel;
- (2) The lodging of a Libel by some accuser who has been charged to do so under pain of being censured as a slanderer if he fail to do so;
- (3) The prevalence of a widespread rumour (*fama clamosa*) which lays Presbytery under an obligation to take action for its own vindication.

2.10 Necessary Preliminary Inquiries: In explanation of the foregoing paragraph the following should be noted:

(1) Since a scandal against a Minister, once raised, cannot be easily wiped off, a Presbytery must exactly ponder by whose information and complaint it comes before them. And in judging the *probability* that would justify them in proceeding, they are called upon to weigh well the measure of credit due to the quarter from which an allegation of scandal proceeds.

(2) If the raiser of a Complaint, being a Member of the Church, presses it upon them, representing that attention to it is requisite for the due exercise of discipline, while he fails to satisfy them of its truth being reasonably probable, they must require him to declare that he undertakes to make it out under the pain of being himself censured as a slanderer. If he allow this declaration to be minuted, and put his hand to it, they are called upon to proceed.

(3) Before beginning a process against a Minister or a Probationer on the ground of a *fama clamosa* involving serious scandal or manifest heresy, such as persistent opposition to the doctrine of the Confession of Faith, the Presbytery must be careful to inquire into the rise, occasion, broachers and grounds of such a *fama*.

2.11 Process against a Professor: Act IX, 1861 lays upon the General Assembly's Training of the Ministry Committee the special function of originating and prosecuting before the Church Courts any process required against a Professor in the Church's College for heresy or immorality. The rights competent to all parties according to the laws of the Church are at the same time reserved. This lays upon the Training of the Ministry Committee the duty of precognition and preliminary investigation prior to any decision respecting the presentation of a Libel to the relevant Presbytery.

2.12 Preliminary Examination: In all cases which may lead to a Libel, a careful preliminary examination of proposed witnesses is requisite by the party prosecuting in order that a charge incapable of proof may not be proceeded with.

2.13 Dealing with a view to Confession: If a Presbytery find that there is good ground for entertaining or framing a Libel against a Minister or Probationer subject to their jurisdiction, they ought in the first instance to deal with him so as to ascertain whether further steps in the process may not be superseded by his confession. They ought to do what they can, in the spirit of love and faithfulness, to bring him to a confession. He may either deny the charge or before committing himself at all by answering the inquiries of his brethren, he may think it necessary that the imputations against him be set forth distinctly in regular form. In either case the framing of a Libel becomes necessary.

2.14 Relevancy of a Libel: When a Presbytery has framed or resolved to entertain a Libel against a minister it must as a first step consider the relevancy of the Libel. The relevancy of a Libel includes two things:

(1) Whether the major proposition is true or not, that is, whether the offence or offences referred to are truly a subject of Church censure inferring the indicated penalty according to the Word of God and the standards of the Church; and

(2) Whether the conclusion is fairly deducible or not from the premises, that is, whether the facts specified in the minor proposition really amount to the offence or offences charged in the major proposition.

2.15 Notice of Meeting: The minister concerned is entitled to ten clear days' notice of the date on which the Presbytery is to consider the relevancy of a Libel. He should be duly cited to attend this meeting, and furnished with a copy of the Libel whose relevancy is to be considered.

2.16 *Discussion of Relevance:* On the date appointed Presbytery is to give careful consideration to the relevancy of the Libel and during the discussion of this question the minister concerned, though formally summoned, is not deemed to be a party at the Bar. He may therefore participate in the discussion and if aggrieved by the decision of Presbytery his remedy is not by Appeal but by Dissent and Complaint. This does not sist proceedings (see 2.21).

2.17 *Serving of a Libel:* If Presbytery adjudge the Libel to be relevant, it may then formally place it in the minister's hands as a Libel deemed relevant (see 2.23 below for action that may intervene before it is actually served). Once the resolution to serve the Libel as relevant has been agreed the minister concerned becomes a party at the Bar.

2.18 *Suspension from Duty:* Once a Presbytery has resolved to serve a Libel upon a minister, he immediately ceases to exercise the functions of his office, both ministerial and judicial, until the Libel has been finally disposed of. This cessation of duties is not a judicial censure and is without prejudice to the final outcome.

2.19 *Probationers:* The rule with regard to the Presbytery adjudging a Libel relevant before it may be served on an ordained minister does not apply in the case of Probationers. In such cases the Libel is first served and its relevancy considered thereafter, even when the Presbytery itself has framed the Libel.

2.20 *Libel framed by other parties:* When a Libel against a minister is prepared and prosecuted by any other party than the Presbytery, it must be presented to the Presbytery and can only be served by its authority. In this case its relevancy cannot be judicially considered until it has been served.

2.21 *Sisting of Procedure:* No Appeal or Dissent and Complaint at any stage of Presbyterial action in a case of charge or *fama* which involves a Libel, or may lead to the necessity of serving a Libel against a minister, has the effect of sisting procedure, until the Libel has both been served and found relevant (see Act IV, 1853).

2.22 *Irrelevancy of Libel:* If Presbytery judge a Libel to be irrelevant the whole proceedings fall to the ground, unless the decision regarding irrelevancy is brought before the superior Court by appeal, complaint or reference. If the intervention of the superior Court is required, it may correct the irrelevancy and return the process to the original court. If the decision of Presbytery, or in due course the Superior Court, is that only part of the Libel is irrelevant, the case may proceed with reference to the part which has been found relevant.

2.23 *Fresh Dealing toward Confession:* After a Libel against a Minister has been found relevant, the Presbytery ought to deal with him anew as to whether he is or is not prepared to confess the truth of the charge or charges. For every reasonable consideration ought to be urged in order to persuade a Christian Minister that, if an accusation against him be well-founded, it is his duty, both for his own sake and for the interests of the Christ's cause, to save his brethren or other parties the trouble of adducing proof against him either by witnesses or by documents. When the Presbytery are themselves the Libellers, this dealing may take place immediately after the Libel has been found relevant and before it has been actually served. In any other case it must be resorted to after the serving of the Libel and also after it has been found relevant. It may be carried on either at a private meeting of the Presbytery or by a Committee of their number appointed for the purpose.

2.24 *Taking of Proof:* If the accused Minister or Probationer persists in his denial of the charge or charges after the Libel has been found relevant, the Presbytery, if prepared to carry on the case without reference to the Superior Courts, must proceed to take the proof after hearing the Libel read over again and after hearing also any answers that may have been given in on the

part of the Minister or Probationer. The same rules for the conduct of the trial apply as have been stated with reference to the action of Kirk Sessions in cases of discipline. The whole procedure must be carefully minuted. It is expedient that it should be kept in a separate Record lest from any cause a Superior Court should order the whole or any part of it to be deleted or destroyed. But it must be considered in the meantime as an integral part of the Presbytery's Minutes.

2.25 Reference to Superior Courts when Presbytery are prosecutors: When the Presbytery are prosecutors, and have adequate evidence before them that a Libel adopted by them as relevant has been served upon a Minister within their bounds, it is competent for them, if they see cause, to refer the case to the Superior Courts (that is to the Synod, if it meets before the Assembly, and otherwise to the Assembly) either on the ground that it does not appear expedient in the circumstances for the Presbytery to act both as prosecutors and judges, or on the ground that it does not appear expedient in the circumstances for the proof to be taken except in the presence of those who have the power of giving a final deliverance as to its effect.

2.26 Reference to Superior Courts when another party prosecutes: When the Libel is prosecuted not by the Presbytery, but by another party, and when, having had adequate evidence before them that the Libel has been duly served, the Presbytery have found it relevant, it is competent for them, if they see cause, to refer the case to the Synod or Assembly, on the ground that it does not appear expedient in the circumstances for the proof to be taken except in the presence of those who have the power of giving a final deliverance as to its effect.

2.27 Deposition or Suspension after Confession: If a Minister or Probationer confesses himself guilty of any scandalous offence, such as flagrant or habitual intemperance, or of overtly violating the Seventh Commandment, it is the duty of the Presbytery to depose a Minister *instante* from his office, or to deprive a Probationer *instante* of his licence, and to deal with him otherwise as the ordinary discipline of the Church requires and as may be most for edification. A public confession in presence of the Congregation was originally required, though in many localities such a requirement may not be thought suitable in the existing circumstances of the Church and of society. Where an offence by a Minister has not been very flagrant or aggravated, suspension from office *sine die*, that is, indefinitely as to time, has sometimes been considered sufficient censure. But such a suspension is always accompanied by a sentence which looses the suspended Minister from his Pastoral Charge, so that, even if he is reposed to the status of a Minister, he is not restored to that Charge.

2.28 Execution of Sentences: In inflicting censures upon Ministers and Probationers, a Presbytery may either be called upon to execute its own judgments, when there is no appeal or complaint against them, or when they are confirmed by the Synod or Assembly, or be instructed to execute the judgments of the Synod or Assembly.

2.29 Minister not appearing: If an accused Minister, when duly cited, does not appear, and either leaves the locality, or shows himself otherwise contumacious, without any relevant excuse, the Presbytery are required to hold him as having confessed, and to depose and censure him *instante* with the lesser excommunication. If, after some time, he does not return and subject himself to discipline, he may be proceeded against, so as to be censured with the greater excommunication, if the Presbytery see cause.

2.30 Public Citation: The full citation of a Minister who does not obey an ordinary citation is a public citation from the pulpit of his Church.

2.31 Resignation does not stop Libel: A tendered resignation of his office by a Minister cannot stop procedure by libel against him, for no resignation can be accepted unless the Presbytery be satisfied that no charge of scandal or heresy can be reasonably brought against him.

2.32 Reponement: It is competent for a Minister to be reponed to his status, and for a Probationer to have his licence restored, upon professions of repentance which seem to be borne out by a course of consistent conduct. But great caution is requisite in entertaining the question of such reponement or restoration. A Minister may be reponed, or a Probationer's licence may be restored, either by the Presbytery which pronounced the sentence of deposition or deprivation, or by the Presbytery having jurisdiction over him at the time when application is made for reponement or restoration.

SUMMARY

1. When allegations made against a Minister are brought before Presbytery, they should instigate preliminary enquiry as to the nature, seriousness and *prima facie* plausibility of the charges made and as to the standing of those likely to give evidence.
2. If the allegations are not of serious moral misconduct or blatant heresy, Presbytery should endeavour by interviews, conference and visitation of the congregation, to deal with the situation in such a way as to restore good relations.
3. If allegations are of a serious nature Presbytery are first of all to ascertain the response of the Minister concerned, as confession on his part, if appropriate, may obviate the need for formal trial.
4. If serious allegations are made and denied by the Minister concerned and evidence of which Presbytery are aware indicates that a formal process should be initiated a Libel must be framed, either by Presbytery or by those making the allegations. The form of the Libel should be approved by a competent law agent.
5. A Libel against a Minister must be first scrutinised with regard to its relevancy and only after being adjudged relevant may it be served. But a Libel against a Probationer is to be served before judgment on the relevancy is pronounced.
6. A copy of the Libel, a list of witnesses and a note of evidence must be supplied in good time to the Minister before the meeting to assess relevancy takes place. The Minister must be summoned to this meeting.
7. When a Libel has been adjudged relevant, a further opportunity should be given to the Minister to confess guilt and if this is rejected the Libel should be served and the Minister is thereby relieved of all duty. A date is then fixed for formal hearing of witnesses who must be duly cited.
8. On the appointed date parties are called to the Bar, their testimony recorded and the Presbytery come to their decision and announce it to parties at the Bar. They may acquiesce in the decision or appeal to the higher court.

PART V: *Processes which are the Responsibility of the Provincial Synod*

1. ***Court of Review:*** The Provincial Synod becomes involved in a process of discipline as a Court of Review by means of Appeal, Complaint or Reference from Presbytery.
2. ***Evidence:*** When acting as a Court of Review in a case of discipline a Synod does not have witnesses personally at its bar as is the situation in the court in which the case was initiated. It is dependent on the written records of the case supplied by the lower courts and on the pleadings of parties at its bar. If the written records are very voluminous, it may be necessary to have

them printed and circulated to members of Synod and time given, by way of adjournment if appropriate, for members to study them.

3. **Correction of Irregularity:** If in the annual examination of a Presbytery's Record Synod becomes aware of irregularity in the proceedings of Presbytery, it must endeavour to correct the irregularity. This can be done by Synod simply reversing a judgment, or by reversing a judgment and instructing Presbytery how to proceed, or by drawing the Presbytery's attention to the matter as necessitating either investigation or further investigation than appears to have been given to it.

4. **Power to Initiate Enquiry:** Should Synod become aware of a scandal or *fama clamosa* before the court of primary reference has knowledge of it, it is its duty to inform the primary court so that it may initiate appropriate action. It is not competent for the Synod itself to initiate a formal process.

5. **Reference from Presbytery:** If a Presbytery refers a case to Synod in terms of Act IX or Act X, 1854, three courses are open to Synod. It may dismiss the reference and require the Presbytery to try the case; it may sustain the reference and resolve to try the case itself; or it may sustain the reference and refer the case to the General Assembly.

PART VI: Processes which are the Responsibility of the General Assembly or its Commission

1. **Court of Review:** Like Synod the General Assembly becomes involved in cases of discipline mainly as a court of review dealing with Appeal, Complaint, or Reference.

2. **Correction of Libel:** If the question of the relevancy of a libel against a minister is duly brought before the Assembly and the Assembly find that the libel is not relevant, they may, if they see fit, amend the libel and direct that the case be tried in Presbytery on the basis of the amended libel. (See Act VIII, 1854).

3. **Evidence:** In reviewing the judgment of Presbytery and Synod, the General Assembly are dependent on the written records of the case. They do not examine witnesses. The records must be printed and circulated to members of Assembly for their cognisance.

4. **Standing Orders:** Any procedure peculiar to the General Assembly is described in the Standing Orders adopted each year by the Assembly.

5. **Remission to Ordinary Commission:** It is within the power of the General Assembly to remit a case which they cannot themselves overtake to their ordinary Commission at one of its stated diets. The Commission is precluded from taking up a case which has not been specifically remitted to it by the Assembly. In dealing with any case the Commission must adhere to the Standing Orders

6. **Special Commission:** If a Reference is brought to the General Assembly in terms of Acts IX and X, 1854, the following courses of action are competent: (1) the Assembly may sustain the Reference and try the case; (2) the Assembly may dismiss the Reference and direct the Presbytery to try the case; (3) the Assembly may sustain the Reference and return the case to Presbytery with special instructions; (4) the Assembly may appoint a Special Commission to try the case. The Special Commission will be required to report its deliverance either to the General Assembly or to the ordinary Commission at one of its stated diets. The ordinary Commission will then pronounce sentence and give directions to the Presbytery concerned.

7. **Nobile Officium:** Because the General Assembly is the Supreme Court, beyond which there is no ecclesiastical mode of appeal, it is competent for it to exercise what is called the *no-*

bile officium; that is to say, when a case is fairly before it, it may take such action regarding it as may appear most for the interests of truth and the cause of justice, provided it does not exceed the powers vested in it by the ecclesiastical constitution. At any stage of procedure brought constitutionally under its view, the Assembly may either give special instructions to a Presbytery, or appoint Assessors to assist them, or appoint a Special Commission to deal with a matter for the right conduct of which the Presbytery may be disabled by any peculiarity of circumstances. But, notwithstanding the general principle which would justify such interference by the Assembly in extraordinary emergencies, it is held that without an extraordinary emergency it requires special legislation to warrant any disturbance of the ordinary course of Discipline even by the authority of the Assembly.

8. **Review of Synod Records:** If in reviewing Synod records the General Assembly perceive that discipline has been neglected or irregularly administered, they may take such corrective action as they deem proper. They may give directions as to how errors in procedure can be corrected and order the excision of objectionable minutes.

9. **Matter forced on attention:** If any case of palpable scandal, heresy or contumacy be forced by circumstances upon the attention of the General Assembly before it has reached any inferior Court having jurisdiction over the party, the Assembly may either remit such a case to the inferior Court or deal with it summarily by the direct exercise of their own authority.

10. **Execution of Sentences:** If a Libel involving a charge or charges of scandal or heresy is found proven by the General Assembly, the sentence following upon such a judgment, whether deposition, suspension *sine die*, or temporary suspension, or rebuke, or admonition, or deprivation of license, may either be pronounced by the Assembly, or be reserved for the action of the inferior Court in following out the Assembly's instructions.

SUPPLEMENT TO CHAPTER ON DISCIPLINE

EVIDENCE OF PERSONS UNABLE TO ATTEND A CHURCH COURT [ACT VIII, 1994]

1. A witness whose evidence is deemed likely to be material may not be able to attend the Church Court dealing with a case of discipline. Inability to attend may be due to illness, old age, or great distance, for example, residence overseas. Where illness is the cause of non-attendance, medical certification is required.

2.1 Where liability to attend is due to distance, evidence may be taken on Commission.

2.2 The relevant Court appoints a responsible person as its Commissioner to take the evidence of the witness in writing (possibly also with a tape-recording of the proceedings). This Commissioner is resident in the locality of the witness. Where distance precludes parties from being present at the Commission and so having opportunity to question and cross-question the witness, the following procedure is adopted:

(1) A list of numbered questions is prepared on behalf of the party who wishes the witness interviewed.

(2) This list is then submitted to the other party who prepares cross-questions to be put to the witness on his behalf. The preparation of this list of cross-questions cannot be postponed until the answers to the first list have been lodged.

(3) The list of cross-questions is then submitted to the first party and both parties try to agree the terms of both documents.

(4) The lists are then submitted to the clerk of the Court concerned and parties are duly cited to appear before the Court for the adjustment, if necessary, of the documents submitted and for their approval.

(5) The documents are then passed on to the appointed Commissioner who duly meets with the witness in a formal manner. At this meeting the Commissioner reads the questions separately to the witness and his replies to each question are numbered and recorded. The Commissioner may put further questions to the witness and require him to make such additions and explanations as he thinks necessary.

(6) The document recording the witness's answers and explanations should be read over by him or to him and duly signed by him.

(7) The documents are then returned to the clerk of the Court which authorised the Commission.

3.1 The foregoing is the best procedure which has been devised especially where the witness resides outside the United Kingdom. But these procedures, although satisfactory for obtaining certain types of evidence are a very inadequate and sometimes wholly unsuccessful expedient for testing the evidence of a witness whose credibility and reliability are likely to be serious issues. For interviewing a witness who though at a distance is within the United Kingdom a different procedure may therefore be adopted. This procedure dispenses with the preparation of written lists of questions and cross-questions and adopts what is called an "open Commission".

3.2 In an open Commission, the Commissioner effectively holds court at the location of the witness and parties attend and put questions as they would normally do and the Commissioner records the questions and answers in writing as given in the course of examination, cross-examination and re-examination, possibly with the support of a tape-recording of the proceedings. In his report of the evidence the Commissioner may remark upon the demeanour of the witness and his impressions as to credibility and reliability.

3.3 A circumstance to be noted is that at an early stage when proceedings are only being contemplated, a party may seek to obtain immediately the evidence of a witness where the evidence is in danger of being lost. The danger usually arises from the witness's old age or dangerous sickness, so that he is in danger of early death, or from the fact that he is obliged to go abroad. In that event the evidence is taken to lie *in retentis*, that is to be held back or laid aside until the proper time arrives for adducing it.