

**AUSTRALIA BRANCH
(Via CompuServe)**

AB:LLA February 18, 1997 No. 173

Governing Body, Publishing Committee
Brooklyn.

Dear Brothers:

Re: Handling Child Abuse Matters - Court Subpoenas

We are writing to seek an urgent response to two questions and matters related to them, as set out below. The Society and the chairman of a judicial committee have received subpoenas to produce confidential records relating to a charge of child abuse, the return date being February 27, 1997.

For the reasons later discussed in this letter, we have determined, subject to your direction otherwise, that the Society should hand the disfellowshipping records to the court without claiming ecclesiastical privilege. We believe that the elders may also want to hand over the congregation's records, but we will leave that for them to decide. We have today discussed the issues briefly with Brother Lloyd Barry of the Governing Body and are forwarding this letter with a request for an urgent response, if that is possible.

This particular case involves a man who was disfellowshipped for homosexual acts with a young boy with whom he studied some years ago. He was disfellowshipped on his own admission and later reinstated. It appears that the brother will deny the charges in court, and the testimony of the elders, and the congregation and Society records will be needed to convict him.

There is little, if any, chance that we would be successful in a claim of ecclesiastical privilege on the records held by the Society and if we seek to claim privilege it will give the impression that we are wanting to cover over the matter. However, if we do hand over the records without putting up a fight, it will tend to undermine the stand taken by the elders when asked to produce the congregation judicial records. Until now the elders have been willing to face a jail sentence rather than disclose confidential information or records.

So, basically, our questions are, where individual elders or the Society are subpoenaed to testify to what they know, and/or records in their possession are the subject of a subpoena:

- 1 How should the Society respond?
- 2 How should the elders on the judicial committee respond?

There have been several incidences where elders have been subpoenaed to testify against a brother or a disfellowshipped person who has been accused of child abuse and we have examined the possibilities of claiming ecclesiastical privilege on numerous occasions. Hence, we are not primarily seeking a legal answer to these questions. We are

asking for a scriptural viewpoint on the appropriate course to take in view of the confidentiality requirements outlined in the Scriptures and the Society's publications.

In some of the States of Australia legislation exists which grants qualified privilege to ministers of religion. Only matters disclosed in confession, according to the ritual of the particular religion, are privileged. As you would appreciate, not all judicial matters come within this definition, since information is gained by the elders from the testimony of others and circumstances not related to a confession. This may be the case even where there is a confession. We believe that we can extend the claim of privilege to written notes made by the elders where they pertain to an actual confession, but not to records that originate from witnesses testifying in the judicial hearing. When records are forwarded to the Society, these records are distanced from the confession and would not come within the provisions of the various State Acts.

Three of the seven states of Australia have not legislated to provide for ecclesiastical privilege and the common law operating in these states provides no basis for such privilege. To date we have relied on the fact that prosecutors and judges have been reluctant to penalise ministers who have refused to divulge the contents of a confession.

If records held by the Society are subpoenaed, and where it is clear that no privilege exists, are such records to be released? If so, what effect will this have on the elders who may not see the fine line between documents held by the Society and those held by the elders? Even though the legal principles applicable to the records held by the Society are different to those applying to those held by the elders, it would be hard for the brothers to see that difference if the Society were to release their records but encourage the elders to take a different course.

In your Interbranch Memo LLB:LSB of September 16, 1993, on page 2, it is stated: "When elders are forced to go to the hearing, they have been directed to claim ecclesiastical privilege unless ordered to testify by a judge or risk contempt of court. Then, each elder has been allowed to make his own conscientious decision. No one should view any elder in an unfavourable light for whatever decision is made in these instances." This raises several questions.

When the order is to disclose or produce the records of the judicial committee, is it a matter for the elder personally and for his conscience alone?

Why is the subject matter no longer confidential merely because a judge decides it is not confidential? It would seem to us that it is a breach of confidentiality to disclose such matters whether or not a person is ordered to do so by a judge. Perhaps the principle of protection for the brothers and the community permits disclosure of information that would otherwise be confidential. (w 1/1/97, page 29, par 4) Is that the case?

The Watchtower has said, "Depending on the law of the land where he lives, the molester may well have to serve a prison term or face other sanctions from the State. The congregation will not protect him from this." (w 1/1/97, page 29) Does this mean that where a brother has committed a criminal offence, such as child abuse, the elders on the judicial committee or the Society, will disclose this information to the proper authorities if required to do so? If that were the case, and the brothers were aware of our stand, it would make a clear distinction between matters that may or may not be disclosed even under duress.

This also raises the question of whether elders should report child abusers or other criminal activities that they are aware of *before* they are ordered to do so by a court, particularly where they have some indication that the person may be a danger to the congregation or the community.

Of course, there are varying degrees of abuse, and the circumstances that surround the offences may vary greatly. A person may have committed an offence some 10 or 20 years ago, and the victim who is now an adult makes these accusations. The accused may admit the accusations, and while we would not permit him to serve in a responsible position, does that mean that the elders, or the Society, should testify against him in court when ordered to do so? If the elders were to testify and disclose the confidential records of his past, they would also have the opportunity to speak to his altered course of life, if that was a fact.

Where elders become aware of a person's previous record of child abuse, and that person applies for baptism, or to become an unbaptised publisher, should he not be encouraged to clear this matter with the authorities before he is approved, or at least should he not be advised by the elders that if the issue arises later, the elders will have to testify to the authorities.

The general feeling in the community and the legal profession is that churches will cover and protect child abusers, and that has proven to be the case in Christendom. We have also been accused of protecting the abuser when we refuse to reveal confidential matters, or produce confidential records.

Since these issues are arising with greater frequency as the old system decays, we feel that it is important to clarify the questions raised in this letter. It may be that the Society will need to review the extent to which it keeps records and reports of judicial proceedings involving criminal matters. Perhaps the only information we need to keep is the fact and date of the disfellowshipping. If this was the procedure *only in matters involving child abuse* it may be that this would be clear enough indication to the Society as to his past record. It may also be advisable to make an exception to the re-instatement procedure in these cases, allowing the Society to review the judicial committee's decision prior to any announcement to him or to the congregation. In that case, the elders could send a report from the disfellowshipping records of the congregation.

There are, then, two issues that seem to cross the issue of confidentiality. Firstly, the need to protect the children in our congregations and the community, and the question of whether elders bear some responsibility if a person is permitted to continue to abuse children. Secondly, the question of where Caesar's law overrides the obligation of confidentiality.

Our questions, then, are:

1. Where it is clear that there is no ecclesiastical privilege available a law, does the obligation of the elder to maintain confidentiality cease when ordered by proper authority to disclose such information, either by personal testimony or the production of records?
2. Where the Society is called upon to produce and/or speak to the documents it holds, what stand should be taken?

We therefore seek an urgent response to these issues

Please accept our warm Christian love,

Your brother,
H. V. Muritz
For the Branch Committee
AUSTRALIA BRANCH

xc: Writing Committee
Service Committee