

## SUMMARY OF DECISION

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The decision under appeal to the ELCIC Court of Appeal (Court) is the Synod Council's September 2021 decision to suspend the Appellant from the roster of ordained ministers of the Evangelical Lutheran Church in Canada (ELCIC) "for her willful noncompliance with the standards and practices and the constitution, administrative bylaws and enactments of the ELCIC described in para. 3 of the *Manual Re: Discipline of Rostered Ministers*, until such time as the ELCIC recognizes and affirms polyamorous relationships for rostered ministers." The majority of the Court has decided to grant the appeal and set aside the Synod Council's decision, finding that the Appellant is not in contravention of para. 3 of the *Manual Re: Discipline of Rostered Ministers* ("Manual"). One member of the Court dissents from the majority view, finding that the Appellant is in breach of an enactment of the ELCIC, contrary to the ELCIC Constitution. In addition to its decision on the appeal, the Court has made several recommendations regarding the review and amendment of the ELCIC's governing documents.

The majority decision is based on the grounds for discipline alleged in the Complaint against the Appellant underlying Synod Council's disciplinary decision. The Complaint only refers to para. 3 of the ELCIC Manual: "willful disregard or violation of the functions and established by the ELCIC for rostered ministry," alleging contravention of the ELCIC Social Statement on Human Sexuality (SSHS) as the basis for this ground. In the majority's view, the wording of para. 3 of the Manual clearly requires "functions and standards" to be articulated in Article VIII of the Constitution or Part IV of the Administrative Bylaws. Neither the SSHS nor a prohibition against polyamory is found in these provisions, as required by para. 3. For this reason the majority finds it unnecessary to determine whether the SSHS should be interpreted as prohibiting polyamory.

Since the majority is also of the view that the Complaint does not refer to (nor include by implication) para. 4 of the Manual regarding "willful disregard of the... enactments the ELCIC" and the Complaint was not amended to include this ground for discipline, it is also unnecessary to decide whether the SSHS should be interpreted as an "enactment" of the ELCIC under para. 4 of the Manual. The majority views the grounds in paras. 3 and 4 of the Manual as distinct and therefore has serious concerns that a breach of due process would arise from treating the Complaint as having included para. 4.

The majority of the Court finds that due process errors were in fact committed by the Committee on Discipline during the hearing of the Complaint regarding some of the questions asked of rebuttal witnesses and with respect to the introduction of new evidence in Complainant's closing statement. However, due to a lack of clarity regarding the Court's power to remedy this issue, it is not included as grounds for granting the appeal.

The dissenting opinion of one member is to dismiss the appeal on the basis that the SSHS, which is identified in the Complaint, is a valid "enactment" of the ELCIC that sets a standard for both lay and rostered members of the church. Article VIII, s. 2 of the Constitution is viewed as the "standard" being violated, which requires a pastor to covenant to abide by "enactments" of the ELCIC. The dissenting member of the Court expresses concerns that granting the appeal would undermine the validity of work by ELCIC task forces that develop statements such as the SSHS.