

Chapter 7 GENERAL RULES**Clerk**

7.1 Every court shall have a clerk, usually but not necessarily a member of the court, who shall keep an accurate record of its proceedings and supply extracts when requested to do so.

Extracts

7.1.1 Extracts from the minutes of proceedings of a court or certificates regarding the resolutions of a court are given, on application, by the clerk, but he may refer such applications to the court for instructions.

Fees

7.1.2 The court shall fix what fees, if any, are to be charged for extracts.

Tenure of office

7.2 A clerk is appointed either for a specified time or at the pleasure of the court. Unless otherwise recorded, the appointment is at the pleasure of the court.

Oath of office

7.3 On accepting office, a clerk shall promise to discharge faithfully the duties of the office by repeating these words: "I solemnly affirm and declare that I will faithfully discharge the duties now entrusted to me".

Temporary clerk

7.4 In the absence of its clerk, a court shall appoint a temporary clerk whose appointment must be recorded in the minutes and who must also take the oath of office.

Meetings constituted

7.5 Meetings of Church courts, congregations and committees are opened and closed with prayer, both facts being minuted. The Benediction may take the place of the closing prayer.

Minutes confirmed

7.6 When a court has been constituted, the minutes of the previous ordinary meeting and any of any special or urgent meetings are read or taken as read if circulated to all members, corrected if necessary, and confirmed.

Accuracy

7.7 The correction of a minute does not imply any power to alter the acts or decisions of the meeting. The only question is the correctness of the minute as a true account of what was done.

Alteration

7.7.1 Any alteration shall be noted in the margin and initialled by the moderator and clerk.

Minutes signed

7.7.2 The minutes must then be signed by the moderator and clerk.

Decisions - when operative

7.8 Notwithstanding the fact that a decision of a court has not been confirmed, the decision itself becomes operative from the time it was made or ordered to take effect, except that decisions of the General Assembly, unless otherwise ordered, take effect immediately upon the closing of the Assembly.

Permanent records

7.9 The permanent records of the courts of the Church shall be those confirmed in the presence of the court.

Deletion of minute

7.10 Once minutes of a lower court have been confirmed, no part of them shall be deleted except by authority of the immediately higher court.

7.10.1 When a minute is deleted as a result of such authorisation or ordering, reference to the minute of the court so authorising or ordering shall be made in the margin.

Not recorded

7.11 It is competent for a court to resolve that certain decisions or acts shall not be recorded in the permanent record.

Record apart

7.12 To keep its record of proceedings free from the presence of undesirable matter, every court shall keep a separate Record Apart for a case where moral delinquency is alleged, whether the case comes before it as the court of first instance or of appeal. The resolution to keep minutes of the proceedings of a case in the Record Apart shall be minuted in the Record Apart, not in the ordinary record.

7.12.1 The Record Apart of each such case shall be kept on separate sheets consecutively numbered both in figures and in words at the head, and subscribed by the signature of the clerk at the foot.

7.12.2 No entry may be made in the permanent record of these courts until judgement in the case is finally delivered.

7.12.3 When the judgement which finally disposes of the case, by whatever court of the Church pronounced, involves any degree of censure of the accused, the court of its first instance shall record in its ordinary minutes:

- (a) the first minute of the Record Apart;
- (b) the libel, or a summary of each of the charges thereof if a libel was served; and
- (c) the final judgement.

7.12.4 When a case has ended in entire acquittal, the court of first instance shall:

- (a) seal up in the presence of the court the Record Apart with all papers appertaining thereto;
- (b) endorse the sealed papers with a note of the judgement;
- (c) retain the sealed papers for five years before destroying them;
- (d) furnish the person so acquitted with a certified copy of the judgement of the court.

Typed or loose-leaf

7.13 When minutes are type-written and pasted in, or when loose-leaf books are used, the pages must be numbered consecutively and each page initialled by the moderator and the clerk.

Index

7.14 Minutes must have a clear index of subjects for the sake of reference. A general index should also be kept for each volume.

Incompetent motion

7.15 A motion is not competent if it: (a) violates a law of the Church; (b) violates a decision of a higher court; or (c) infringes on the privileges of a court.

Reopening a case by petition

7.16 Members of any court may not only dissent from its decision on a case but may petition to have the case re-opened if they can: (a) produce new evidence materially bearing on the case; or (b) demonstrate to the satisfaction of the court that the rules of procedure have been so violated or departed from as to involve substantial injustice.

7.16.1 Due notice of such a petition and of the grounds on which it is based must be given to the court. Without sufficient grounds, petitions to re-open a case are liable to be dismissed as frivolous and/or vexatious.

Courts of equal status

7.17 An inferior court has not the right to interfere with or review the proceedings of courts of equal status. It may endeavour to put any matter right by friendly representation. If this is ineffectual, the court which feels aggrieved may ask, through a higher court, for information relative to the alleged action of the courts of equal status.

Formulation of a charge

7.17.1 If any charge founded on such information is brought against a lower court, it must be definitely formulated in writing, and, before the charge is taken up by the higher court, the lower court must be given an opportunity to meet and appoint respondents to defend its action.

Procedure

7.17.2 The charge as thus formulated is dealt with in the same manner as an appeal, the members of the lower courts concerned having no right to vote or to take part in the deliberations except as appellants and respondents.

Business of lower courts

7.18 In all meetings of lower courts, the items of business to be taken up shall be fixed at the commencement of the meeting.

7.18.1 No item to which exception is taken by three or more members of the court may be discussed:

- (a) until the next ordinary meeting; or
- (b) until a meeting is called for the purpose of considering the matter to which exception is taken; or
- (c) unless notice of intention to have the matter brought forward was given at a previous meeting; or
- (d) unless the matter is included in the circular calling the meeting.

Business of ordinary meetings in lower courts

7.19 The following is recommended as the order of business in lower courts:

- (a) adoption of the agenda for the meeting;
- (b) confirmation of the minutes of the previous ordinary meeting and of any special or urgent meeting held since the last ordinary meeting;
- (c) in Presbyteries, the sustaining of commissions and the welcoming of associated members;
- (d) reasons for dissent from any of the decisions recorded in the minutes and the necessary procedure connected therewith;
- (e) reception of deputations;
- (f) matters recorded in the previous minutes but not disposed of at the previous meeting;
- (g) matters of ordinary business which have emerged between the meetings;
- (h) matter of which notice has been given at the previous meeting;
- (i) notices of motion relative to matters to be brought forward at a future meeting.

Instruction of parties

7.20 It is the duty of the lower court, when requested to do so or when it considers it necessary, to instruct parties on the rules and forms of procedure applicable to their cases.

Documents in a case

7.21 The court from which any appeal, complaint, petition or reference comes, must forward to a higher court all documents relating thereto.

7.21.1 No document shall be read or appear among the papers of an appeal, complaint, petition or reference unless it was before the court of first instance or, upon being offered to it, was rejected.

Documents not received

7.21.2 Every court is entitled to protect:

- (a) itself from evident insolence and contumacy; and
- (b) outside parties from unnecessary injury. In doing so it may refuse to receive documents which commit such offences.

Distribution of papers forbidden

7.22 Before a case comes before a court, parties in the case are forbidden to distribute to members of the court papers bearing on the case.

A party not to vote

7.23 A member of a court is not entitled to deliberate or vote in a case in which he is a party or in a case in which he is a candidate for office.

Private sitting

7.24 When parties are removed from the bar, it is at the discretion of the court whether or not they shall hear the deliberation on their case.

Canvassing

7.25 Canvassing on the part of a candidate for an office or appointment disqualifies him 1 her from office.

Associate

7.26 A member of one court present at the meeting of a co-ordinate or lower court, may be associated unless a judicial process is before the court.

Special activities

7.27 Any decision to pause in the proceedings of a court to engage in special activities shall be made only by the moderator.

Right to dissent

7.28 A member of a court, other than a party at its bar, is entitled to have his / her dissent recorded in respect of a decision against which he 1 she has voted, provided:

- (a) such a decision has been made after a show of hands 'For' and "Against", or a division, is not a resolution of the 'Committee of the Whole', or a decision on an amendment or part of a case, and
- (b) the dissent is given in when the decision is announced, and is not against carrying out an instruction of a superior court.

Moderator's dissent

7.28.1 A moderator, having no deliberative vote, may also record dissent.

Effect of dissent

7.28.2 A member of a court who dissents from a decision relieves himself 1 herself from responsibility for the decision and its consequences and protects himself 1 herself from censure on account of it, but is still under obligation to comply with the decision itself unless and until it is reversed or altered.

Reasons and answers

7.28.3 No reasons need be given for dissent, but if given forthwith, they are usually recorded. The court may or may not frame answers which are recorded only if the reasons have been recorded. Otherwise, reasons and answers, if any, are kept separate.

Reasons rejected

7.28.4 A court may reject reasons for dissent which are:

- (a) disrespectful to it; or
- (b) injurious to a party; or
- (c) involve a breach of privilege.

Not recorded

7.28.5 While not rejecting a dissent or reasons for dissent, a court may have good ground for refusing to insert the same in its permanent record, and may simply minute the fact that the member dissented and that the dissent and reasons were ordered to be kept separate.

Reasons brief

7.28.6 Reasons must be brief and definite.

Appeal

7.29 An appeal is a signed document given in by a person who is or was a party at the bar in a case before a court. It contains grounds for the appeal against a decision of the court and is designed to bring that decision under review by a higher court.

7.29.1 The appellant must either give in the appeal at the time the decision of the court is announced, or, at that time, protest for leave to appeal.

7.29.2 A lower court must inform any parties at its bar of this requirement when judgement is delivered.

Complaint

7.30 A dissent and complaint also referred to herein as a complaint is a signed document presented by a member of a court who neither is nor was at its bar in a case before the court. It contains reasons for dissent and complaint against a decision of the court on which the complainant has voted in the minority, and is designed to bring that decision under review by a higher court.

7.30.1 Separate reasons for dissent are not presented. The complainant says, "I dissent and protest for leave to complain". The complaint shall be presented at the time or within the period hereinafter provided.

Moderator's rights

7.30.2 A moderator, having no deliberative vote, may also dissent and complain.

Rights reserved

7.31 A lower court against the findings of which an appeal or complaint has been lodged may, at its own risk, proceed without regard to the appeal or complaint if it considers that:

- (a) there is nothing in the subject matter or the procedure or the finding to warrant the appeal or complaint;
- (b) the appeal or complaint is frivolous or vexatious;
- (c) its finding was in the interests of the Church's welfare or the higher good of the Kingdom of God; the rights of the appellant or complainant being always preserved.

Court cannot refuse leave

7.32 A court cannot refuse leave to appeal or to complain when a qualified person protests for either of these.

Reasons lodged

- 7.32.1** An appellant or complainant must lodge reasons for appeal or complaint with the clerk of the court the decision of which is appealed or complained against.
- 7.32.2** This must be done within ten days, not including the day of decision, otherwise the appeal or complaint shall be held to be fallen from, and the court shall proceed as if no appeal or complaint had been lodged.

Extracts

- 7.32.3** A person intending to appeal or complain against a decision of a court may crave extracts relevant thereto and is entitled to full but not partial extracts of the proceedings and to copies of all relevant papers.
- 7.32.4** Reasons for appeal or complaint may be such as these:
- (a) irregularity in the proceedings of the court;
 - (b) refusal of reasonable indulgence to a party in the conduct of a case;
 - (c) reception of irrelevant evidence;
 - (d) refusal to receive relevant evidence;
 - (e) error or injustice in judgement;
 - (f) judgement against evidence or the weight of evidence;
 - (g) denial of natural justice.

Respondents and appellants

- 7.32.5** When an appeal or complaint is lodged against the decision of a lower court, two members of the court shall be appointed to act as respondents and defend its judgement. The appellant and complainant and the respondents alone have the right to speak on the case in the higher court.

Appeals against final decision or judgement

- 7.32.6** An appeal or complaint against the final decision or judgement on a case stays execution of the decision or judgement until the appeal or complaint is disposed of by the higher court or it becomes null by not being prosecuted.

Appeal on a part or on point of procedure

- 7.32.7** An appeal on a part or on a point of procedure, unless expressly provided to the contrary, does not stay procedure or prevent the court from prosecuting the matter and ripening it to final judgement.

Earlier appeals

- 7.32.8** If there is no appeal or complaint against the final decision in a case, all earlier appeals or complaints are held to be fallen from.

Papers transmitted

- 7.32.9** A court shall transmit to its higher court any appeal or complaint received against one of its decisions together with all records and documents connected therewith.

Responsibility of appellant or complainant

- 7.32.10** It is the responsibility of the appellant or complainant to satisfy himself 1 herself that all necessary documents have been transmitted to the higher court.

Failure to appear

- 7.32.11** An appellant or complainant failing to appear at the bar at the time appointed is held to have fallen from the appeal or complaint unless the court, for due cause, is shown otherwise.
- 7.32.12** Where sickness is relied upon as the reason for failure to appear, a medical certificate must be produced.

Appeal or complaint fallen from

- 7.32.13** When an appeal or complaint is not proceeded with, a member of the court the decision of which was appealed or complained against should take protestation in the higher court that the appeal or complaint has been fallen from, and that the decision of the lower court has become final, and should crave extracts. This protestation, after being recorded in the minutes, shall be supplied by the clerk as an extract minute.

Death of an appellant

- 7.32.14** In the event of the death of an appellant, the appellant court may allow his / her representatives or a member of the court authorised in that behalf to appear in the interests of the good name of the estate of the appellant, should such matters be involved in the appeal.

Parties at the bar

- 7.32.15** Appeals and complaints place at the bar of the higher court and prevent from voting in the case: (a) all members and former members of the lower court together with appellants or complainants who were members of the lower court at the time when the decision appealed or complained against was made; and (b) members of the lower court admitted subsequent to its decision and before the appeal or complaint has been finalised.

Arguments

- 7.32.16** Appellants or complainants should confine their arguments to the points to which the appeal or complaint refers, as set forth in the record.

Procedure

7.32.17 In appeals or complaints, the procedure shall be:

- (a) the minutes of the lower court and relative documents shall be read;
- (b) parties shall be called;
- (c) the clerk shall read the following announcement:
"As the decision of the court is determined not only by the documents in the case, but also by the pleadings at the bar, members are reminded that justice requires the pleadings at the bar to be heard by all those who vote in the case, and that, in particular, no member ought to vote against either party who has not heard the pleadings on that side.";
- (d) the parties shall be heard;
- (e) members of the court may, through the moderator, put questions to the parties. If the court sees fit, questions and answers may be recorded in the minutes;
- (f) parties shall be removed from the bar;
- (g) the court shall consider the case and proceed to judgement;
- (h) parties shall be recalled, the finding shall be intimated to them and, except in the highest court, they shall be asked if they acquiesce.

How dealt with

7.32.18 The higher court may:

- (a) sustain or dismiss the appeal or complaint in whole or in part;
- (b) modify or alter the judgement of the lower court;
- (c) remit the case to a special committee of inquiry and report.

7.32.19 If any of the parties refuse to accept the recommendations of the special committee, they are entitled to be heard by the court itself before the final judgement is delivered.

Sustained

7.32.20 Appeals or complaints are sustained because the decision of the lower court is disapproved or because of irregularities or informalities in the procedure of the lower court.

7.32.21 The sustaining of an appeal or complaint on the ground of irregularities or informality does not necessarily imply the reversal of the decision appealed against. Unless it is considered that substantial injustice has been done to the appellant or complainant through such irregularities, the higher court, without entering comment on the merit of the decision appealed or complained against, or pronouncing any judgement in regard to it, may send back the case to the lower court with particular instruction or with instructions to have it taken up anew and disposed of in accordance with the laws of the Church.

Dismissed

7.32.22 The dismissing of an appeal or complaint implies approval of the procedure and confirmation of the decision of the lower court.

Overture

7.33 An Overture is a formal written proposal submitted to a court:

- (a) for the enactment of a new law; or
- (b) for the repeal of an existing law; or
- (c) for a declaration or interpretation of the law on some particular point; or
- (d) to have something done or declared which is for the general benefit of the Church.

7.33.1 Only matters of general interest may be brought by Overture.

Form of overture

7.33.2 An Overture for the enactment of a new law or the amendment of an existing law ought to set forth what is desired in the exact words in which it would stand if granted. Overtures of vague, indefinite proposals, although their aim may seem to be good, may be dismissed as irrelevant.

Rights of members

7.33.3 Members of lower courts have a right to move that Overtures on any matter which they regard as of general importance be sent to the higher courts.

7.33.4 In deciding to overture a higher court, a lower court is required to:

- (a) ensure that the Overture is in due form and properly expressed; and
- (b) appoint two of its members to support the Overture in the higher court.

Who may overture

7.33.5 An Overture may be made:

- (a) to a court by a lower court;
- (b) to the General Assembly by any seven members thereof or by a committee thereof,
- (c) to a lower court by any two members thereof.

Notice

7.33.6 No Overture may be moved in any court unless notice has been given at a previous session of the court, or intimated by circular to all members of the court prior to the meeting at which the Overture is brought forward.

From session to State Assembly

7.33.7 Any Overture from a Session to the General Assembly shall be transmitted through the Presbytery of the bounds, which shall forward it with or without comment, or with approval or disapproval.

7.33.8 A Presbytery may not refuse to transmit an Overture which has been presented in proper form.

7.33.9 In cases of urgency when no regular meeting of the Presbytery intervenes between the meeting of Session at which the Overture is approved and that of the Assembly, the Session may transmit the Overture to the Assembly direct.

From Presbytery to G.A.A.

7.33.10 Similar provisions apply in the case of the transmission of an Overture from a Presbytery through the State Assembly to the General Assembly of Australia.

Proceedings not judicial

7.33.11 A court when considering an Overture is not exercising its judicial function and the stating of an Overture does not bring parties to the bar or exclude any member of the court from participating and voting in the proceedings relative thereto.

When several overtures

7.33.12 If there are several Overtures on substantially the same subject, only one person shall be heard in support of each.

Receiving and stating an overture

7.33.13 Before an Overture may be stated in the court to which it is addressed it must be formally received. Only members of the court overtured or others specifically appointed for the purpose by a lower court from its own members may state the Overture.

7.33.14 After the Overture has been stated, members of the court may put questions to the overtureists through the Moderator. After questions have been answered, the overtureists, if they are members of the court overtured, have the right, in priority to other members:

- (a) to move that the Overture be sustained; and if the motion is approved,
- (b) further to move that the specific action proposed in the Overture be taken.

Procedure

7.33.15 If no one appears to introduce the Overture, it falls without motion to that effect. Once introduced, even if the introducer does not support it, the Overture is before the court and action must be taken on it.

How dealt with by higher court

7.33.16 An Overture is either:

- (a) sustained by the higher court and the specific matter proposed in the Overture approved in its original or amended form; or
- (b) sustained by the higher court and sent down to Presbyteries in its original or amended form for consideration and report; or
- (c) sustained by the higher court and sent down to Presbyteries in its original or amended form under the Barrier Act; or
- (d) it is dismissed.

Remits apart from Barrier Act

7.33.17 The Assembly may remit any subject to Presbyteries and Sessions if it sees cause to do so, for their suggestion, opinion and report, apart from the Barrier Act.

7.33.18 Under such a remit, Presbyteries, and Sessions if included, may:

- a) approve or disapprove of the proposal in its present form, or;
- b) approve of the proposal with amendments

Not passed into Standing Law

7.33.19 Upon such a remit and the returns thereon, the Assembly does not pass the overture into standing law of the Church.

Remit under the Barrier Act

7.33.20 Before an Overture can pass into a standing law of the Church it must be approved by the Assembly and sent down to Presbyteries under the Barrier Act, that is, Presbyteries must either approve or disapprove of the Overture.

7.33.21 Any suggestions from a Presbytery in view of a possible reconsideration of the subject on an Overture under the Barrier Act must be kept entirely distinct from the approval or disapproval of the Overture.

7.33.22 A qualified approval is reckoned as disapproval.

7.33.23 Presbyteries not reporting are held to vote in the negative.

7.33.24 If a majority of Presbyteries approve, it shall be competent for the Assembly to pass the Overture into a standing law, should it see fit, or it may remit the Overture again to Presbyteries in the same or in an amended form.

Resolution of Impasse between the Presbyteries in respect of a Remit under the Barrier Act

7.33.25 If exactly half the number of Presbyteries approve the Overture, then the Assembly shall remit the Overture in identical terms as before to the Presbyteries and to all the Sessions within the Assembly's bounds.

7.33.26 Any suggestions from a Presbytery or a Session in view of a possible reconsideration of the subject of an Overture under the Barrier Act must be kept entirely distinct from the approval or disapproval of the Overture.

7.33.27 A qualified approval is reckoned as disapproval.

7.33.28 Presbyteries or Sessions not reporting are held to vote in the negative.

7.33.29 If a majority of Presbyteries approve the Overture:

- a) The impasse shall be treated as resolved in the affirmative and the returns from the Sessions shall be disregarded.
- b) It shall be competent for the Assembly to pass the Overture into a standing law, should it see fit, or it may remit the Overture again to Presbyteries in the same or in an amended form.

7.33.30 If exactly half the number of Presbyteries approve the Overture and also no less than three-fifths of the number of Sessions approve it then the impasse shall be treated as resolved in the affirmative, and it shall be competent for the Assembly to pass the Overture into a standing law, should it see fit.

7.33.31 If exactly half the number of Presbyteries approve the Overture and also less than three-fifths of the number of Sessions approve it then the impasse shall be treated as resolved in the negative.

7.33.32 If the number of Presbyteries that approve the Overture be less than half the number of all Presbyteries, then the impasse shall be treated as resolved in the negative and the returns for the Sessions shall be disregarded.

Law of the Church

7.33.33 A standing law of the Church is a law enacted in accordance with the provisions of the Barrier Act.

Interim Act

7.33.34 If the Assembly considers the object of an Overture transmitted to Presbyteries under the Barrier Act to be of urgent practical importance, it may, while transmitting the Overture to Presbyteries, at the same time pass it into an interim Act which shall remain in force only until the next meeting of the Assembly.

When not interim act

7.33.35 No Overture shall be converted into an interim act which involves an essential alteration of the existing law or practice of the Church, it being understood that this does not apply to measures which may be necessary for carrying out more effectively subsisting regulations or forms of the Church.

Declaratory Act

7.34 The rules regarding Overtures do not prejudice the right of the Assembly to pass Declaratory Acts, declaring what the Assembly understands the law of the Church to be on any point on which questions have been raised. Such Acts may be passed by the Assembly without reference to Presbyteries.

Petitions

7.35 A Petition is a written and signed request in approved form made to a court and usually relating only to the affairs of the petitioners.

7.35.1 Petitions must be in respectful language and usually include a statement of the circumstances or reasons which are held by the petitioners to justify the specific request made.

Who may petition

7.35.2 Any lower court, congregation, committee or organisation of the Church, or any person or group of persons within the jurisdiction of the courts of the Church has the right of approach to the appropriate court of the Church by Petition. Such court may at its discretion receive and deal with a petition from any other person than the aforesaid.

Matter and form to be attended to

7.35.3 Petitions must be what they profess to be: that is, they must pray for something which could not have been, or cannot be, otherwise constitutionally obtained.

Incompetent petitions

7.35.4 A Petition reviewing the judgement of a lower court which may have been appealed or complained against is incompetent and cannot be received.

Competent use of a petition

7.35.5 A Petition may competently be used when the petitioner:

- (a) has been obstructed in his right of appeal or complaint in the lower court; or
- (b) is not legally qualified to proceed by appeal or complaint; or
- (c) being a court of the Church, cannot conveniently deal with a case before it other than by petitioning the higher court to take action.

Assistance

7.35.6 Sessions and Presbyteries should assist communicants and adherents of the Church in preparing Petitions so as to prevent their rejection on the ground of informality or other defect.

7.35.7 A petitioner is a party at the bar. Any member of a court being a petitioner to it, singly or with others, is at the bar and remains at the bar until the matter is finally determined. No member may present the Petition of others.

Procedure

7.35.8 Sufficient of the Petition shall be read as to indicate to the court its subject, character, competence and propriety. If the court receives the Petition, it shall then proceed to consider the answer to the prayer of the Petition.

Others concerned

7.35.9 When a Petition affects the interests of others, a petitioner must supply them in reasonable time and either by personal delivery or by registered post with:

- (a) a copy of the Petition; and
- (b) a notice of the time and place of the meetings of the court at which he has asked or shall ask that the Petition be heard.

Clerk notified

7.35.10 The petitioner must notify the clerk of the court that he has taken this action.

Citation

7.35.11 If the court after receiving the Petition, is not satisfied that sufficient intimation has been given to others concerned, it shall order the petitioner to serve a copy of the Petition on them with a citation to attend.

Reference

7.36 A Reference is a document containing matters of difficulty or of importance which are stated and referred by resolution of a lower court for the opinion or advice of its higher court.

Right to vote

7.36.1 In all such cases the members of the lower court retain their right both to deliberate and to vote.

How transmitted

7.36.2 A Reference is transmitted in the form of a properly attested extract minute of the resolution to refer, accompanied by all relevant documents.

Interested persons notified

7.36.3 The referring court must notify persons who have a direct interest in the matter of the place and time of the meeting of the higher court at which the matter will be discussed.

Reference stated

7.36.4 In the higher court, a member of the referring court shall state the Reference, showing: (a) what the subject matter is; and (b) why it has been referred.

Questions

7.36.5 No question on a point of form or order can be raised, except by the Moderator, until the Reference shall have been stated.

How dealt with

7.36.6 The court may then decline to entertain the Reference or it may sustain the Reference which means that the matter is properly before the court. If sustained, the Reference may then be discussed on its merits.

Disapproved but taken up

7.36.7 A court may find that there was not sufficient ground for referring the case and that the lower court should have addressed itself to the adjudication of the same, but, considering the hardship of delay to any person having direct interest in the matter, it may proceed with the case.

Further procedure

7.36.8 Unless the decision of the higher court determines the issue of the case, the lower court shall be directed to proceed with it according to the laws of the Church.

Chapter 8 STANDING ORDERS

BUSINESS PROCEDURE

Order of Business

- 8.1** In the General Assembly after the first sederunt the order of business shall be: (a) At forenoon sederunts:
- (i) confirmation of the minutes of the proceedings of the previous day.
 - (ii) reasons for dissent from any of the decisions recorded in the Minutes so confirmed, and the necessary procedure connected therewith.
 - (iii) leave to print and circulate notices of motion relative to matters to be brought forward at some future sederunt.
 - (iv) the various items of business in the order arranged by the Business Committee and approved by the court.
 - (v) applications from Presbyteries, for authority to meet, and the announcement of meetings of committees.
- (b) At the last sederunt of the day:
- (i) report of the Business Committee relative to next day.
 - (ii) leave to print and circulate notices of motion
 - (iii) business as previously arranged by the Business Committee and approved by the court.
 - (iv) announcements relative to presbyteries and meetings of committees.

Orders of the Day

- 8.2** The items of business, as arranged by the Business Committee and approved by the Assembly, shall constitute the Orders of the Day.

Variation of Orders of the Day

- 8.3** The Assembly may, from time to time during a Sederunt, if it deems it necessary, vary the Orders of the Day for that sederunt by a motion, without notice and without debate.

Orders of Day varied

- 8.4** A motion to vary the Orders of the Day may be made only at the interval between items of business.

- 8.5** When the Order of the Day is reached, it shall be called for by the Moderator.

- 8.6** No business shall be introduced to the Assembly by any member until it is called for by the Moderator.

Reports and Deliverance

- 8.7** Committees of the General Assembly shall submit to the Assembly a written report. Recommendations for action shall be appended in a proposed Deliverance; such reports and proposed deliverance shall be printed and circulated among members of the Assembly at least one day before they are considered.

8.8 Reports concerned with

- (a) doctrinal matters that do not require Barrier Act procedures, or
 - (b) changes to regulations,
- shall be submitted to presbyteries and Sessions for consideration and report at least six months before the next meeting of the General Assembly.

Matters that fall within this Standing Order, and for which six months' notice has not been given, may be considered by the Assembly by leave of a majority of the House.

Recommendations

- 8.9** No recommendation in any report shall be held as adopted unless it shall have been definitely set forth in the deliverance and approved by the Assembly.

- 8.10** Printed reports shall be held as read unless the Assembly desire otherwise.

Questions

- 8.11** Relevant questions may be put by any member through the Moderator to the Convener of a Committee when the report is before the Assembly, and also after the deliverance as a whole has been moved and seconded.

MOTIONS AND AMENDMENTS

Substantive Motions

- 8.12** A substantive motion refers to business which does not arise from the report of any Committee. It shall be written and handed to the Business Convener normally at least one sederunt before it is considered by the Assembly. A substantive motion may, by leave of the House, be moved without notice.

Character of Motions

- 8.13** Motions shall be considered as belonging to one of the following categories, and shall be dealt with as prescribed, namely:
- (a) the original motion,
 - (b) counter-motions - being motions contradictory or negative of the original motion or of a substantial part of the original motion. And
 - (c) amendments - being motions not substantially contradictory of the original motion or counter-motion, but for:
 - (i) leaving out certain words,
 - (ii) leaving out certain words in order to insert or add other words, or
 - (iii) inserting or adding certain words.

The Moderator shall be the judge of the character to which any motion shall be considered to belong, and shall rule accordingly.

Procedure for Voting on Motions

- 8.14** After all amendments, if any, have been disposed of, the Moderator shall take a vote between all motions in Categories (a) and (b) of Standing Order 8.14, and in doing so shall adopt the following procedure:
- (a) A vote shall be taken between all the motions in the order as determined by the Moderator, beginning at the first.
 - (b) Each Commissioner may vote for one motion only.

- (c) If on the vote being taken, one motion has obtained a clear majority of votes, all the other motions shall fall.
- (d) If no motion has obtained a clear majority, the motion having the smallest number of votes shall be disregarded and a vote taken between the remaining motions.
- (e) The same procedure shall continue until one motion receives a clear majority on a vote.
- (f) The motion which has received a clear majority shall then be put by the Moderator to the Assembly, and shall be voted on 'For' or 'Against'. If a majority vote for it, the motion shall become the judgement of the Assembly. If a majority vote against it the motion shall fall, and further procedure in the matter shall be as the Assembly may determine.

Amendments

- 8.15** Motions shall be amended
- (a) by leaving out certain words,
 - (b) by leaving out certain words in order to insert or add other words,
 - (c) by inserting or adding certain words.

Negative

- 8.16** A direct negative to a motion shall not be a competent amendment.

Incompetent Amendments

- 8.17** No amendment shall be proposed in any part of a motion after a later part has been amended, or in any words the House has resolved shall stand part of a motion, or has inserted in or added to a motion, except the addition of other words thereto.

Amendments to Amendments

- 8.18** An amendment may be moved to an amendment that has been moved and seconded as if the first amendment were an original motion.

Notices of Motion

- 8.19** Notices of Motion shall be written and handed to the Business Convener at least one sederunt before the matter to which it is related is before the Assembly. Amendments on a proposed deliverance, motion or amendment of which due notice has been given shall be printed and circulated.

Amendments Without Notice

- 8.20** An amendment may be moved without notice if in the opinion of the moderator it arises in the course of a debate and does not alter the substance of the motion; should the Moderator rule that the proposed amendment affects the substance of the motion, it shall require, in addition to the Moderator's ruling that it has arisen in the course of debate, the Leave of the House.

When Seconded

- 8.21** Except in Committee of the Whole, a motion or amendment shall be seconded before it can be debated or put to the vote.

Reserving a Speech

- 8.22** No member who moves or seconds a motion or amendment shall have the right to reserve his speech to a later stage of the debate.

Member giving notice absent

- 8.23** If, When the motion of which notice has been given is called for by the Moderator, the member who gave notice is absent, another member may move the motion; or the court may postpone the motion. Otherwise the motion lapses.

Motion lapses if not seconded

- 8.24** When the mover of the motion or amendment has finished his speech, his motion or amendment shall forthwith be seconded; if there is no seconder, it lapses and shall not be recorded in the minutes.

Notice withdrawn

- 8.25** If a member withdraws a notice of motion given in, he shall do so without remark, and such motion shall not be recorded in the minutes.

Motions withdrawn by Leave of the House

- 8.26** A motion or amendment, duly made and seconded, shall not be withdrawn except by Leave of the House and at the request of the mover, with the consent of the seconder; and any amendment to such motion shall first be withdrawn or negatived.

Motions - not recorded

- 8.27** A motion or amendment ruled not competent shall not be recorded in the minutes, except when the ruling of the Chair has been challenged and voted on.

Notice changed

- 8.28** No change shall be made in the terms of a notice of motion after it is given in, except by Leave of the House; but a member has the right to alter his motion provided notice of the alteration be given at least one sederunt before it comes before the House.

No change without Leave

- 8.29** After a motion or amendment has been moved, no change shall be made in its terms without Leave of the House.

Amendments put first

- 8.30** Amendments shall be put before the motions to which they refer.

Debate thereon

8.31 When an amendment is before the House, the debate shall be strictly confined to such amendment.

PROCEDURE IN DEBATE

Members called

8.32 When a member desires to speak, he shall rise in his place, but shall not speak until he is called on by the Chair. A member speaking in the Assembly shall address the Chair only.

Speak more than once

8.33 Each member may speak once to each question in debate, whether a motion or an amendment; but no member shall speak more than once to the same question, except

- (a) in explanation,
- (b) in stating and asking the ruling of the Chair on a point of order,
- (c) in reply at the close of a debate, if he is the mover of the original motion, except in any debate involving counter-motions, and
- (d) in Committee of the Whole.

Mover of amendment

8.34 A member who has spoken to the main question shall not afterwards move an amendment on it, but he may second or speak to an amendment moved by another member.

8.35 A mover of an amendment shall not afterwards speak to the main question.

Moderator leaves the Chair

8.36 The Moderator or Chairman of the Committee of the Whole shall take no part whatever in any debate. If he wish to speak to any question or to give in a report of a committee, he shall leave the Chair. He shall also leave the Chair when any case arises in which he is a party.

The Moderator standing

8.37 When the Moderator or Chairman shall rise in his place, all members shall forthwith resume their seats and shall remain silent so that the Moderator or Chairman may be heard without interruption.

Interruptions

8.38 No member shall interrupt a speaker except for one or other of the following purposes:

- (a) to state a point of order and to ask for a ruling of the Chair on it;
- (b) to call attention to a breach of the privileges of the House;
- (c) to make a personal explanation;
- (d) to move that the House sit in private;
- (e) to move the adjournment of the debate;
- (f) to move the "Previous Question";
- (g) to object to language deemed objectionable or reflecting on character.

Points of Order

8.39 Points of order must refer strictly to the order of the proceedings of the House.

8.40 A member raising a point of order shall simply state it and no other member shall speak at this stage.

The Moderator shall then:

- (a) forthwith rule on the point
- (b) ask certain members whom he selects to state their views on it, and afterwards rule on the point; or
- (c) refer it to the House for decision by debate and vote.

Ruling of the Chair challenged

8.41 When the ruling of the Chair is challenged, the member who questions the ruling may be heard for not more than five minutes and, the Moderator or Chairman having been heard in reply, the vote shall be taken without further discussion.

Privilege

8.42 Questions of privilege take precedence over all other business and may at any time be brought forward by any member.

8.42.1 Questions of privilege must refer strictly to matters directly affecting the privileges of the Court or its members, which matters have ' recently emerged and call for present interposition.

8.42.2 If a question of privilege is brought forward in Committee of the Whole, the Committee shall forthwith report it to the court which alone can deal with questions of privilege.

The "Previous Question"

8.43 The "Previous Question" may be moved at any stage in a debate after the motion in debate has been moved and seconded, but not by anyone who has spoken to the main question or to an amendment thereon.

8.43.1 The "Previous Question" shall be moved and seconded without debate and shall forthwith be put to the vote.

8.43.2 The "Previous Question" must refer to the motion before the House. It cannot be moved in a Committee of the Whole House or in a Select Committee.

8.43.3 The carrying of the "Previous Question" shall mean that the court does not consider it expedient to discuss further, or to make a decision on, the matter before the House; and the effect shall be that the court forthwith departs from that matter and takes up the next order of the day.

8.43.4 The negating of the "Previous Question" shall not preclude its being moved again during the same debate.

Adjournments, etc.

8.44 A motion for the adjournment of (a) the debate, or (b) the court, or a motion in the Committee of the Whole "that the Committee report" may be made at any time and without notice.

8.44.1 Such a motion shall be put to the vote without debate.

- 8.44.2** The negating of such motion shall not preclude its being moved again during the same debate or sederunt.
- 8.44.3** The adjournment of a debate may be moved by any member, including the member who is at the time speaking to the question in debate.
- 8.44.4** When an adjourned debate is resumed, the right of speaking first shall belong to the member whose speech was interrupted by the adjournment. If no speech was interrupted, the right of speaking first shall belong to the mover of the adjournment, provided that he has not already spoken to the question, whether a motion or an amendment, which was in debate when the adjournment was moved.

Closed doors

- 8.45** The General Assembly may at any time close its doors and sit in private in consequence of a ruling by the Chair, or of a motion made, seconded and put to the vote without debate; but cases or questions which have been discussed with closed doors in a lower court shall be so discussed in the higher court unless a motion to the contrary, duly made and seconded and put to the vote without debate, is carried.
- 8.45.1** The negating of such motion shall not preclude its being moved again during the same debate or sederunt.

Character affected

- 8.46** In dealing with cases or questions which have been declared by the Chair to affect character or partake of the nature of personal disputes or misunderstandings, the House shall deliberate and decide thereon in private unless a motion to the contrary, duly made and seconded, is carried; and every such motion shall be put to the House without discussion.

Personal explanation

- 8.47** A member may at any time make a personal explanation.

Explanation in debate

- 8.48** If a member makes an explanation during a debate, it shall refer exclusively to some statement or statements made by himself which, in his opinion, one or more of the speakers in the debate have misapprehended. No other matter whatsoever shall be introduced into an explanation during a debate.

Objectionable language

- 8.49** Language ruled objectionable shall be forthwith withdrawn and apologised for by the speaker and in a manner satisfactory to the House.
- 8.49.1** When language used in debate seems to any member to be objectionable, he may forthwith, but not later, raise a point of order concerning it and ask for the ruling of the Chair. He may also demand that the words be taken down. The Moderator or Chairman shall, without debate, forthwith put the question, "that the words objected to be taken down, and, if this question is resolved in the affirmative, he shall direct the Clerk to take them down as ground for such further action as the House may think fit to take."

Laws not to be reflected on

- 8.50** No member is allowed to reflect on any law or decision of the Assembly except for the purpose of moving in a legitimate form that it be altered or rescinded.

Speech in reply

- 8.51** After the speech in reply, which shall contain no new matter, there shall be no further debate. Before the speech in reply is begun, the Moderator shall distinctly declare that it is to be a reply on the debate, and that thereafter the debate will be closed. Any member entitled to speak has then an opportunity of speaking to the main question before the speech in reply.

The Closure

- 8.52** When it shall appear to the Moderator or Chairman, during any debate, that the motion, or any amendment on it, has been adequately discussed and that it is the evident sense of the House that the question be now put, he may so inform the House distinctly stating at the same time whether it is to be the debate on the amendment only or to the debate on both the amendment and the motion that the closure is to be applied. A motion "That the question be now put" may then, but not till then, be made and seconded without any remark or discussion. The Moderator or Chairman shall forthwith put this motion and, if the same be carried by a majority of at least two-thirds, the Moderator or Chairman shall forthwith put to the vote the motion, or the amendment only, or the amendment and the motion, as the case may be, without further debate.

Mode of taking the vote

- 8.53** The Moderator or Chairman shall endeavour to put the question at every convenient opportunity. He shall state the motion or amendment or shall cause it to be stated by the Clerk. Any member not distinctly hearing the motion or amendment so stated may require it to be stated again.

The Moderator interrupted

- 8.54** When the Moderator or Chairman shall rise in his place to state or put the question, he may be interrupted by, and shall give way to, any member who wishes to speak to the question, except when the debate has been closed by a speech in reply or by the application of the closure. A member may so intervene up to the moment when the Moderator or Chairman utters the words "Aye" in putting the question to the voices.

VOTING

Member's vote

- 8.55** A member may vote on a motion though he has not voted on any amendment to it.

Within the House

- 8.56** No member can, by voice or otherwise, give a vote outside the barrier.

Vote taken

- 8.57** A vote may be taken
(a) By the voices

The Moderator or Chairman shall take the vote by the voices. He shall put the question in this form: "The question is: Shall this motion (or amendment) pass? All who are of that opinion say 'Aye'." The "Ayes" shall then respond. The Moderator or Chairman shall further say, "All who are of the contrary opinion say 'No'." The "Noes" shall then respond. The Moderator or Chairman shall then say, as the case may appear to him to be, "I think the 'Ayes' (or the 'Noes') have it." If his opinion is acquiesced in by the silence of the House, he shall say "the 'Ayes' (or the 'Noes', as the case may be) have it", and the motion or amendment is passed or lost accordingly. Should there be no dissenting voice a unanimous vote may be recorded.

- (b) By show of hands
If his opinion is challenged by one or more members saying "no", the vote shall be taken by a show of hands and the numbers shall not be recorded.
- (c) By division or ballot
If the opinion of the Moderator is further challenged, the vote may be taken by either division or ballot.

Vote by ballot

- 8.58** A motion that the vote be taken by ballot shall be put without discussion and decided by a show of hands "for" or "against". Should such a motion be carried, it precludes the taking of the vote by a division. The result of a vote by ballot as reported to the Moderator in writing and declared by him to the House shall be final. The numbers shall be recorded in the minutes.

Vote by division

- 8.59** When a motion that the vote be taken by ballot has not been moved and carried any five members may demand a division. The names of those voting are recorded on the demand of five members, but numbers are recorded in any case. When the vote is about to be taken by division, the bell shall be rung and after a lapse of two minutes the doors shall be locked and no one shall be allowed to enter or leave the House till the vote is taken. Two tellers on each side shall be appointed. Those "for" the motion or amendment shall go to the right and those "against" to the left of the Chair. The result of the division, as reported in writing to the Moderator and declared by him to the House, shall be final.

Casting vote

- 8.60** In the case of an equality of votes the Moderator or Chairman shall have a casting vote, but he usually votes so as to leave the matter voted on open for further consideration. He has no deliberative vote.

Questions not reconsidered

- 8.61** No question which has been decided at one sederunt of a court can be reconsidered at a subsequent sederunt during the same session.

DISSENTS

- 8.62** A member may dissent from any resolution of a court on which he has voted, and he has the right to have his dissent recorded in the minutes; also his reasons if given forthwith. But he shall not dissent from a resolution, which has been carried on the voices, or from a resolution affirming or negating any amendment, or from any resolution of the Committee of the Whole.
- 8.62.1** He may also, when the minute recording the dissent is brought forward for confirmation, give in, without comment, written reasons for dissent. These, provided they do not involve a breach of privilege, shall be received without debate and shall be kept in retentis.
- 8.62.2** The court may, if it thinks fit, give written answers to reasons of dissent, which answers shall be likewise kept in retentis. A motion to appoint a Special Committee to answer reasons of dissent shall be put to the vote without debate. The report of the Special Committee may be debated, and shall be dealt with as the court sees fit.

COMMITTEE OF THE WHOLE

- 8.63** By a motion put to the vote a court may resolve itself into a Committee of the Whole.
- (a) All members of the court shall likewise be members of the Committee of the Whole.
 - (b) The court shall appoint the Chairman of the Committee.
 - (c) Separate minutes shall be kept of the proceedings.
 - (d) A motion need not be seconded.
 - (e) A member may speak more than once to the same question.
 - (f) No member may dissent from any resolution of the Committee.
 - (g) The proceedings shall be closed by the carrying of a resolution to report to the court on the matter committed, or to report progress and ask leave to sit again.
 - (h) The court shall forthwith resume, and the report of the committee shall be given in.
 - (i) The report may be adopted with or without amendment, rejected, postponed, recommitted, or otherwise dealt with as the court sees fit. At this stage any member may exercise his privilege of dissent.
 - (j) Any of the other Standing Orders which are literally applicable to the proceedings of the court in session only shall, when applied to the proceedings of the Committee of the Whole, be read along with and be modified by the provisions of this section.

OVERTURES, PETITIONS, REFERENCES ETC.

Papers transmitted

- 8.64** All overtures, returns on remits, and all papers transmitted by the inferior courts shall be in the form of certified extracts from the minutes of the said courts.

Questions

- 8.65** Relevant questions may be put by any member through the Moderator to (a) overtureists, (b) petitioners, (c) parties stating References, and (d) parties in any case when they shall have completed their respective statement.

Parties at the Bar

- 8.66** Overtureists who are not members of the Assembly, petitioners, and parties duly commissioned to state References, Complaints and Appeals shall take their places at the bar when called by the Moderator, and they shall not leave the bar until they are formally dismissed from it by the Moderator.

Two heard

8.67 References shall be stated, and overtures and petitions supported, by not more than two persons in each case.

Procedures in dissents and complaints and appeals

8.68 In dealing with an appeal or a complaint transmitted for its judgement a court:

- (a) calls the parties (i.e., appellants or complainants and the respondent court) to its bar;
- (b) hears read the record of the case in the inferior court, and relative documents, or if they are printed, may take them as read;
- (c) hears the appellants or complainants or, if there are more than two, the representatives to a number it determines;
- (d) hears the respondents appointed by the inferior court;
- (e) hears the appellants or complainants in reply;
- (f) calls for questions from members of the court;
- (g) after removing all parties from the bar, deliberates on the case before it.

When the parties are removed from the bar, it is at the discretion of the court whether they be permitted to hear the discussion of the case.

When the court has reached a decision or judgement, parties shall be recalled to the bar by the Moderator, who shall then announce to them the decision or judgement of the court.

No document may be read or appear among the papers of the court (printed or written) unless it was before the court of first instance, or was offered to it and rejected, and has thence come up regularly.

Protestation

8.69 When a complaint or an appeal has been fallen from, the respondent shall make a protestation to the effect and shall be entitled to receive an extract minute of the same.

"Sustain"; "Dismiss"

8.70 If a motion dealing with an overture, reference, complaint or appeal is negatived, the matter is still before the House, and shall be disposed of by another motion. For instance, if a motion to "sustain" or "dismiss" is negatived, it shall be followed by another motion to "dismiss" or "sustain", or by any other relevant and competent motion, until the matter is disposed of.

Reference dismissed

8.71 If a reference is informal or frivolous, or if it clearly appears that the inferior court has not exhausted all its resources in the matter, the Assembly may dismiss the reference without entering upon the consideration of the substance of the reference.

Petitions

8.72 A motion to grant the prayer of a petition (which includes the words "or do otherwise as the Assembly in its wisdom may deem fit") means that the court considers there are sufficient grounds in the petition to justify deliberation and decision. If the motion is approved, it is followed by another motion giving effect to the court's decision. If it is negatived, it is followed by a motion to "dismiss" the petition.

Documents in a case

8.73 All overtures, petitions, references, complaints and appeals, with all necessary relative papers shall be printed and circulated among the members of the General Assembly at least one day before the business is taken up for discussion in the House. No other document shall be deemed part of the record unless it is expressly so ordered by a resolution duly moved, seconded and voted on. In complaints or appeals the expense of printing shall in the first instance be borne by the complainant or complainants or by the appellant or appellants, and by the party losing when the case is finally decided, unless remitted or distributed by the Assembly.

COMMITTEES - COMMISSIONS**Committees**

8.74 The General Assembly shall appoint Standing and Special Committees and the conveners thereof.

- (a) Three members of a committee shall constitute a quorum.
- (b) Motions need not be seconded.
- (c) A member may speak more than once to the same question.
- (d) The Convener, without leaving the chair, may speak to a question and may move motions or amendments, and he shall have both a deliberative and a casting vote.
- (e) A committee may, however, at any time resolve to be guided strictly by the formal Rules of Debate.
- (f) Any member of a court has a right to be present at a meeting of any of its committees, whether standing or special, and may be associated.
- (g) Reports of the proceedings of the committees shall not be published without their consent.
- (h) Any of the other Standing Orders which are literally applicable to the proceedings of a standing or special committee, be read along with, and be modified by, the provisions of this section.

Commission

8.75 The General Assembly may appoint a Commission of one or more persons with full powers to deal with all matters submitted to it and any other urgent matters which may arise from time to time. When a Commission consists of two or more members, the Assembly appoints the Chairman.

STANDING ORDERS - SUSPENDED - AMENDED**Suspension of Standing Orders**

8.76 These Standing Orders may be suspended in whole or in part by a motion, notice of which shall have been given at a previous sederunt, duly moved, seconded and carried, or by a motion without notice if the court be unanimous. The purpose or purposes for which it is proposed that the Standing Orders be suspended shall be distinctly stated.

Amendment of Standing Orders

8.77 Any proposal to amend or add to these Standing Orders shall be introduced to the General Assembly by overture only.