

# WOLMARANS & ASSOCIATES

Commercial & Employment Law Specialists  
Associated with Manong Badenhorst Abbott Van Tonder Attorneys

## MEMORANDUM TO THE NATIONAL OFFICE BEARERS OF THE AFM OF SA In Re: PASTORS' CONTINUOUS DEVELOPMENT ("PCD") AND THE BASIC CONDITIONS OF EMPLOYMENT ACT

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### Introduction

1. Copies of the following documents have been provided and perused –
  - 1.1 Resolution NLF618/July 2011- Ministry Quality Assurance;
  - 1.2 Resolution NLF688/March 2012 – Pastoral Continuous Development;
  - 1.3 Resolution NLF727/July 2012 – PCD Marketing & Communication Plan;
  - 1.4 Resolution NLF728/July 2012 – PCD National Coordinator Responsibilities and Profile;
  - 1.5 Resolution NLF729/July 2012 – PCD Regional Coordinator Responsibilities and Profile;
  - 1.6 Report of the General Secretary (GBM September 2012);
  - 1.7 AFM of SA Education and Training Department September 2012 General Business Meeting Report;
  - 1.8 AFM of SA Pastoral Code of Conduct;
  - 1.9 AFM of SA Pledge of Office;
  - 1.10 Service Agreement for Ordained Pastors; and
  - 1.11 Letter to The General Secretary AFM of SA from Pastor W Trytsman dated 31 May 2013.
  
2. The National Office Bearers of the AFM of SA ("AFM") are seeking legal advice –

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- 2.1 *"... in order to give clarity as to whether the linking of the accumulation of credits (PDC) to the renewal of pastors' status does alter the conditions of employment unilaterally as suggested by Pastor Trytsman."; and*
- 2.2 *"... in order to give clarity as to whether it is necessary to convene a special meeting of both pastors and their employers to discuss this matter as suggested by Pastor Trytsman?".*
3. Certain extracts of the Constitution of the AFM ("Constitution") was also considered for purposes of this opinion.

## **Pastoral Status and Employment**

- 4.1 The provisions of the Constitution determine the status of pastors of the AFM and assemblies of the AFM are bound by such determinations.
- 4.2 The salient aspects of the Constitution in relation to the status of a pastor are as follows -
  - 4.2.1 The Biblical premise of the AFM is explained in the Constitution with reference to relevant passages from the Bible in relation to the equipping of ministries and in this regard reference is made to Ephesians 4: *"1) I therefore, the prisoner for the Lord, appeal to and beg you to walk (lead a life) worthy of the (divine) calling to which you have been called with behaviour that is a credit to the summons to God's service, 2) Living as becomes you with complete lowliness of mind (humility) and meekness (unselfishness, gentleness, mildness), with patience, being with one another and making allowances because*

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*you love one another. 11) And His gifts were varied; He Himself appointed and gave men to us some to be apostles (special messengers), some prophets (inspired preachers and expounders), some evangelists (preachers of the Gospel, travelling missionaries), some pastors (shepherds of His flock) and teachers. 12) His intention was the perfecting and the full equipping of the saints (His consecrated people), that they should do the work of ministering toward building up Christ's body (the church),” [Amplified Bible, expanded edition – 1987 Zondervan Corporation and The Lockman Foundation];*

4.2.2 The purpose of the Constitution is to maintain and promote the good order of the church and for the realisation thereof the Constitution has been drafted together with regulations. These regulations are detailed extensions of the Constitution. The Constitution and regulations contain the foundation of the church government as well as that of the separate legal *personae* covered in the Constitution. The Constitution and regulations are that of the church as well as of each of the separate legal *personae* covered in the Constitution;

4.2.3 Every local assembly of the AFM is an independent legal *persona* represented by its governing body. The governing body in accordance with the regulations call any pastor from a call list of ordained pastors of the AFM. Pastors fall directly under the discipline of the national leadership forum of the AFM in relation to their pastoral status;

4.2.4 The presiding pastor is the leader, vision carrier and member of the governing body of a local assembly. Pastor is defined as a person

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admitted to the ministry under church laws. Ordination requires the signing of a pastoral pledge and pastoral code of conduct, referred to in 1.8 and 1.9 above. Certificates of ordination remain church property and must be returned to the General Secretary of the AFM after termination of pastoral status; and

- 4.2.5 The standard employment agreement for ordained pastors used by local assemblies of the AFM referred to in 1.10 above specifically confirms the required ordained status for a pastor to be and remain employed by an assembly.

## **NLF Resolutions and Related Documents**

5. The National Leadership Forum of the AFM ("NLF") resolutions and related documents are in relation to pastoral professional and continuous development for sustaining pastoral status. The NLF would not have direct authority to address the independent employment relationships with ordained pastors at the assemblies as the assemblies are separate legal *personae*.
6. The NLF is the highest and national authority in the AFM and as such a representative and elected body at the behest of the broader national AFM membership.
7. Salient aspects of the documents referred to in 1.1 to 1.7 above are –

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- 7.1 The NLF seemingly followed a consultative process with the AFM's Regional and Network leaders for the contextualization and eventual implementation of PCD;
- 7.2 PCD should make provision to include pastor's spouses;
- 7.3 PCD compliance by pastors is determined on minimum PDC points obtained during every year and linked to credential renewal of pastors' ordained status in cycles coinciding with election;
- 7.4 The ultimate aim is to foster a positive climate for life-long learning amongst all ordained pastors;
- 7.5 PCD applies to all the ordained AFM pastors; and
- 7.6 *"One of the NLF's constitutional mandates is to ensure that pastors will be continuously developed in order to be relevant and effective in ministry."*

## **Pastor W Trytsman's Letter**

8. The clarity sought in 2.1 and 2.2 above is not in relation to the implementation process followed for or compliance with PCD. Thus, the salient aspects in relation to allegations of unilateral amendments to conditions of employment by having implemented PCD referred to in this letter are –

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- 8.1 A pastor who has lost ordained status must be dismissed by the assembly and such dismissal may then be challenged at the Commission for Conciliation Mediation and Arbitration which is likely to succeed “... based on unilateral changes to the conditions of employment.”;
- 8.2 “... no pastor has a direct working relationship with any legal body within the AFM as denomination except the congregation that has employed the pastor. Therefore should any change to the conditions of service be necessary it must be taken up with the congregation management board to make sure that it is changed in the service agreement that it has entered into with the pastor.”;
- 8.3 “... the management structures outside the employer employee relationship like the NLF does not have legislative powers in terms of executing labour related matters ...”;
- 8.4 Should the NLF implement steps which could lead to a pastor’s “... dismissal, the pastor could approach the Labour Court in terms of Section 77A(e) of the Basic Conditions of Employment Act on unilateral changes to the conditions of employment.”; and
- 8.5 “... I (Pastor Trytsman) support the idea of PCD: I merely raised the issues because the church could face possible actions being taken against it for unilateral changes to the conditions of employment.”.

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## Conclusion

9. In light of the clarity sought in 2.1 and 2.2 above it is assumed that the processes followed by the NLF prior to implementation of PCD have been done in accordance with all the appropriate and procedural requirements of the AFM's Constitution.
10. It is trite that the pastoral status is established and determined in terms of the Constitution under the auspices of the NLF and clearly separable from the employment relationship that exists between an ordained pastor and a local assembly. An ordained pastor's status must be in good standing as an indispensable condition – *sine qua non* - for an assembly to be permitted to employ such a pastor.
11. PCD is clearly driven by the NLF's Department of Education and Training for ordained pastors and not by the assemblies in which these pastors serve as employees.
12. The status of an ordained pastor is as such bestowed by the NLF and it is also the NLF that may terminate such status after having followed due process. The ordained status of a pastor in the AFM is comparable to the professional status of medical, legal and audit practitioners. The professional status of the aforementioned practitioners must be in good standing for any of such professionals to be employed as medical, legal and audit practitioners.

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13. By example, the South African Institute for Chartered Accountants (“SAICA”) as the custodian of Chartered Accountants’ status requires what is referred to as “*Continuous Professional Development*” (“CPD”). To keep the status and be in good standing as a Chartered Accountant (“CA”), every CA must attend training of at least 20 hours per annum to a total of at least 120 hours over a three year cycle to remain recognised as a CA. This requirement is not determined through the employment conditions of an employed CA but remains an ongoing requirement for such an employed CA to be professionally recognised as a CA. It follows that where an employer employed a CA and the employment agreement requires the incumbent to be a CA, the employer would be within their right to terminate the employment agreement where the incumbent’s CA status may be revoked or suspended by SAICA due to whatever reason, including not attaining the minimum required CPD hours.
14. The above SAICA example is somewhat analogous to the NLF’s requirement for the cyclical credential renewal of ordained pastors’ status through attainment of the minimum required PCD points.
15. It is trite that a distinction exists between the status of an ordained pastor and such pastor’s employment. The NLF is the custodian of an ordained pastor’s status whilst the latter is agreed between contracting parties clearly acknowledging the ordained pastoral status requirement for a pastor to be employed as such.



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16. The NLF's requirements for the status of an ordained pastor's credential renewal by having achieved the minimum required PCD points is not a condition of employment but rather one of the requirements for sustaining the credentials as that of an ordained pastor.
  
17. It is not for an ordained pastor's employment agreement to address PDC as it has not been implemented, driven and or monitored by the employer. PCD seemingly emanated from "*... the NLF's constitutional mandates .. to ensure that pastors will be continuously developed in order to be relevant and effective in ministry.*".
  
18. It is respectfully submitted the averments by Pastor Trytsman referred to in 2.1 above is incorrect and in 2.2 above is not required.

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