

CLERKS OF ASSEMBLY
(A&P 2016, p. 281–83, 23)

OVERTURE NO. 37, 2015 (A&P 2015, p. 610–11, 249, 17)

Re: Process for a congregation leaving the denomination

OVERTURE NOS. 4, 5 AND 7, 2016 (p. 500–01, 502–03)

Re: A policy for a congregation leaving the denomination

These various overtures request the establishment of a means for congregations to leave The Presbyterian Church in Canada, retaining their property and assets, if they find themselves unable to accept changes in doctrine or discipline made by the General Assembly. Some of the overtures refer to current discussions around human sexuality as the source of the request.

In developing this response, the Clerks of Assembly consulted with members of the Trustee Board, the Assembly Council and the Pension and Benefits Board.

While the Clerks of Assembly will focus on the law and polity, they acknowledge the concern expressed in the overtures that there is the potential for division in the current discussions. The Clerks believe the denomination is called to work diligently to find ways to continue to be one family under Christ. There will always be tremendous scope for a generosity of spirit and diversity of practice as we seek to fulfill the mission of God in our communities and beyond.

Two of the overtures allude to a situation whereby former members of the congregation of St. Andrew's, Lachine, Quebec, were able to keep their building at nominal cost when they wished to leave the denomination. This was not the case. At no time did the property move to the former members. Rather, a temporary lease agreement was arranged by the Trustee Board in which the former members paid a nominal rent and were responsible for all expenses related to the facility. Shortly thereafter, the Trustee Board sold the property, at market value, to the Norwegian Church Association.

Overture No. 37, 2015 begins with the assertion that the trustees of a local congregation hold the real property of a congregation in trust for that congregation. This is a misunderstanding of our polity.

Trustees of a local congregation hold property of a congregation under a dual trust. The first is for the benefit of that congregation, but it is also for the benefit of The Presbyterian Church in Canada. Congregations are not independent bodies within our church. They are a part of The Presbyterian Church in Canada which is governed by the Book of Forms and the Presbyterian system of church government. (See especially Book of Forms sections 109.2, 114.6, 139, 149, 150–157, 158–173 and 200–200.14.)

As noted in the Trust Deed for congregations found in Appendix C of the Book of Forms (section 5 C):

Congregational Trustees will hold all property and real estate for the sole use and benefit of the congregation. It is noted that in the event that the congregation is dissolved, by provincial and federal law, the ownership of the church, contents, funds and property transfer to the Trustee Board of The Presbyterian Church in Canada and will be used to further the mission of the church.

The federal and provincial legislation referred to in this section is found in Appendix B–6 from The Act to Incorporate The Trustee Board of The Presbyterian Church in Canada (1939), section 13, re Property of Congregations Ceasing to Exist.

All lands and premises and personal property and assets which have been, or shall hereafter at any time, be held by any trustee or trustees for any congregation of The Presbyterian Church in Canada which shall have ceased to exist shall vest in the Board upon trust to sell, get in and realize the same and to pay the proceeds to the treasurer of The Presbyterian Church in Canada for such trusts, institutions, organizations, schemes of funds thereof as may be determined from time to time by the General Assembly of the said church.

This legislation is in force federally and in each province. It means that while congregations themselves own their property, it is held by trustees for the congregation under a Trust arrangement. The Trust, in effect, is that the property must be used for the benefit of the congregation and its purposes and in the event that it ceases to exist

(which takes place on dissolution) it reverts to The Presbyterian Church in Canada to be held in trust by the Trustee Board, still for the benefit of The Presbyterian Church in Canada.

Some of the overtures refer to other denominations, but we must adhere to our own polity and the legal implications of the specific Act (to Incorporate the Trustee Board) that governs our denomination. If a civil court were ever to be involved, and we pray that will not be the case, this Act and its application through our own internal polity will be the basis upon which decisions are made. Both stipulate that the property is held for the benefit of The Presbyterian Church in Canada.

This is consistent with the principle that when donors through the years have given to the congregation, they have given to a congregation of The Presbyterian Church in Canada for the purposes of The Presbyterian Church in Canada. There is no provision for those donations, now represented in the assets of the congregation, to be moved outside The Presbyterian Church in Canada no matter how much support there may be to withdraw from The Presbyterian Church in Canada. When a congregation issues charitable giving receipts to members of The Presbyterian Church in Canada who have given to a congregation of The Presbyterian Church in Canada, a further trust relationship is established regarding the assets of the church, consequently they must be used for the ministry for which they were given, that is, a congregation of The Presbyterian Church in Canada. A second principle that highlights members' connection beyond the congregation is in the fact that we are members both of a local congregation and also of The Presbyterian Church in Canada. A member in good standing has the right to present a membership certificate to any session of any congregation in the country and immediately claim the privileges of membership in that congregation by virtue of their membership in The Presbyterian Church in Canada. (Book of Forms section 125.2, 126 and Appendix A–8)

According to The Act to Incorporate The Trustee Board of The Presbyterian Church in Canada, the Board has a duty to realize assets for the benefit of The Presbyterian Church in Canada.

Our polity does not include any provision for a congregation to be dismissed as an entity from the denomination, with or without retaining ownership or property.

Members may leave a congregation under the provisions of Book of Forms section 142. Even if every member were to leave a congregation, the congregation still exists as a congregation of The Presbyterian Church in Canada until the presbytery dissolves it (section 200.9).

142. Members of the church are under the care and subject to the authority of the session until they are disjoined by receiving a certificate, or having their names removed in consequence of voluntary withdrawal from the fellowship of the congregation, or as a result of a judicial process.

Ministers may also leave the denomination under the provision of Book of Forms section 251–251.1 thus receiving a letter of standing which indicates that they leave the denomination as ministers of the gospel in good standing at the date of issue.

251. Upon his/her own application, a presbytery may grant to a minister or certified candidate for ordination, against whom are pending no matters in the way of judicial process, a letter of standing (see Appendix A–15) setting forth the facts of his/her ordination or certification and certifying to his/her presbyterial standing at the date of issue.

251.1 Upon the receipt of a letter of standing, the applicant ceases to be a minister or certified candidate for ordination of The Presbyterian Church in Canada; and the letter of standing can only be received by a presbytery with the permission of the General Assembly. (A&P 1894)

In the past twelve years there have been three situations of congregations where the majority of members and the minister felt they could not remain within The Presbyterian Church in Canada. In these cases, as a matter of principle, and consistent with our polity, the majority members received certificates (or were removed from the roll) and the minister a letter of standing. The remaining members carried on, retaining ownership of the property and all assets relating to the congregation, or those assets were transferred to The Trustee Board of The Presbyterian Church in Canada. In each case, the presbytery, while disappointed by the departure, worked graciously with the departing members and minister. All were treated as brothers and sisters in Christ through their period of transition.

Book of Forms section 200.1 grants authority to the presbytery alone to organize new congregations and section 200.9 authorizes the presbytery to dissolve congregations.

200.1 Congregations may be organized and places of worship erected only with the sanction of the presbytery, which should be satisfied that such places of worship are of a suitable character (see sections 150 and 200.7).

200.9 It belongs to the presbytery, subject to a corrective case to synod and General Assembly, to sanction the name of congregations, unite or disjoin congregations in pastoral charges, raise or reduce the status of charges as self-supporting or mission fields, and to dissolve congregations and to discontinue preaching stations.

(Note for clarification: The authority to ‘disjoin’ a congregation in section 200.9 pertains only to disjoining congregations in multi-point pastoral charges.)

On dissolution, all assets (real and personal property – meaning land, buildings, bank accounts and all goods and chattels held by the congregation) vest with (become the property of) The Trustee Board of The Presbyterian Church in Canada for the ongoing use and benefit of The Presbyterian Church in Canada.

One scenario that honours our polity and approximates the prayer of the overture would be as follows. Members of a congregation express their desire to leave The Presbyterian Church in Canada. They resign their membership and receive certificates to that effect from the session of the congregation, or if necessary, from the presbytery. If, in this case, the remaining members do not have sufficient resources to maintain the congregation, the presbytery will consider dissolving the congregation. Following due process, the presbytery proceeds with the dissolution. The property will then vest with the Trustee Board of The Presbyterian Church in Canada. The Trustee Board normally gives priority to other Christian churches in offering church properties for sale (Book of Forms section 200.11.1). Working with a presbytery, the Trustee Board could be alerted to the fact that a fellowship (or new congregation outside of The Presbyterian Church in Canada) made up of former members of The Presbyterian Church in Canada would like to purchase the building the previous congregation owned. Such a sale could be given priority and would therefore meet the fiduciary requirements of the Trustee Board and the desire of a group of former members to re-own, if not retain, their property.

The Clerks of Assembly are disinclined to create a process for congregations to withdraw from The Presbyterian Church in Canada. To do so would require changes to our civil legislation both federal and provincial. The current provisions of the church for members and ministers to leave if they feel constrained by conscience to do so, is available, even with the consequence that church property remains with The Presbyterian Church in Canada. If this happens, there will always be room for gracious action, and loving respect on the part of those leaving, those remaining, their presbyteries and the Trustee Board. By God’s grace, we remain brothers and sisters in Christ.

Recommendation No. 2 (adopted, p. 23)

That the above be the response to Overture No. 37, 2015 and Overture Nos. 4, 5 and 7, 2016 re request for process for a congregation leaving the denomination.