

RIGHT TO DISSENT 2019

(Clerks of Assembly, Interim Report, p. 1–3)

The Clerks of Assembly welcome feedback on this report. This feedback may be forwarded to the Clerks through the General Assembly Office by 31 January 2021.

Overture No. 8, 2019 asks that inconsistencies in the law of the church touching upon dissent be rectified. The inconsistencies have to do with recent Assembly decisions regarding sections 12.1 and 8.1 as described later in this report.

The overture requests that the General Assembly reaffirm the right of a presbyter to record dissent from an action taken by any court of which the presbyter is a member under any of the following circumstances: (a) the presbyter has participated in the vote and is dissatisfied with the result; (b) the presbyter has been absent with leave of the court and is dissatisfied with an action taken while so absent; or (c) the presbyter has been absent having expressed prior regrets and is dissatisfied with an action taken while so absent.

What is meant by dissent?

A dissent is a held or expressed opinion that differs from an officially held position. When a court of the church makes a decision, those who vote against that decision may: (a) be content that their vote is sufficient expression of their disagreement or, (b) have their names noted in the minutes of that court as having dissented from the decision. In addition, they may ask that reasons for their dissent be entered into the minutes.

While dissent relieves a person from the responsibility for the adoption of the decision, as a member of the court, the person is still dutybound to honour any action that flows from that decision.

The foundational statement regarding dissent is expressed in Book of Forms, 91 where it is clearly stated that it is a member of a court “who has voted on a question” that is entitled to have their dissent recorded.

91. Any member of a court who has voted on a question and is not satisfied with the decision is entitled to have his/her dissent recorded. By so doing he/she relieves himself/herself from responsibility for the decision and saves himself/herself from censure on account of it. The dissent must be given in when the decision is announced. Reasons for dissent may be given in at that time or within ten days. If in proper language, they are entered in the minutes. When deemed necessary the court prepares answers that are disposed of by being entered in the appropriate minutes.

Book of Forms, 12.1 and 8.1

The 2016 General Assembly removed Book of Forms, 12.1 from the General Rules for Church Courts. The section indicated that if a person was absent from a meeting of a court without permission, then the member could not dissent from any decision made in the member’s absence. (A&P 2016, p. 286)

The General Assembly removed section 12.1 because it implied that, as long as the member received permission to be absent, they could dissent from decisions made by the court even though they did not participate in the discussion related to the decision nor did they vote on it.

Here are sections 12, which remains in the Book of Forms, and the now deleted section 12.1.

12. A member of the court ought not to withdraw from attendance without leave.

12.1 If he/she does so, he/she cannot dissent from any decision of the court arrived at in his/her absence.

This is contrary to the principle expressed in section 91 which clearly states that only those who vote on a decision may have their dissent recorded. Therefore, those who do not vote on a recommendation in any circumstance, may not have their dissent recorded.

The rationale for this legislation is that the church discerns the mind of Christ together. Decisions are made after hearing the views of others. Positions held on a topic can be altered through the exchange of ideas. If the member had been present for the discussion, it is possible they may have been convinced to change their mind regarding a

recommendation under consideration which could eliminate their need for dissent. If a member of a court is not present for the discussion that leads to a decision, they cannot vote on it nor dissent from it in an informed way.

In 2018, the Clerks of Assembly drew attention to a similar legislative conflict. The conflict was found in section 8.1 that grants permission for a session to meet at the same time that a General Assembly is being held. That part of the legislation is fine. That section also states, however, if a session member misses a session meeting because they are a commissioner to a General Assembly, they may dissent from session decisions taken in their absence. (A&P 2018, p. 256–58)

This creates the same conflict that led to the deletion of section 12.1. Section 8.1 allows an elder, who was a commissioner to a General Assembly when their session met and made a decision, to dissent from a decision they neither discussed nor voted on. For this reason, the Clerks proposed that section 8.1 be amended by deleting the words that related to dissenting to a decision taken while they were at the Assembly. The amendment would have brought the section in line with the church's understanding of dissent and make it consistent with other legislation: that a member of a court may only dissent from a decision upon which they have voted.

An amendment to this effect was made and defeated. As a result, section 8.1 is still in conflict with the principle expressed in section 91 that a member of a court must vote on a matter before being entitled to have their dissent recorded. This is the inconsistency raised by the overture.

The only way to eliminate this inconsistency and satisfy the primary legislation regarding dissent, is to amend section 8.1 by deleting everything after the words "General Assembly". The section would then state that a session has standing leave to meet during the sitting of the General Assembly illustrated below.

8.1 A session has standing leave to meet during the sittings of the General Assembly. ~~provided always that in the event of such a meeting, any member who was a commissioner to the Assembly shall have liberty, on his/her return, or when the minutes are confirmed, to dissent or dissent and complain (see sections 381, 382) from any decision taken during his/her absence while attending the Assembly.~~

The Clerks offer two practical observations. First, the Clerks cannot remember a single case of a registered dissent being needed to protect a presbyter from censure by a higher court in the past 20 years that they have served in the Clerk's office. Second, it is likely a rare situation that would compel a session to meet at the same time as the General Assembly. Normally, sessions would be able to shift a meeting date to accommodate an elder commissioned to the Assembly.

The Clerks of Assembly believe it is self evident that section 8.1 needs to be amended to honour our understanding of decision making in our courts and to bring it into harmony with section 91. Nevertheless, the Clerks recommend that the amendment be forwarded to the church at large for study and report.

Recommendation No. 1 (will be presented in final report to the General Assembly)

May Young Adult Representatives express dissent?

The overture observes that young adult representatives attending the 2018 General Assembly were permitted to have their dissents recorded. Young adult representatives have an advisory vote that is not counted with commissioner votes. That means, on recommendations of particular interest to them, they are given the opportunity to express their support or opposition to those recommendations before commissioners are asked to vote on them. In this way the young adults "advise" commissioners. Even though their vote is not counted towards the adoption or defeat of any recommendation, the Assembly allowed these young people to record their dissent when they asked to do so. This was a courtesy extended by the Moderator and not challenged by the Assembly.

Decisions Regarding Dissent and the Barrier Act

It is true that the Barrier Act exists as a safeguard against rushed or careless changes to law or rule relative to doctrine, discipline, government or worship by engaging the wider church approving or disapproving changes. On occasion, however, when a recommendation to amend a section of the Book of Forms is deemed to be self evident, a necessary revision that does not alter the meaning of the legislation or unlikely to require debate, Assemblies have chosen to make the amendment without reference to sessions or presbyteries. Clearly, this choice is made not to avoid session and presbytery examination, but with an understanding that to engage the broader church in decisions deemed obvious by the Assembly is poor stewardship of the time of those who serve the courts of the church. It is a judgement call an Assembly sometimes makes.