

## **RIGHT TO DISSENT**

(Clerks of Assembly report, A&P 2021, p 302-04, 54)

Overture No. 8, 2019 asks the General Assembly to rectify inconsistencies in the law of the church that touches on dissent. It proposes reaffirming 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 dissent?**

When a church court adopts a motion, those who oppose the motion may vote against it and be content that their vote adequately expresses their disagreement. If those who vote against the motion want their opposition registered, they may ask to have their name and dissent recorded in the minutes. They may also ask that their reasons for dissent be included. Normally, this only happens when the approval of a motion creates a conflict of conscience or belief that a person feels compelled to declare.

### **What is the value of dissent?**

Those who dissent relieve themselves from responsibility for the adoption of the motion. That means, if a court is censured by a higher court for a particular decision, those who dissented would not be found at fault. While dissenting relieves a person from responsibility for the adoption of the motion, the person is still duty-bound, with all members of the court, to carry out any action that results from the motion.

The fundamental legislation regarding dissent is expressed in Book of Forms 91:

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.

The first sentence of section 91 declares a principle that must be applied to all other questions about dissent. Only those who vote on a question are entitled to a recorded dissent.

Why is it important that only those who vote are entitled to a recorded dissent? The church discerns the mind of Christ through mutual consent and not by the decision of individuals acting in isolation. We pray, reflect, speak and listen in community when seeking God's will. Opinions brought to a meeting can be changed in community. If a member of a court is not present for the discussion that leads to a vote, they are not exposed to the broad spectrum of reasoning that leads to the decision. Therefore, they cannot properly dissent from the decision because their disagreement, in part, would be with a conversation they did not hear.

### **Book of Forms 12.1 and 8.1**

The overture refers to Book of Forms 12.1 and 8.1, both of which touch on dissent.

The 2016 General Assembly removed 12.1 from the General Rules for Church Courts. The section indicated that if a member of a court was absent from a meeting without the permission of the court, then that member could not dissent from any decision made in their absence. The section was removed because it implied that if the member received permission to be absent, they could dissent from any decision made in their absence. The Assembly agreed this was contrary to the fundamental principle that only those who vote on a question are entitled to dissent.

Here is section 12, which remains in the Book of Forms and section 12.1 that was deleted. It has been struck through to illustrate that it is no longer part of our legislation.

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.~~

At the 2018 Assembly, the Clerks of Assembly drew attention to an almost identical dissent situation. Section 8.1 grants permission for a session to meet while a General Assembly is being held. There is no problem with that part of the legislation, however it then states that if a member of a session misses a session meeting due to being a commissioner to the Assembly, then the member is allowed to dissent from session decisions made in their absence. In other words, they may dissent from a decision they neither discussed nor voted on. For this reason, the Clerks proposed that section 8.1 be amended as follows:

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.

This amendment would have brought the section in line with the church's understanding of dissent and make it consistent with other legislation but it was defeated. (A&P 2018, p. 256–58) Consequently, section 8.1 is still in the Book of Forms in its entirety, with none of those words crossed out. Therefore, an Assembly commissioner may still dissent from a decision their session makes in their absence. This is the inconsistency raised by this overture.

The overture believes the inconsistency can be resolved by asking the church to permit a presbyter to record dissent from an action taken by any court not only when presbyter participated in the vote but also when the presbyter is absent with the permission of the court or when they informed the clerk, prior to the meeting, that they cannot attend. (Expressed their regrets.) But both scenarios are inconsistent with the fundamental principle that a member of a court can only dissent from an action taken when the member has participated in the vote, as stated in section 91.

Consistency would be achieved if section 8.1 is amended as noted above and, in that way, brought in line with section 91. The Clerks, therefore, make the following recommendation.

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### **May Young Adult Representatives express dissent?**

The overture observes that young adult representatives attending the 2018 General Assembly were permitted to have dissents recorded. Young adult representatives do not have a counted vote but they do have an advisory vote. 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, the Assembly allowed these young people to record dissent as a courtesy.

### **Decisions Regarding Dissent and the Barrier Act**

As suggested by the overture, 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 in approving or disapproving changes. On occasion, however, when an Assembly deems a recommendation regarding a piece of legislation beyond dispute, the Assembly has chosen to make the amendment without reference to other courts. To save the broader church from studying matters considered obvious by the Assembly seems to be good stewardship of time. This is a judgement call the Assembly sometimes makes.