

Legal Questions Committee speech—General Assembly 2022

Rev Dr Grant Barclay

Moderator,

I present the report of the Legal Questions Committee which is found in section 4 of the Blue Book.

Church Courts Act

The chief piece of work offered by the Committee is the revision of the Church Courts Act, with the text found in Appendix B.

This seeks to be more than a consolidation of existing law. It also offers a broad understanding of the roles of each of the three church courts and the interactions among them. As far as possible, it uses language which doesn't require legal knowledge to understand its provisions, it points to (rather than repeats) other legislative material, and it endeavours to be reasonably comprehensive in addressing matters specifically relating to the courts of the Church. The Committee hopes this is a practically useful tool principally for Session and Presbytery Clerks, and others, too.

It largely restates the law, but makes slight innovations in the following areas:

1. Provisions are made to enable eldership obligations to be relinquished in the event of a lack of capacity; and there is clarification that standing apologies for absence from Session meetings may be accepted.
2. It is proposed that membership of a Presbytery need not require an elder who is otherwise in good standing to be a member of a Kirk Session within its boundaries.
3. Delegation of authority, not itself considered innovative, is described in detail which has not previously been included in legislation.

No change to the minimum age of eldership is proposed given the potentially significant trustee and other obligations placed on elders which the Committee considers are not appropriate for those who have not attained majority. In this, the Church seeks to implement the general principle of empowerment at age sixteen but protection to

eighteen. Correspondents, however, may be any age and this may provide a route for greater engagement with people of all ages.

A novel procedural proposal is that this draft Act should not be sent down under the Barrier Act. It is, rather, offered to the Church for consultation in draft form during the coming year. Suggestions for improvement and clarification are welcome and the Committee will present a fresh and final draft next year.

Legal Questions considers there is little of an innovative nature which is significant in this proposed Act. The Committee believes an invitation to consider and discuss its terms is preferable to the Barrier Act's binary vote by Presbyteries to approve or disapprove, coupled with a more limited opportunity to comment.

This approach is, however, simply proposed. If this Assembly considers it more appropriate to send the draft down under the Barrier Act, all materials are prepared and a suitable Overture shall swiftly be provided.

The past, challenging, years have taught us that flexibility is vital and I hope the Assembly sees in this proposal a desire to learn from experience whilst not insisting upon novelty for its own sake.

Presbytery review

Presbytery review has not developed as swiftly as some might have anticipated, partly due to the pandemic and also the continuing, widespread Presbytery restructuring.

We need continually to review our practices, not merely to improve but also to encourage, to congratulate as well as challenge and correct. The outline of a possible peer-resourced review process for the new, larger Presbyteries distils thinking to date and shall, it is hoped, be further refined through consultation in the coming year. High-level comments are welcome.

Appeals procedures

Proposed changes to appeals procedures aim to balance the interests of appellants with the resource demands of addressing grounds of appeal which are incompetent or irrelevant. It grants powers to the Convener and vice convener of the Committee or Commission to dismiss those grounds of appeal which are incompetent or irrelevant. It is also proposed

that the Judicial Panel pool be widened to permit the Church to benefit from wider, relevant experience.

Format of General Assembly

Recent experience has informed proposed changes to the Commission of Assembly Act to permit changes to the format of a subsequent General Assembly where circumstances demand, and for the Commission itself to meet in a range of formats.

The proposed Church Courts Act permits, but does not oblige, Kirk Sessions, Presbyteries and the Assembly itself to meet in a variety of formats. The task of Legal Questions is simply to make possible these formats of meeting.

The General Assembly itself has yet to debate the potential benefits, and the disadvantages, of online or mixed-format as opposed to fully in-person meetings; further, a hybrid pattern of meeting could also be achieved through a sequence, over time, of wholly in-person and wholly online, meetings.

Important issues such as fellowship and encounter, sharing in worship, adequate scrutiny of proposals, and ensuring sufficient engagement in debate are all essential elements of any General Assembly, as is the value of the prominence given to the Church's work achieved through a large gathering.

Permissive, or enabling, legislation demands careful consideration of the principles which inform, and the consequences which may flow from, any change of practice. Directions which come from this Assembly shall be incorporated in the developing draft of the Church Courts Act and in the provisions for calling the next General Assembly in 2023.

Conflict of interest

I underline the need for all Kirk Sessions to adopt a conflict of interest policy, with a style being available on the Church website, and I thank the Solicitor and Law Department for its work in this and other significant areas of the Committee's work.

Expressions of thanks

The Report notes that this has been a busy year, something I would emphasise. I simply wish to acknowledge the Committee's gratitude to the Principal and Depute Clerk who have

met, with efficiency and good grace, both this demanding workload and the need to operate under challenging circumstances through the pandemic restrictions.

The Principal Clerk serves as Secretary to the Legal Questions Committee. While he does far more than that, his advice, experience, insight and ability to explain facets of Church Law and practice have been of singular benefit to the Committee in its work over this past year. It would be hard to imagine how legislation concerning registration of ministry, discipline, same-sex marriage, mission planning, church courts and much more would be developed without the insight and input of the Principal and Depute Clerks. The frequent engagement with Scottish Government officials over the pandemic period and early dissemination of information to Ministers and Kirk Sessions has been invaluable and I thank all those involved in this uniquely challenging task.

Moderator, more shall be said later in this Assembly as the Rev Fiona Smith formally takes up the role of Principal Clerk. At this point I simply wish to offer the sincere thanks of the Legal Questions Committee to Dr George Whyte for his leadership, guidance, encouragement and good humour over his period of service. We wish Moira and George enrichment and joy in the years to come.

I present the Report and move the Deliverance.