

## Legal Questions Committee Speech—General Assembly 2023

### Rev Dr Grant Barclay

Moderator,

I present the Report of the Legal Questions Committee, contained in section 7 of the Blue Book.

Commissioners will see that further work has been carried out to refine the Church Courts Act which was presented in draft form last year. The opportunities for consultation which were offered or taken up, and suggested improvements which were gratefully received and which are detailed in Appendix C, have contributed to a more refined piece of legislation. The committee considers that this offers sufficient confidence that adequate scrutiny of this draft legislation has been provided. While it is possible for the matter to be sent down under the Barrier Act, it is proposed the Act be given effect now.

Last year's Assembly instructed the committee to review process aspects of Act I 2015, the Ministers and Deacons in Civil Partnership and Same Sex Marriages Act. After reflection, the committee proposes that the Act's operation be clarified to include Pioneer and Associate Ministers and also to clarify procedures surrounding the appointment of an Interim Moderator who is in a same sex marriage or civil partnership. It is also proposed to reduce to one the number of Kirk Session votes required to depart from the traditional doctrine and practice of the Church, and to provide a mechanism which removes the need to vote repeatedly on this matter in Team Ministry charge appointments. Opportunity for reconsideration is built into the proposed amendments. The Committee, while anxious to fulfil the instruction given, confines its proposals to matters of process and not to policy considerations.

Presbytery review has, given the focus on Presbytery reform, not progressed swiftly but principles are, nonetheless, presented this year which – it is hoped – will guide the development of this work in the future.

Presbytery reform and, in particular, the significant reduction in the number of Presbyteries, has consequential effects on Barrier Act process and votes, a matter which is explained in the report in some detail. Various alternative approaches have been considered but, after reflection, no proposals for alteration to the Barrier Act are proposed.

An instruction received at last year's Assembly to consider the possibility of Readers solemnising marriage was given careful reflection, though the Committee does not advance the proposal for the reasons outlined in the Report.

Protocols which were introduced to address the uniquely challenging circumstances of the pandemic are now considered unnecessary. Accordingly and since no extension of these is now proposed, they lapse at this time. The Assembly will note, however, that provision for the courts of the Church to meet in online and hybrid forms is included in the Church Courts Act.

While Church Law may be criticised for apparently inducing delay and complexity in a common life which should be marked by grace and some fleetness of foot, I want to offer a different perspective.

The Church was able to respond timeously to events which were not reasonably foreseeable through the COVID pandemic. When widespread and significant restrictions on assembling physically were imposed by national law, it was through Church Law that a flexible, but robust, governance process provided which enabled decision making, albeit in a quite different form, to continue to support the life of congregations and the wider Church.

Substantial innovations to practices in the General Assembly, and now in other courts, have been developed through Church Law which provide offer flexibility while ensuring decisions are taken securely and can, therefore, command confidence.

Church Law has enabled the whole Church to give practical expression to the concept of constrained difference in an area of challengingly divergent thinking. After a conceptual foundation was laid – quite properly – by the Theological Forum, the Legal Questions Committee offered a practical application by means of Church Law.

In these areas, and in others, Church Law has proved that it can act speedily but carefully, can offer flexibility whilst retaining valued and valuable principles, and that it offers a foundation for progress whilst providing, at the same time, necessary protection.

Our approach to law as a Church has made this possible, but it has only been achieved through the dedication of officials and members of staff.

I want, then, to finish by paying tribute to the efforts of my colleagues over past years – few of which could be described as routine. The support of Christine Paterson to the work of the Office of the General Assembly, the Legal Questions Committee and to legal aspects of Presbytery life is difficult to overstate. In expressing my thanks on behalf of the committee to Christine, I note with some vicarious relief (given that I'm a Presbytery Clerk) that Victoria Linford's legal knowledge and experience as a Presbytery Clerk, too, will support

clerks in their future work. The insight of Fiona Smith as Principal Clerk has been of considerable assistance to the committee and the broader Church over this past year.

I'd argue that Church law is one expression of faithful obedience and is one way we express our care for others as we all live to an agreed set of principles. Church law promotes equity, for all stand under the same law with no special treatment for those who are particularly well resourced, well connected or articulate. Church law can be a tool to preserve good practice and capture wisdom gained over years of experience and reflection.

The former Archbishop of Canterbury, Dr Rowan Williams, has said that Church law 'begins from that basic affirmation of equity which is the fact of membership in the Body of Christ.' Its purpose, also in his words, is to offer 'clarity about who may do what and who is answerable to whom, because every Christian has to know how to work out their responsibility to God within the context of the various relationships and obligations they are involved in.'

Moderator, the Committee has sought to fulfil its responsibility to make Church law readily accessible, generally understandable and practically useful so that it might help us all to act justly and exhibit love in our dealings with one another, serving as Jesus commands.

I accordingly present the report and move the deliverance.