

**THE PERMANENT JUDICIAL COMMISSION
OF THE GENERAL ASSEMBLY
OF THE PRESBYTERIAN CHURCH (U.S.A.)**

DECISION

SESSION, LONDONDERRY)	
PRESBYTERIAN CHURCH, et al.)	
Complainant/Appellee)	
)	
v.)	REMEDIAL CASE 213-2
)	
)	
PRESBYTERY OF NORTHERN NEW ENGLAND)	
Respondent/Appellant)	

This case has come before this Commission on appeal from a decision of the Permanent Judicial Commission of the Synod of the Northeast (SPJC).

Pursuant to D-13.1200a, this Commission finds that it has jurisdiction, that the Complainant has standing to appeal, that the appeal was properly and timely filed, and that the appeal is in order.

History

On April 20, 1997, as the vote of the presbyteries adopting what is now G-6.0106b was drawing to its completion, the Session of Christ Church Presbyterian, Burlington, Vermont, (Christ Church), a particular church under the jurisdiction of the Presbytery of Northern New England (Presbytery), adopted and issued a Resolution of Dissent (Resolution). The Resolution asserted that G-6.0106b was inconsistent with various

other provisions of the Book of Order that affirm inclusivity, and concluded, “we vow to continue welcoming persons living singly or in committed relationships, regardless of sexual orientation, into the life, membership and leadership of this congregation on an equal basis, including eligibility for election and ordination as a ruling elder or deacon.” The Resolution was received by Presbytery at its stated meeting on June 7, 1997. A similar resolution was submitted by Mid-Coast Church, Topsham, Maine. Presbytery authorized its moderator to appoint a committee to meet with the dissenting churches regarding the resolutions. At a meeting of the Presbytery held in March, 1998, the Presbytery adopted the recommendation of the committee:

While affirming the right of both Christ Church and Mid-Coast Church to express their opinions and feelings regarding the eligibility requirements for ordination in the Presbyterian Church (U.S.A.), the Presbytery of Northern New England cannot affirm non compliance (*sic*) with the Book of Order, therefore it instructs the sessions of Christ Church, Burlington VT and Mid-Coast Church, Topsham ME to be in conformity with Book of Order G-6.0106b as pertains to the ordination of elders and deacons, and report such compliance to the Presbytery by the March 1999 stated meeting.

While Mid-Coast Church did not protest the Presbytery order, on June 18, 1998, Christ Church submitted a “Report of the Session to the Presbytery of Northern New England” in which it stated that it could not in good conscience comply with G-6.0106b, “without harming deeply the church community that we have been called to lead.” The Presbytery Council subsequently formed what it termed a “response team.” At the

December 5, 1998, Presbytery meeting, the response team presented four alternatives for Presbytery to consider. The Presbytery adopted the alternative that the Presbytery, “acknowledge that Christ Church Presbyterian carries on a valid and sacred ministry in Burlington; ... recognize that the alleged inconsistencies do exist; ... [and] rescind its action instructing the Session of Christ Church Presbyterian be in compliance with G-6.0106b.”

A protest was filed objecting to the Presbytery action, and a stay of enforcement was granted on January 4, 1999. A complaint against the Presbytery was subsequently filed on March 2, 1999.

The SPJC held a trial on October 8, 1999. It found that the action of Presbytery to rescind its previous motion did not meet the requirements of G-11.0103t.(2) to see that, “orders of higher governing bodies are observed and carried out,” and that Presbytery was required, at a minimum, to record in its minutes its disapproval of the Session’s action. Moreover, it found that the motion was irregular because “an action fulfilling an affirmative duty of a governing body can only be in order if it leaves in place some other action... which fulfills that duty.” The SPJC ordered the Presbytery to work pastorally with the Session of Christ Church, “with the ultimate goal of bringing them into compliance” with the *Constitution*.

The Respondent appealed the decision to this body, and the Complainant/Appellee filed a cross-appeal.

Specifications of Error

The Respondent/Appellant cites five specifications of error (restated for clarity and concision):

A-1. That SPJC erroneously concluded that the Presbytery's rescission constituted an irregularity, in that the stated intention of Christ Church and the action of Presbytery were in compliance with G-6.0106b under the Authoritative Interpretation adopted by the 1998 General Assembly.

This specification is not sustained.

While the authoritative interpretation adopted in 1998 requires governing bodies to examine each officer-elect on the basis of his or her individual character and behavior, it does not permit a governing body to disregard ordination standards mandated by the *Constitution* in the examination of those individuals. The interpretation of G-6.0106b and G-4.0403 states: "Standing in the tradition of breaking down the barriers erected to exclude people based on their condition, such as age, race, class, gender, and sexual orientation, the Presbyterian Church (U.S.A.) commits itself not to exclude anyone categorically in considering those called to ordained service in the church, but to consider the lives and behaviors of candidates as individuals." (*Minutes*, 1998, pp. 68, 166)

A-2. That SPJC erroneously concluded that the Presbytery's rescission constituted an irregularity, in that various other passages of the Form of Government¹ are irreconcilable with the requirements of G-6.0106b;

A-3. That SPJC erroneously concluded that the Presbytery's rescission constituted an irregularity, in that G-1.0301a and G-6.0108 affirm freedom of conscience with respect to matters addressed by G-6.0106b.

These specifications are not sustained.

It is not unusual for a document such as our *Constitution*, written at different periods of time and under different circumstances, to exhibit tensions and ambiguities in its provisions. Nevertheless, it is the task of governing bodies and judicial commissions

¹ G-3.0401, G-4.0403, G-5.0103, G-5.0202, G-10.0102(1), and G-11.0103a, b, g, and n.

to resolve them in such a way as to give effect to all provisions. It is not within the power of any governing body or judicial commission to declare a properly adopted provision of the *Constitution* to be invalid. The only appropriate avenue to change or remove a provision of the *Constitution* is through the process for amendment provided within the *Constitution* itself.

G-6.0106b presents the qualifications established by the corporate judgment of the whole church for ordination to service as minister of the Word and Sacrament, elder, and deacon. The Historic Principles of Church Order are explicit as to the right of the church to make and to enforce these standards:

That, in perfect consistency with the above principle of common right, every Christian Church, or union or association of particular churches, is entitled to declare the terms of admission into its communion, and the qualifications of its ministers and members, as well as the whole system of its internal government which Christ hath appointed; that in the exercise of this right they may, notwithstanding, err, in making the terms of communion either too lax or too narrow; yet, even in this case, they do not infringe upon the liberty or the rights of others, but only make an improper use of their own. (G-1.0302)

The paradox illustrated in the instant case did not originate with the adoption of G-6.0106b, but is inherent in the essentials of our faith and our *Constitution*, as evidenced by the first two Historic Principles of Church Order (G-1.0301² and G-1.0302).

²G-1.0301(1)(a): "That 'God alone is Lord of the conscience, and hath left it free from the doctrines and commandments of men which are in anything contrary to his Word, or beside it, in matters of faith or worship.'"; G-1.0301(1)(b): "Therefore we consider the rights of private

its A-4. That SPJC erred in its conclusion that the action of Presbytery rescinding original order to comply with G-6.0106b constituted an erroneous decision or action, and hence an irregularity.

This specification is sustained.

As a matter of procedure, Presbytery had a right to rescind its previous action. In so doing, it did not commit an irregularity. However, the rescission did not release the Presbytery from its responsibility to act (see discussion under A-5 below).

A-5. That SPJC erred in declaring that the rescission of an action requires some other action which fulfills a duty.

This specification is not sustained.

In the instant case, it is not the act of rescission itself which is in question, but the oversight obligations of Presbytery. Appellant is correct in its claim that *Robert's Rules of Order* do not require any action following a rescission. However, the judgment of the SPJC was not grounded on Robert's Rules, but on G-11.0103t(2) and G-9.0409. While there is no accusation of an action by Christ Church regarding an improper ordination or installation, its statements clearly went beyond a mere expression of opinion and gave a reasonable basis for concern that violations may have already occurred or might occur. Therefore, Presbytery had an obligation to make at least a minimal response.

Rescinding the original order to comply with G-6.0106b created a vacuum. Since Presbytery has responsibility for both pastoral and administrative oversight of Christ

judgment, in all matters that respect religion, as universal and unalienable: We do not even wish to see any religious constitution aided by the civil power, further than may be necessary for protection and security, and at the same time, be equal and common to all others."

Church, the primary response is pastoral. This shall reaffirm the Presbytery's connectional responsibility for the work and struggle of Christ Church, while counseling Christ Church not to violate the *Constitution*. This Commission reaffirms the right of decorous dissent. An appropriate dissent may be expressed in various ways; however, it may not include an intent by those who have vowed to be governed by the church's polity to violate the *Constitution*. Therefore, nothing in this decision shall be construed to abridge the right of decorous dissent. Indeed, the Second Helvetic Confession affirms that, "it pleases God to use the dissensions that arise in the church to the glory of his name, to illustrate the truth, and in order that those who are in the right might be manifest (I Cor. 11:19)." (C-5.133)

Specifications of Error of Cross-Appeal

The Complainant/Cross-Appellant listed four specifications of error in the notice of cross-appeal. Complainant/Cross-Appellant subsequently abandoned two of these, and rephrased the remaining two prior to the hearing on appeal. There was no objection at the hearing to this modification.

C-1. *That SPJC erred in not finding that the December 5, 1998 action of the Presbytery of Northern New England violated the amendment process prescribed in G-18.0300.*

This specification is not sustained.

By rescinding its former order, Presbytery did not invalidate any provision of the Book of Order, or exempt Christ Church from its obligation to act in conformity with the *Constitution*. If at any time the Session of Christ Church were to ordain or install an elder or deacon in violation of the *Constitution*, it would still be subject to the discipline

of the Church. Presbytery merely withdrew its formal censure of Christ Church's Resolution.

C-2. That SPJC erred in not finding that the December 5, 1998 action of the Presbytery abdicated its duties and responsibilities under any one or more of G-1.0302, G-1.0303, G-4.0300a, G-9.0102b and G-9.0409, and not just under G-11.0103t(2).

This specification is not sustained.

It is sufficient for a judicial commission to base its decision on Holy Scripture and the *Constitution* of the Church. It is not an error to fail to cite all passages and provisions that might apply to a given case, unless failure to consider them would alter the decision or order.

Discussion

This case raises fundamental questions about the paradoxical nature of Christian liberty within the covenant community of the Church, especially as it relates to the freedom of governing bodies to dissent from Constitutional standards of faith and conduct.

There is a natural tension between God alone being the Lord of the conscience and the Church being a covenant community. The covenantal nature of the Church requires the exercise of mutual accountability between both individuals and governing bodies. In Matthew 18:15-17, Jesus instructs the disciples concerning how this accountability is to be exercised within the church. Our Lord also strictly warned the disciples concerning the spiritual peril of allowing a brother or sister to stumble in sin (Matthew 18:6-7). The confessions also echo this covenantal responsibility (C-9.38, 5.163). When an individual or governing body threatens to move from verbal dissent to active disobedience, it is the obligation of the covenant

community to seek to prevent the dissenting party from falling into contumacy. This begins as an act of pastoral care, but may become an act of church discipline (D-1.0103).

The Second Helvetic Confession speaks extensively of the Church as a covenant community with Christ alone as its head (C-5.124-.141). While our culture prizes individualism, the nature of the Church as a covenant community under the Lordship of Christ implies that no individual or segment of the Church exists unto itself (I Corinthians 12:14-27). Indeed, because of our propensity to sin and self-interest, we must look to the collected wisdom of the whole Church as an aid to continual self-examination and the grace of repentance. For this reason, we seek the will of God corporately as a covenant community. For the same reason, our consciences are free, but subject to the headship of Christ and to the Church as a covenant community. As a community bound by covenant with Christ as our head, we can celebrate and encourage a diversity of opinion while faithfully calling for conformity in action.

The Westminster Confession addresses Christian Liberty and Liberty of Conscience in Chapter XXII (C-6.108ff.), from which is derived the first historic principle of church order, “That ‘God alone is Lord of the conscience, and hath left it free from the doctrines and commandments of men which are in anything contrary to his Word, or beside it, in matters of faith or worship.’” (G-1.0301a) Here too, however, the confession is clear that this liberty is to be exercised within bounds. These include respect for and obedience to duly constituted authority (C-6.111). While one is free to hold and decorously to advocate ideas that are contrary to such authority, one may not

act in contravention of such authority (in this case, a properly enacted provision of the Church's *Constitution*).

The Form of Government echoes these principles as they pertain to church officers in G-6.0108a: "It is necessary to the integrity and health of the church that the persons who serve in it as officers shall adhere to the essentials of the Reformed faith and polity as expressed in the Confessions and the Form of Government. So far as may be possible without serious departure from these standards, without infringing on the rights and views of others, and without obstructing the constitutional governance of the church, freedom of conscience with respect to the interpretation of Scripture is to be maintained."

A formal declaration by a governing body whose members have taken the vow "[to] be governed by our church's polity," and "abide by its discipline," not to comply with the express corporate judgment of the Church in an explicit constitutional provision exceeds the constitutional bounds of freedom of conscience and therefore requires a response on the part of the governing body exercising oversight. Because the statements of Session raise a reasonable basis for concern that the *Constitution* may be violated, Presbytery neglected its duty to help Christ Church to apprehend and to embrace both the blessings and responsibilities, the grace and obligation, of living in covenant community.

In the process of providing counsel and guidance to sessions and congregations, presbyteries should not lose sight of the special relationship that exists between particular churches and their presbyteries. It is a relationship that is built on mutual trust and accountability among those parties and with the larger church.

Presbyteries are responsible to particular churches for providing guidance. Particular churches rely on presbyteries for this guidance. Presbyteries are likewise accountable to the larger church for upholding the *Constitution*. They are also responsible for dealing fairly and honestly in upholding these connectional obligations.

Decision

This Commission finds that there are no constitutional grounds for a governing body to fail to comply with an express provision of the *Constitution*, however inartfully stated. Assertions of inconsistency, confusion, or ambiguity may justify the right to protest. They do not create a right to disregard any part of the *Constitution*. Furthermore, no court in our denomination has the authority to amend the *Constitution* or to invalidate any part of it. This is exclusively a legislative process (G-18.0300).

SPJC correctly ruled that Presbytery's action was insufficient. Presbytery had a right to rescind its original order. However, in so doing without further action, Presbytery was delinquent in failing to fulfill its responsibility of oversight (G-11.0103g and G-11.0103t) to care for and to counsel Christ Church not to violate the *Constitution*. Because other constitutional remedies are available to the Presbytery than those stated in the original order, the order of SPJC to void the rescission and to reinstate the original order was in error.

Order

IT IS THEREFORE ORDERED that the decision of the SPJC be affirmed with the following modifications: (1) to reinstate the action of Presbytery rescinding its original order, and (2) to require the Presbytery to exercise pastoral and administrative oversight of Christ Church as herein stated;

IT IS FURTHER ORDERED that the Presbytery of Northern New England continue to work pastorally with the Session of Christ Church to assist it in fulfilling its obligation to comply with the *Constitution*. The Presbytery of Northern New England shall notify in writing the Session of Christ Church Presbyterian, Burlington, Vermont of its concern over the stated intention of the Session not to comply with G-6.0106b, and warn it of the spiritual effects and disciplinary consequences of non-compliance. A notation of this correspondence shall be recorded in the Presbytery minutes.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Northeast report this Decision to Synod at its first meeting after receipt, that a copy of this Decision be entered into the minutes and that an excerpt of those minutes showing entry of the Decision be sent to the Stated Clerk of the General Assembly; and that the Stated Clerk of the Presbytery of Northern New England report this decision to the Presbytery at its first meeting after receipt, that the Presbytery enter the full decision upon its minutes, and that an excerpt from those minutes showing entry of the decision be sent to the Stated Clerk of the General Assembly.

Dated this 7th day of July, 2000.

Concurring Opinion in part; Dissenting Opinion in part by Patricia K. Norris

I concur with the Commission's order reinstating the Presbytery's action rescinding its March 1998 motion and requiring it to exercise appropriate oversight and counseling of Christ Church. And, I agree with much of what the Commission has said regarding the nature of Christian liberty within the Church. I dissent, however, from the parts of the Commission's opinion which suggest that Christ Church's statements violated the *Constitution*.

The fundamental issue in this case is whether the Presbytery violated G-11.0103t.(2)

(“seeing that the orders of higher governing bodies are observed and carried out”) when, on December 5, 1998, it rescinded its March 7, 1998 motion instructing sessions of two churches to “be in conformity with *Book of Order* G-6.0106b as pertains to the ordination of elders and deacons, and report such compliance to the Presbytery...” The answer is no.

The Presbytery’s March 7, 1998 motion and subsequent rescission arose out of an April 1997 resolution of dissent by the Session of Christ Church Presbyterian, Burlington, Vermont. Endorsed by unanimous vote of the Christ Church congregation, the resolution vowed “to continue welcoming persons living singly or in committed relationships, regardless of sexual orientation, into the life, membership and leadership of the congregation on an equal basis, including eligibility for election and ordination as a ruling elder or deacon.” After Christ Church reported to the Presbytery in response to the March 1998 motion that it had not found a way to be in compliance with G-6.0106b without deeply harming its community, the Presbytery rescinded its March 1998 motion, acknowledging that Christ Church was carrying out a valid and sacred ministry and recognizing that inconsistencies existed between G-6.0106b and other portions of the *Book of Order*.

In rescinding the prior motion, the Presbytery did not state, directly or indirectly, or indicate in any way that it would not enforce G-6.0106b in a matter properly before it. Within our system of governance, a presbytery is entrusted with judgement and discretion as to how and when it will respond to allegedly irregular or delinquent conduct by a lower governing body. This constitutional grant of discretion does not sanction attempts of a lower governing body to nullify or disregard the law of the Church as constitutionally determined by a higher governing body. But, in the constitutional exercise of its judgment and discretion, a presbytery may elect to deal with a particular situation in a variety of ways, consistent with its obligations under G-11.0103t.(2). This Commission recognized this very principle in *Central Presbyterian Church v.*

Presbytery of Long Island (Minutes, 1996, p. 173).

The importance of recognizing and preserving such discretion is of critical importance in this case. It is undisputed, as Appellee acknowledged, that no ordination or attempted ordination by Christ Church in violation of constitutional standards was at issue. No evidence was presented, as Appellee also admitted, that either Christ Church or the Presbytery had taken any action, remedial or otherwise, inconsistent with denominational ordination policy. The Church's ordination standards are not violated through disagreement, objection, and protest, or even by advocacy of unconstitutional action at some indefinite time in the future. Compliance with ordination standards is to be determined by considering "the lives and behaviors of candidates as individuals." (*Minutes, 1998, p. 166*) (Authoritative Interpretation).

Appellee asserts, nevertheless, that this case is governed by this Commission's decision in *Union Presbyterian Church of Blasdell, New York v. Presbytery of Western New York (Minutes, 1985, p.120)*. In that case, this Commission held that a session had committed an irregularity in adopting a resolution proposing a course of action contrary to established Church ordination policy and that a presbytery was required to take corrective action to deal with this irregularity.

Appellee's reliance on *Blasdell* is misplaced. First, *Blasdell* was decided before the adoption of Amendment B and before the 1998 Authoritative Interpretation of G-6.0106b. Under the 1998 Authoritative Interpretation, as explained above, conduct and behavior, not statements of protest and intent, are determinative for compliance and, conversely, non-compliance, with constitutional standards for ordination.

Second, *Blasdell* was decided before this Commission's decision in *Presbytery of West Jersey v. Synod of the Northeast (Minutes, 1993, p. 181)*. This Commission distinguished

between expressions of opinion and actions in violation of constitutional requirements, stating as follows:

Expression of an opinion by a synod or other governing body, without action, does not constitute the adoption of a policy contrary to an established and controlling constitutional policy of the denomination.

Each case must be decided on the facts presented. Here, the resolutions passed by the synod and challenged by the presbytery before this commission do not compel or direct any action (or inaction) and do not extend any rights (including the right to be ordained) that contravene any stated positions of this church.

Appellee raises two additional arguments in requesting affirmation of the Synod PJC's decision. First, Appellee asserts that the Presbytery was barred from rescinding its March 1998 motion because rescission left Christ Church's resolution in place, without correction or disapproval by the Presbytery. For the reasons expressed above, the Appellee is mistaken.

Second, citing *Maxwell v. Pittsburgh Presbytery* (UPCUSA, *Minutes*, 1975, p. 254), Appellee asserts that the Presbytery was required to take corrective action concerning Christ Church's resolution because it expressed an intent not to conform to Church ordination policies. In *Maxwell*, a presbytery voted to ordain a minister who was unable to answer the ordination questions in the affirmative. The ordination was stayed. The General Assembly held that the Presbytery's action violated the *Constitution*. In so doing, the General Assembly did not challenge the right of the minister to his beliefs: "It is not seemly to challenge the right of [the minister] to his beliefs, but it is the responsibility of our Church to deny ordination to one who has refused to ordain women." *Maxwell* did not hold that a statement of intent constituted a violation of the *Constitution*. The constitutional breach in *Maxwell* was the presbytery's decision to ordain a person in violation of the *Constitution*, not the minister's statement of intent. Here, the Presbytery has not sanctioned the ordination of anyone contrary to denomination requirements.

In obedience to Jesus Christ, the church is “open to the reform of its standards of doctrine as well as of governance. The church affirms ‘ecclesia reformata, semper reformanda,’ that is, ‘the church reformed, always reforming,’ according to the word of God and the call of the spirit.” (G-2.0200).

Dissent, advocacy of the unpopular and even proclamations of intent are ways to express truth to power, to induce change and to encourage “the church reformed, always reforming.” Although the Presbytery, in accordance with its connectional obligations should counsel with Christ Church to ensure constitutional compliance, the Presbytery’s rescission of its March 1998 motion did not constitute an irregularity.