



Book of Order Advisory Committee
Convener: the Very Rev Pamela Tankersley
51 Roy St
Palmerston North
pamelatankersley@gmail.com

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Memorandum to Council of Assembly

Opinion of the Book of Order Advisory Committee concerning the legality of the General Assembly's decision that its ministers may solemnise marriage only between a man and a woman.

Introduction

1. The Council of Assembly referred to the Book of Order Advisory Committee (BOAC) a letter from the Parish of St Andrews on the Terrace, Wellington, which asked the Council to investigate the legality of restricting ministers of the Church to solemnising marriage only between a man and a woman. [Book of Order (BOO) 6.8(5)]
2. The BOAC was asked, in light of the decisions made at the 2014 and 2016 General Assemblies, to consider particularly the issue of whom a minister may marry, based on the liberty of conscience provisions in the Declaratory Act.

Summary

3. The BOAC understands the view of the parish to be thus: because the Church's doctrine of marriage is not a fundamental doctrine of the Reformed Faith contained in its subordinate standards, ministers can exercise liberty of opinion on whether they may solemnise a same-sex marriage and the Assembly does not have authority to restrict their ministry practice in relation to this matter.
4. It is the opinion of the BOAC that the 2014 and 2016 Assemblies had authority to determine that "a minister may solemnise marriage only between a man and a woman" [BOO 6.8 (5)].

General Assembly's authority to bind the Church

5. The standards of the Church are set out in BOO 1.1.
 - (a) 1.1 (5) refers to the Declaratory Act 1892-3 as setting out, in regards to certain doctrines, what is required from those entering upon office. The Declaratory Act includes this statement:

"That this Church disclaims intolerant or persecuting principles, and does not consider her office-bearers, in subscribing the Confession, committed to any principles inconsistent with liberty of conscience and the right of private judgement.

That while diversity of opinion is recognised in this Church on such points in the Confession as do not enter into the substance of the Reformed Faith

therein set forth, the Church retains full authority to determine, in any case which may arise, what points fall within this description, and thus to guard against any abuse of this liberty to the detriment of sound doctrine or to the injury of her unity and peace." [BOO 1.1(4)]

- (b) The statement is partly reflected in the Formula that is signed by ministers at times of ordination and induction. It includes this statement:

"I accept that liberty of conviction is recognised in this Church but only on such points as do not enter into the fundamental doctrines of Christian faith contained in the Scriptures and subordinate standards." [BOO 1.7]

- (c) BOO 1.1(6) states the authority of the Church "to formulate, interpret or modify its subordinate standards, ..."

6. The General Assembly's governance authority is set out in BOO chapter 14.

- (a) 14.1 (1) gives the General Assembly power to exercise authority "over all synods, presbyteries, church councils, congregations, faith communities and also over ministers, elders, and members and associate members of congregations."
- (b) 14.2 (1) (e) states that the Assembly has the purpose and function, among other things "to act as the legislative body of the Church."
- (c) 14.2 (2) states that "A decision of the General Assembly is conclusive and binding on the whole Church."
- (d) 14.9 (4) outlines the special legislative procedure and states that if the General Assembly accepts a proposal, as occurred in this situation, "it becomes a part of this Book of Order and is final and binding on the Church and its constituent bodies."

7. The provisions in chapter 14 cited above suggest that the General Assembly has the authority to bind ministers in relation to "points as do not enter into the fundamental doctrines of Christian faith". Chapter 14 does not limit binding decisions only to those points as do enter into the fundamental doctrines of Christian faith.

8. An example of where the Assembly has bound ministers to a particular practice over which liberty of conviction might apply concerns the ordination of women to the ministry of word and sacrament.

- (a) BOO 6.1 (5) states: "The Church recognises both men and women for ordination to the ministries of word and sacrament and eldership.", and 9.1 (5) states: "The Church recognises that men and women are called to be ordained and commissioned to ministry." A minister "participates in the ordination of ministers." (6.5 (f))

Without reference to this being "a fundamental doctrine of the Christian faith" or able to be fallen from through claiming liberty of conscience, ministers are *required* to participate in the ordination of both men and women.

9. Thus, the liberty of conscience of a minister in relation to a particular issue does not exempt that minister from compliance with the Book of Order.

10. It is therefore the view of the Book of Order Advisory Committee:

- (a) General Assembly has authority to interpret the standards of the Church and to make decisions that bind ministers as a result of such interpretation.
- (b) General Assembly can make binding decisions without first assessing whether liberty of conviction is thereby affected.
- (c) The question as to whether liberty of conviction is affected is rightly raised as part of the Assembly discussion as to whether a particular decision should be made. If raised, it should be given careful consideration, given the sentiment of the Declaratory Act and the Formula. However, a lack of attention to such a matter does not thereby render the decision of the Assembly invalid.
- (d) Such decisions are only binding when the special legislative procedure is followed, a procedure with the aim of enabling the church to make considered and careful decisions.
- (e) In this instance the special legislative procedure was followed and a subsequent Assembly confirmed the previous Assembly's decision.
- (f) The issues raised in the letter of St Andrew's on the Terrace as to whether a minister can no longer comply with the regulations concerning worship, pastoral care and mission to people of the same gender who wish to have a marriage solemnised, **are issues for consideration as the Assembly makes its decision.** Lack of attention to these aspects cannot invalidate later the decision of Assembly.

Pamela Tankersley
Convener
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