

OVERTURE FROM ST. ANDREW'S AND ST. STEPHEN'S PRESBYTERIAN CHURCH

RE: GRACIOUS DISMISSAL

WHEREAS, between 2015-2020 24 Overtures and Petitions have been made to General Assembly requesting, in general, that The Presbyterian Church in Canada permit congregations to leave the denomination with their property at nominal cost to the congregation if the denomination approves either a redefinition of marriage to include same sex couples or the ordination of those leaders who are in a same sex marriage (“Gracious Dismissal”); and

WHEREAS, in response to those Overtures, in 2016 and again in 2018 the Clerks of Assembly presented to General Assembly a response that concluded that there was not a process to permit Gracious Dismissal due to both the polity of the denomination and the statutory restrictions set out in the Act to Incorporate The Trustee Board of The Presbyterian Church in Canada (1939) (“Trustee Board Act”), although the Clerks of Assembly in the 2016 report reminded the denomination of the missional focus of the denomination and that “there will always be room for gracious action, and loving respect on the part of those leaving, those remaining, their presbyteries and the Trustee Board. By God’s grace, we remain brothers and sisters in Christ”; and

WHEREAS, in discussions with the Clerks of Assembly and representatives of the Trustee Board, the Gracious Dismissal Committee of Assembly Council (“Committee”) concluded (contrary to the statements made by the Clerks of Assembly in their 2016 and 2018 reports to General Assembly that formed the basis for the 2016 report’s adopted recommendations) that there was a legally acceptable way to achieve Gracious Dismissal (in the manner set out by the Committee in its report attached hereto as Schedule One (“Gracious Dismissal Report”)) under the denomination’s existing polity and legislation if General Assembly duly approved a Gracious Dismissal process, all without amendments to the Trustee Board Act; and

WHEREAS the Committee concluded that if legislative amendments were ultimately believed to be required to the Trustee Board Act to allow Gracious Dismissal, the recent experience of the United Church of Canada in amending its similarly governing Act of Parliament showed such a legislative change could occur with relatively little expense or time, all as summarized in Appendix B to the Gracious Dismissal Report (and again, contrary to the statements made by the Clerks of Assembly in their 2016 and 2018 reports to General Assembly that formed the basis for their 2016 report’s adopted recommendations); and

WHEREAS, the Assembly Council at its meeting in November 2019 agreed that Gracious Dismissal, properly understood, applies to all congregations that in good faith believe they cannot remain in unity with the denomination as a result of the decisions reached by General Assembly regarding the related issues encircling human sexuality, the authority of scripture as it speaks to human sexuality, and the demands of a biblical understanding of justice on the matter of human sexuality, and as such, regardless of the decisions of the General Assembly (if any) regarding those issues and similar decisions at subsequent General Assemblies, Gracious Dismissal can apply equally to both those congregations described by the terms “traditional” and “affirming”; and

WHEREAS, the Assembly Council agreed in November 2019 that every congregation in The Presbyterian Church in Canada is acknowledged by all other PCC congregations as a valid witness to

and participant in the reconciling work of Jesus Christ in the world, regardless of that congregation's position on the issues of human sexuality, the authority of scripture as it speaks to human sexuality, and the demands of a biblical understanding of justice on the matter of human sexuality; and

WHEREAS, the Assembly Council agreed in November 2019 that the strength of The Presbyterian Church in Canada is found in its missional pursuit of being a faithful witness to Jesus Christ and not located on its balance sheet- that assets are important tools and gifts offered by God to the denomination generally to help achieve missional goals of congregations, but the aggregation of assets at the expense of missional vitality in congregations should be avoided; and

WHEREAS, the Assembly Council agreed in November 2019 that unity of the church does not necessarily require unity of any particular denomination - the origins of our denomination in the Reformation speaking to how unity of the church can be upheld even if organizationally it suffers loss of congregations and people to other entities that continue to proclaim the Gospel of Jesus Christ; and

WHEREAS, the Assembly Council agreed in November 2019 that the goal of examining the possibility of Gracious Dismissal is not to facilitate the departure of congregations with concerns about the denomination but that the goal, perhaps counterintuitively, is to encourage congregations to remain within the denomination, and that the debates about the human sexuality / authority of scripture / justice matters should be based on theology and ecclesiology, not on property, and by providing a clear, neutral answer to the question of Gracious Dismissal as an option, the debates can focus on the issues themselves, without the fear of the practical imposition of results on a congregation feeling threatened with the removal of its sanctuary and other church property; and

WHEREAS, the Committee concluded that Gracious Dismissal should be permitted by the denomination for four reasons, as set forth below

- (i) First, and most obvious, there is no agreement by all in the denomination on the issues surrounding human sexuality, authority of scripture, and the requirements of justice on this matter. Even if a consensus could be reached, those who oppose such a consensus do so from their deepest beliefs and commitments. To require compulsion on such a fundamental issue is both in principle inappropriate and in practice inviting acrimony, recrimination and a national and local preoccupation on divisive issues.
- (ii) Second, Gracious Dismissal is applicable to all and not a response to one perspective or theological viewpoint. Regardless how the Remits are addressed at General Assembly, there will be those deeply dissatisfied with the results from those who are both "affirming" and "traditional". Providing a mechanism to allow a Gracious Dismissal for all encourages a fairness to any process adopted.
- (iii) Third, a Gracious Dismissal process upholds materially the structure and principles the Clerks of Assembly set out in their 2018 response to overtures "A Way Forward" (although different to the extent that the Clerks of Assembly believed at the time the denomination's governing legislation would not allow the transfer of property at less than fair market value).

- (iv) Fourth, Gracious Dismissal should not be implemented because of emotional, quick, or theologically suspect reasons. The process proposed emphasizes actions that are ‘decently and in order’:

THEREFORE, the Session of St. Andrew’s and St. Stephen’s Presbyterian Church, North Vancouver humbly overtures the Venerable, the 146th General Assembly to permit congregations to leave the denomination with their property at nominal cost to the congregation if the denomination approves either a redefinition of marriage to include same sex couples or the ordination of those leaders who are in a same sex marriage (“Gracious Dismissal”), to adopt a process for the implementation of Gracious Dismissal in the manner described in Appendix C to the Gracious Dismissal Report or as modified by General Assembly in its wisdom after due consideration of the details, and to place the matter before and have it considered and fully addressed by the Venerable, the 146th General Assembly prior to addressing Remits B and C, 2019 under the *Barrier Act* being considered by such General Assembly so that decisions made about the Remits are based on theology and ecclesiology, not on property, or to do otherwise as the General Assembly, in its wisdom, may deem best.

SCHEDULE ONE

**FINAL REPORT OF GRACIOUS DISMISSAL COMMITTEE
WITH APPENDICES**

FINAL REPORT TO ASSEMBLY COUNCIL
FROM
GRACIOUS DISMISSAL COMMITTEE

March 22, 2020

To Assembly Council:

Background

Over the past 5 years Overtures have been made to General Assembly requesting, in general, that The Presbyterian Church in Canada permit congregations to leave the denomination with their property if the denomination approves either a redefinition of marriage to include same sex couples or the ordination of those leaders who are in a same sex marriage. The phrase “Gracious Dismissal” was used to describe the process articulated in and the prayer of the Overtures (further discussion about the term “Gracious Dismissal” is set out below). An ancillary issue is whether congregations that owned their property prior to 1925 are treated differently than other congregations.

In response to the Overtures, in 2016 the Clerks of Assembly presented to General Assembly a subsequently adopted response that concluded that there was not a process to permit Gracious Dismissal due to both the polity of the denomination and the statutory restrictions set out in the Act to Incorporate The Trustee Board of The Presbyterian Church in Canada (1939) (“Trustee Board Act”). The polity of The Presbyterian Church in Canada does not allow for a congregation to leave the denomination: the congregation by definition must dissolve if it does not remain. If the congregation dissolves, its assets and liabilities vest in the Trustee Board. The Trustee Board must sell that property and “pay the proceeds to the treasurer of The Presbyterian Church in Canada for such trusts, institutions, organizations, schemes of funds thereof as may be determined from time to time by the General Assembly of the said church.” Importantly, the Clerks of Assembly reminded the denomination of the missional focus of the denomination and that “there will always be room for gracious action, and loving respect on the part of those leaving, those remaining, their presbyteries and the Trustee Board. By God’s grace, we remain brothers and sisters in Christ.”

Following the 2016 General Assembly, new overtures and petitions were submitted by sessions and presbyteries. The new overtures asked that the Clerks of Assembly reconsider the decision taken by the 2016 General Assembly with a view to designing a process for congregations to leave the denomination with their property. The Clerks of Assembly responded in 2018 restating and expanding its discussion about PCC polity, the difficulty of amending the Trustee Board Act, and a call to unity within the denomination. A separate response addressed those congregations that owned their property prior to 1925, asserting that the Trustee Board Act also applied to such properties in the case of the dissolution of the congregation.

Action Plan of Committee

The Committee quickly realized that any proper review of the Clerks of Assembly 2018 response required the following, which was presented to the November 2019 meeting of Assembly Council:

- Establish guiding principles for the fact-finding investigation of the Committee
- Review of the original Overtures and petitions
- Review the responses in 2016 and 2018 by the Clerks of Assembly
- Seek explanation from the Clerks of Assembly, the Trustee Board and the Pension and Benefits Board about factual assumptions and statements in the Clerks of Assembly responses to ensure accuracy
- Consider alternative possible legal structures pertaining to Gracious Dismissal, to determine if the responses from the Clerks of Assembly failed to account for other possible legal alternatives
- An interim written report to the November 2019 Assembly Council meeting and a final report by the March 2020 Assembly Council meeting to ensure a substantive response will be provided to General Assembly by 2020

The interim report presented in November 2019 provided a significant amount of background to Assembly Council, including appendices that contained the text of all relevant overtures and petitions, the reports prepared by the Clerks of Assembly in 2016 and 2018, the full text of the Trustee Board Act, and correspondence with each of the Clerks of Assembly, Trustee Board and Pension and Benefits Board. That background material (of over 60 pages!) has not been reproduced in this final report but is available to any member of Assembly Council who requests it.

At the November 2019 Assembly Council meeting, the Committee committed to presenting a fulsome and final report to the March 2020 meeting of Assembly Council. With this report all of the actions listed above have been addressed by the Committee.

Principles of Investigation

The Committee presented at the November 2019 Assembly Council meeting the following principles that guided the Committee's work:

- Gracious Dismissal, properly understood, applies to all congregations that in good faith believe they cannot remain in unity with the denomination as a result of the decisions reached by General Assembly regarding the related issues encircling human sexuality, the authority of scripture as it speaks to human sexuality, and the demands of a biblical understanding of justice on the matter of human sexuality. As such, regardless of the decisions of the 2020 General Assembly (if any) regarding those issues and similar decisions at subsequent General Assemblies, Gracious Dismissal can apply equally to both those congregations described by the terms “traditional” and “affirming”.

- Every congregation in The Presbyterian Church in Canada is acknowledged by all other PCC congregations as a valid witness and participant to the reconciling work of Jesus Christ in the world, regardless of that congregation's position on the issues of human sexuality, the authority of scripture as it speaks to human sexuality, and the demands of a biblical understanding of justice on the matter of human sexuality.
- The strength of The Presbyterian Church in Canada is found in its missional pursuit of being a faithful witness to Jesus Christ and not located on its balance sheet. Assets are important tools and gifts offered by God to the denomination generally to help achieve missional goals of congregations, but the aggregation of assets at the expense of missional vitality in congregations should be avoided.
- Unity of the church does not necessarily require unity of any particular denomination. The origins of our denomination in the Reformation speak to how unity of the church can be upheld even if organizationally it suffers loss of congregations and people to other entities that continue to proclaim the Gospel of Jesus Christ.
- The goal of examining the possibility of Gracious Dismissal is not to facilitate the departure of congregations with concerns about the denomination. The goal, perhaps counterintuitively, is to encourage congregations to remain within the denomination. The debates about human sexuality / authority of scripture / justice matters should be based on theology and ecclesiology, not on property. By providing a clear, neutral answer to the question of Gracious Dismissal as an option, the debates can focus on the issues themselves, without the fear of the practical imposition of results on a congregation feeling threatened with the removal of its sanctuary and other church property. If Gracious Dismissal as a concept is found to be both possible and desirable by the General Assembly, it is the goal of the Committee to make Gracious Dismissal accessible, just and rare.
- Any review of the 2016 and 2018 Clerks of Assembly responses must include a critical analysis of the missional goals of the PCC and how they are achieved by the responses.
- The costs (which are far more than economic) of Gracious Dismissal need to be considered in any analysis. Similarly, the costs of rejecting Gracious Dismissal as a possible process must be identified and weighed as well.
- Prior to recommending what *should* be done with respect to Gracious Dismissal, it is essential to understand and report on what *can* be done. Statements of facts need to be verified, assumptions challenged, and proposals compared to alternatives not expressed in the responses. Third party legal, pension and actuarial experts may be needed to assist the Committee.

The Term “Gracious Dismissal”

While neither the focus nor the responsibility of the Committee, the term “Gracious Dismissal” appears to be considered deficient by many people yet all suggested replacement terms seem similarly unable to capture the breadth of possible outcomes and a level of specificity to the process envisioned. The Committee recognizes that words matter, and the

term used should be neither pejorative nor too ambiguous. Having found no better term, the Committee has continued to use the term “Gracious Dismissal”, while offering to others the suggestion that the theological etymology of the term could be remembered. The Committee notes that our Orthodox, Catholic, Lutheran, and Anglican brothers and sisters in Christ have a more positive understanding of the word “Dismissal”. In each of those traditions, the Dismissal, like a benediction, is the final blessing offered at the end of a religious service that includes an exhortation to the congregation as it leaves to be a blessing to the world around it. In that light, if any departure of a congregation from The Presbyterian Church in Canada is to occur, it is the Committee’s hope that it will occur with a blessing on that congregation’s work and with the encouragement that the congregation will be a continued blessing to the world, despite whatever differences lead to such a departure.

Is Gracious Dismissal Possible?

In discussions with the Clerks of Assembly, representatives of the Trustee Board and representatives of the Pension and Benefit Board, there appears to be a legally acceptable way to achieve “Gracious Dismissal” (in the manner set out by the Committee below and consistent with the principles set out above) under the denomination’s existing polity and legislation. Appendix A sets out a detailed summary of a December conference call with representatives of each of the Committee, the Clerks of Assembly, the Trustee Board and the Pension and Benefit Board. As a result of that discussion it was clear to the Committee that if General Assembly duly approves a Gracious Dismissal process, such a process could occur without requiring amendments to the Trustee Board Act. If, however, such legislative amendments are ultimately believed to be required, the recent experience of the United Church of Canada in amending its similarly governing Act of Parliament is both clarifying and encouraging: such a legislative change could occur with relatively little expense or time. Appendix B sets out a summary of that discussion with legal counsel of the United Church of Canada.

The Committee should note that despite examining the matter at some length, it concluded that it would not be prudent to make complex and radical changes to the pension plan to retain as members those ministers and other professional church workers who may leave the denomination. Those persons will receive benefits as and when they qualify for payment (earned up to the date of when they leave the denomination) and may join as a member all sorts of pension plans that are available to the general population (or just contribute more robustly to their existing RRSPs). To overhaul the entire pension plan with its attendant risks for an uncertain number of persons who may not need such a pension plan is unwarranted, in the view of the Committee.

Should Gracious Dismissal be Permitted?

The Committee, after considering the myriad overtures, the General Assembly reports from the Clerks, and the correspondence and discussions with the Trustee Board and Pension and Benefits Board representatives, and the guiding principles set out above, has concluded that Gracious Dismissal should be permitted by the denomination for several reasons. First, and

most obvious, there is no agreement by all in the denomination on the issues surrounding human sexuality, authority of scripture, and the requirements of justice on this matter. Even if a consensus could be reached, those who oppose such a consensus do so from their deepest beliefs and commitments. To require compulsion on such a fundamental issue is both in principle inappropriate and in practice inviting acrimony, recrimination and a national and local preoccupation on divisive issues. Second, Gracious Dismissal is applicable to all and not a response to one perspective or theological viewpoint. However the Remits are addressed at General Assembly, there will be those deeply dissatisfied with the results from those who are both “affirming” and “traditional”. Providing a mechanism to allow a gracious dismissal for all encourages a fairness to any process adopted. Third, a Gracious Dismissal process upholds materially the structure and principles the Clerks of Assembly set out in their 2018 response to overtures “A Way Forward” (although different to the extent that the Clerks of Assembly believed at the time the denomination’s governing legislation would not allow the transfer of property at less than fair market value). Fourth, Gracious Dismissal should be structured to avoid an emotional, quick, or theologically suspect decision. The process proposed emphasizes actions that are ‘decently and in order’.

The Elements of the Gracious Dismissal Process

The Committee’s proposal builds on the elements first outlined in the Committee’s report to Assembly Council in November 2019: (i) a delay of implementation of the process of at least a year after a relevant final decision of General Assembly has occurred, in order to reduce the likelihood of emotional reactions replacing thoughtful responses; (ii) multiple votes by a congregation over a period of time to ensure a consistency of belief rather than an emotional outburst; (iii) oversight from Presbytery in materials provided to a congregation before a vote, a Presbytery observer at the time of the vote, and an independent Presbytery assessment if the purpose of departing is related to a legitimate concern over the related issues encircling human sexuality, the authority of scripture as it speaks to human sexuality, and the demands of a biblical understanding of justice on the matter of human sexuality (this is to avoid departures simply for Congregationalist motivations).

The Committee, as a result of its work, proposes a Gracious Dismissal process in the manner set out in Appendix C that the Committee believes accomplishes all of the above objectives and contains the above elements.

Recommendation No. 1:

That Assembly Council endorses the principles of investigation and the conclusions set out in this report as well as the Gracious Dismissal process set out in Appendix C and it approves that they form the basis of the Assembly Council’s response to the 146th General Assembly.

Recommendation No. 2

That Assembly Council recommends that the Gracious Dismissal process be adopted by the 146th General Assembly and that such recommendation be placed before, considered and

fully addressed by such General Assembly prior to Remits B and C, 2019 under the *Barrier Act* being considered by such General Assembly.

Recommendation No. 3

That Assembly Council recommends to the 146th General Assembly that (i) if the adoption or implementation of Gracious Dismissal process is delayed for any reason, and (ii) if one or more of Remit B and C, 2019 under the *Barrier Act* is adopted or both are adopted, that the implementation of such Remits be delayed until the Gracious Dismissal process can be implemented.

Respectfully submitted,

Barbara Sargent (Convener)
Linda Shaw
David Jennings

List of Appendices:

- A. Summary of Meeting among Clerks of Assembly, Trustee Board representatives, Pension and Benefits Board representatives, Gracious Dismissal Committee
- B. Summary of Meeting between Gracious Dismissal Committee representative and legal counsel of United Church of Canada regarding amending incorporating legislation
- C. Proposed Gracious Dismissal Process

APPENDIX A TO GRACIOUS DISMISSAL COMMITTEE FINAL REPORT

MEETING NOTES OF JOINT CONFERENCE CALL ON DECEMBER 12, 2019 AMONG TRUSTEE BOARD, PENSION AND BENEFITS BOARD, CLERKS OF ASSEMBLY, AND GRACIOUS DISMISSAL COMMITTEE

A Zoom teleconference call occurred on December 12, 2019 among representatives of the Trustee Board, Pension and Benefits Board, Clerks of Assembly, and Gracious Dismissal Committee. Those in attendance were:

Rev. Cam Bigelow
Ms. Nicole Jeffrey
Mr. David Jennings
Mr. Richard Johnston
Rev. Stephen Kendall
Rev. Don Muir
Ms. Margaret Ogilvie
Ms. Barbara Sargent
Ms. Linda Shaw

The Gracious Dismissal Committee had written in the autumn to each of the Clerks of Assembly, Trustee Board and Pension & Benefits Board to ask questions pertaining to how a “gracious dismissal” process would be possible (regardless if it was deemed prudent or appropriate). This conference call was set up to discuss those questions and to determine if external legal counsel or pension specialists needed to be retained to answer the questions more fully.

Trustee Board

The Trustee Board authorized its members, Rick Johnston and Margaret Ogilvie, to participate in this discussion. They both focused their comments on Section 13 of *An Act to incorporate The Trustee Board of the Presbyterian Church in Canada* (SC 1939, c. 64) (“Trustee Board Act”), which for Gracious Dismissal matters, is the operative section:

13. All lands and premises and personal property and assets which have been, or shall hereafter at any time, be held by any trustee or trustees for any congregation of The Presbyterian Church in Canada which shall have ceased to exist shall vest in the [Trustee] Board upon trust to sell, get in and realize the same and to pay the proceeds to the treasurer of The Presbyterian Church in Canada **for such trusts, institutions, organizations, schemes or funds thereof as may be determined from time to time by the General Assembly of the said church.**” [emphasis added]

Both Rick and Margaret noted that in addition to the statutory obligations, the Trustee Board has common law fiduciary duties. Pursuant to Section 13 of the Trustee Board Act, the Trustee Board had a duty to obtain a fair value for the lands, premises, personal property and assets that vest in the Trustee Board and to turn over those proceeds to the Treasurer of the PCC. If the Treasurer uses those proceeds to fulfill the will of General Assembly, then the duty of the Trustee Board is discharged. It is not the duty of the Trustee Board (nor does it have the power) to question the decisions of General Assembly. If General Assembly duly adopts, to the satisfaction of the Trustee Board, recommendations addressing the use of monies obtained from the sale of vested lands, premises, personal property and assets, then Trustee Board has no role as long as it reasonably believes the Treasurer will fulfill those recommendations. The Trustee Board Act does not act as an impediment to “gracious dismissal” (as the term was being used in the meeting) but does set parameters on how that may occur. The only exception to the supremacy of a duly adopted General Assembly’s decision on the actions of the Trustee Board would be if such a decision requires a criminal, tortious or illegal act by or on behalf of the Trustee Board.

Pension & Benefits

The Pension & Benefits Board likewise noted its fiduciary duty to the denomination to ensure a healthy and sustainable pension plan and benefits plan. It noted that the letter it sent in November 2019 to the Gracious Dismissal Committee had been prepared by the convener, vetted by the director of Pension & Benefits and reviewed by the CFO.

As background, P&B noted that the pension plan was a Single Employer Defined Benefits Pension Plan (a form of Single Employer Pension Plan or SEPP) which gives rise to specific statutory and contractual obligations. All church workers affiliated with the PCC, subject to some qualifications, are members of the plan. Any person working for an entity under the ultimate authority of the General Assembly can constitute a “church worker” for the purposes of the pension plan as long as it is noted in the pension plan’s constitution (which can be amended if criteria are satisfied and approvals are received from both the regulator FSRA (previously named FSCO) and CRA). The test of “under the ultimate authority of the General Assembly” is ambiguous, and in 2006-2007 FSCO had sought to understand the structure to provide a SEPP designation, and included discussion involving Cameron Hunter from Eckler and P&B staff. P&B believes the PCC does not want to lose control of appointing all the board members of P&B, which would have occurred under a Multi-Employer Pension Plan (MEPP) designation.

The governing Ontario legislation requires solvency of the PCC pension plan on both a “going concern” and a “wind up” basis. Under the going concern test, the pension plan has a surplus by approximately 12% (\$30 million) but on the wind up basis it has a deficit of approximately 13% (\$39 million) (actuarial figures as of March 31, 2018). Legislative changes allow for statutory relief, without penalty, on the “wind up” test of the pension plan (as with all Single Employer Defined Benefit Pension Plans) as of May 1, 2018 meeting a minimum threshold of 85% of wind up solvency.

In 2015 General Assembly appointed a special committee to investigate the issues surrounding pension solvency. In 2016 that special committee hired Lisa MacDonald and Murray Gold of Koskie Minsky LLP law firm and the pension advisory company Eckler to investigate if the pension plan could become a multi-employer pension plan (which would relieve the plan of the “wind up” solvency test). There would be several regulatory and legal requirements (including CRA and FRSA approvals) as well as both changes to the plan’s constitution and approval of General Assembly. In addition, moving the SEPP members to a new MEPP would probably require the wind up solvency deficit to be rectified before regulatory approval would be granted. A MEPP is very different than a SEPP as it would be a targeted benefit plan and not a defined benefit plan (which could result in reduced benefits if the MEPP is underfunded, even retroactively). The governance of the plan would require at least half of the governing board be comprised of members. Ultimately PCC would not have authority over the MEPP. Regardless of the creation of an MEPP, the SEPP would remain in place up to the date of the creation of the MEPP and would need to satisfy its present ongoing legislative and member contractual obligations.

It was observed that in lieu of creating a MEPP, under a gracious dismissal process former church workers would still have an interest in the present SEPP up to the date of their leaving the denomination that continues unaffected into the future. Further, those former Presbyterian church workers could obtain pension benefits from another pension plan (an existing group plan or one created by leaving congregations) or through RRSP products.

Finally, P&B noted that if the assets of the denomination are not safely maintained, it could exacerbate a potential risk that another pension solvency crisis could arise.

Clerks of Assembly

The clerks responded in writing to the questions of the Gracious Dismissal Committee delivered at the November Assembly Council meeting. The Clerks also noted that a *Barrier Act* process may be required for any gracious dismissal proposal. It was also observed that before there was a discussion of how to assign under gracious dismissal “lands, premises, personal property and assets”, a definition of those terms (including “gracious dismissal” itself) would be required that would need to include all liabilities that are related to such assets.

Collective Final Note

Before the meeting ended, each of the Trustee Board and the Pension & Benefits Board stated they do not take a position on the legitimacy or appropriateness of “gracious dismissal”, but are called to do what General Assembly requires of its various committees, boards and agencies. Whatever the decision of the General Assembly, each of the Trustee Board, Pension & Benefits Board and the Clerks of Assembly will serve the denomination as requested.

APPENDIX B FINAL REPORT OF THE GRACIOUS DISMISSAL COMMITTEE

Process to amend *An Act to incorporate The Trustee Board of the Presbyterian Church in Canada* (SC 1939, c. 64) (“Trustee Board Act”)

While it appears that to effect Gracious Dismissal the Trustee Board Act need not be amended (contrary to what had been reported to previous General Assemblies), the Gracious Dismissal Committee investigated the process of how such an amendment of the Act of Parliament and provincial counterparts could occur.

While an unusual process, fortunately the United Church of Canada in 2018 commenced such a process and its legal counsel provided a detailed and very helpful analysis of the process. Below is a summary of how the UCC changed its incorporating legislation by way of amending an Act of Parliament and the provincial counterparts. While the contents of this Appendix does not constitute legal advice, it is helpful to understand both the analysis and experience of amending very similar legislation. In short, the amendment of the incorporating Act of Parliament was relatively easy (requiring one outside counsel on a part time basis), quick (approximately a seven month federal process and subsequent year-long provincial process) and inexpensive (under \$200,000).

Why Amend Legislation?

Before detailing the process of amending the Trustee Board Act, it now appears to be the consensus of the Trustee Board and Clerks of Assembly that no such amendment is necessary to effect Gracious Dismissal in the manner described in the Gracious Dismissal Committee report. But if subsequent determinations are made that such a legislative amendment is required, this memo outlines how that could occur. If such a change is needed, it will be because of an interpretation of language in Section 13 of the Trustee Board Act of whether the PCC treasurer must use the proceeds from dissolved congregations solely for the PCC’s “trusts, institutions, organizations, schemes or funds” or could also be used for giving funds to a congregation or fellowship formerly associated with the PCC if such a gift is authorized by General Assembly.

For Gracious Dismissal matters, Section 13 of the Trustee Board Act is the operative section:

“13. All lands and premises and personal property and assets which have been, or shall hereafter at any time, be held by any trustee or trustees for any congregation of The Presbyterian Church in Canada which shall have ceased to exist shall vest in the [Trustee] Board upon trust to sell, get in and realize the same and to pay the proceeds to the treasurer of The Presbyterian Church in Canada **for such trusts, institutions, organizations, schemes or funds thereof as may be determined from time to time by the General Assembly of the said church.**” [emphasis added]

It is the phrase “thereof as may be determined from time to time by the General Assembly of the said church” which would be the focus of any challenge to the legislation’s ability to permit Gracious Dismissal. Does Section 13 of the Trustee Board Act allow that anyone can receive those proceeds “as may be determined from time to time by the General Assembly” or must the expenditure be with respect to “such trusts, institutions, organizations, schemes or funds” of the PCC and for the benefit of PCC and not some third party?

How to Amend Denominational Legislation

The UCC’s process for amending its incorporating Act of Parliament and corresponding legislation in each province are as follows:

- UCC needed to change its legislation because it needed to exercise powers that were not discretionary but were included in two safeguards reserved by the legislation for Parliament.
- Interestingly, the incorporating legislation itself may not be required now as the UCC (or the PCC) could have simply elected to be bound by the Canada Not-for-profit Corporations Act. The UCC chose to pursue the more difficult route of not simply repealing the incorporating legislation and being bound by the CNFPCA, and instead seek amendments to its incorporating legislation, largely because it was desired by the membership to retain the special status it perceived was conferred by its own legislation. The PCC would be well advised to determine if there is any benefit to such separate legislation now that there is general legislation governing most not-for-profit corporations in Canada (including most charities).
- There is an online guide for the preparation of private legislation. Legislative counsel of Parliament perform most of the tasks in co-operation with the denomination. They were excellent, helpful and timely.
- The denomination needs to find a Member of Parliament or a Senator who will sponsor the amending bill, usually a congregant within the denomination. The UCC introduced the amending bill in the Senate initially. A sponsor may only sponsor one bill per parliamentary session, so some potential sponsors may refuse as they have other legislation they seek to introduce.
- Once a sponsor is chosen, the sponsor’s parliamentary office will work with the denomination to understand the rationale for the changes and why politically it is not problematic. A speech needs to be prepared for the bill’s introduction and that is prepared with the denomination. There was no resistance or problems encountered by the UCC in this process.
- The UCC had preliminary discussion with the parliamentary legislative counsel prior to the proposal being adopted by the national denomination, ensuring the wording of the amending bill would be acceptable. Then the UCC passed the motion to adopt the amending bill in July 2018. By October 2018 the amending bill was introduced in the Senate and by April 2019 it received Royal Assent.
- Once the amending bill received first reading in the Senate, then the provinces were approached for corresponding amendments. Ontario was chosen first, due to its size and precedential value for the rest of the country. The provinces have been relatively slower than the federal government, but the end result is not in doubt.

Once Ontario passed the legislation, then the remaining provinces were approached concurrently.

- Of note, since the UCC's original legislation was passed in New Brunswick in English only, the legislation needed to be repealed and reintroduced in both English and French, as that province is the only officially bilingual province in the country.
- The actions of the UCC staff, internal counsel and external counsel was not deemed to be lobbying and as such no registration under the various lobbying legislation was required.
- UCC retained outside legal counsel for the bulk of the work and has now researched all the federal and provincial rules and requirements for such private legislation. That counsel received a strong recommendation as a resource for the denomination.
- UCC counsel pointed out that with the passage of the UCC legislation, arguments and questions regarding why Parliament would get involved are probably answered completely. Hansard would provide ample resources for answering common questions and concerns about religious institution legislation amendments.

APPENDIX C-FINAL REPORT OF THE GRACIOUS DISMISSAL COMMITTEE
PROCEDURE FOR DETERMINING VALID GRACIOUS DISMISSAL

The following is a proposed method by which those who no longer wish to associate with The Presbyterian Church in Canada might depart graciously and within the current polity of our church.

“Gracious Dismissal” generally references congregations wishing to leave the denomination with their property at little or no (“nominal”) cost to the congregations. The Book of Forms has a process for individual members and, if desired, ministers to leave our denomination. While the polity and history of our church, as stipulated both in the Book of Forms and the Act to Incorporate the Trustee Board of The Presbyterian Church in Canada (1939), show that no provision is made for the dismissal of a congregation as a “congregation”, our current polity can allow for an entire congregation (through decisions of individual members) to leave and for those same people to seek to obtain the property if and when they form another body outside The Presbyterian Church in Canada, subject to approval from General Assembly. It is that General Assembly approval that forms the basis of the recommendations in the Assembly Council report.

The following process is proposed by Assembly Council for a congregation wishing to leave with its property from the denomination:

1. Not earlier than the first anniversary of the adoption of this Gracious Dismissal process by a General Assembly, a Session may petition its Presbytery about the desire of its congregation leaving The Presbyterian Church in Canada.
2. Presbytery then appoints a committee to meet with the minister, Session and congregation. The purpose of this meeting would be to give consideration to the motives and process the congregation has taken to come to the request, to assess the degree of support for the request and to determine if there is a way for the petitioners to remain a part of The Presbyterian Church in Canada.
3. If the motives of the congregation wishing to leave the denomination are determined by the Presbytery committee to not be related principally to the issues arising from Remits B and C from the 145th General Assembly (“Remits”), (with such motives being either related to supporting the Remits that do not ultimately become denominational law or not supporting the Remits that do become denominational law) then the Gracious Dismissal process stops at this point and is unavailable to the congregation.
4. If the Presbytery committee determines the motives of the congregation do relate principally to the issues arising from the Remits, Presbytery will then appoint an interim moderator and assessor elders, or an assessor session, as deemed necessary in order to provide impartial leadership for the congregation during these considerations. A Presbytery may wish to request assistance from a Synod if necessary.
5. An audit, paid for by the congregation but in collaboration with the Presbytery, is conducted to provide an accurate statement of all real and personal property, including any liabilities, contingent or otherwise. Any and all potential employment

liabilities related to the Gracious Dismissal will be the sole obligation of the congregation, including but not limited to severance for professional church workers who choose to remain within the denomination.

6. A congregational meeting will be duly called with written materials circulated to all members of the congregation at least 30 days but not more than 60 days before the scheduled meeting date, such materials to provide a fulsome explanation of the proposed Gracious Dismissal and the consequences of such a departure from the denomination for the congregation, its members and adherents, its minister(s) and other professional church workers. The written materials must be reviewed and approved beforehand by the interim moderator and will include the material prepared by the national offices of The Presbyterian Church in Canada for inclusion generally by congregations considering Gracious Dismissal.
7. The interim moderator will moderate the congregational meeting. A secret vote resulting in a positive vote for the Gracious Dismissal process by a minimum of both (i) 80% of members in attendance at the congregational meeting, and (ii) 67% of all members on the roll of the congregation as at the time of the original request to Presbytery (“First Positive Vote”) will be required to continue the Gracious Dismissal process.
8. If there is a First Positive Vote, the congregation will again hold a congregational meeting six to nine months after the First Positive Vote occurred, and steps 6 and 7 above will be repeated. If a secret vote resulting in a positive vote for the Gracious Dismissal process by a minimum of both (i) 80% of members in attendance at the congregational meeting, and (ii) 67% of all members on the roll of the congregation as at the time of the original request to Presbytery occurs (“Final Positive Vote”) occurs, then the Presbytery shall approve the Gracious Dismissal of that congregation (which, at this point in the process, becomes a “Departing Fellowship”).
9. Every member of the Departing Fellowship will be issued a membership certificate (to the extent permitted by the Book of Forms) from the Session, as the Departing Fellowship will be dissolved and the membership certificate will facilitate the member’s leaving of the congregation as it is constituted within The Presbyterian Church in Canada for either the New Congregation (as defined in step 12 below) or another congregation within or without The Presbyterian Church in Canada.
10. A minister of that congregation that wishes to leave the denomination with the Departing Fellowship’s assets must request a letter of standing from the Presbytery, thereby leaving the jurisdiction of the denomination. Any minister or other professional church worker who is a member of the pension plan of The Presbyterian Church in Canada who wishes to leave the denomination acknowledges that the pension plan will only provide benefits for the time of employment until the time of such departure and that person will be responsible for any pension plan he or she wishes to join as a member after the departure. Any minister wishing to remain a minister within The Presbyterian Church in Canada will need to negotiate a severance package with the Departing Fellowship effective when the Departing Fellowship is no longer within The Presbyterian Church in Canada.
11. The Departing Fellowship shall be deemed by the Presbytery to be a dissolved congregation and all real and personal property of the Departing Fellowship will vest in the Trustee Board of The Presbyterian Church in Canada and shall be reviewed, if

- necessary, by legal counsel for the Trustee Board (at the cost of the Departing Fellowship) in the case of possible ongoing legacies and trusts. The assets and liabilities of a Departing Fellowship will be for the Departing Fellowship at nominal cost to the Departing Fellowship and will not be subject to the general disbursement provisions for dissolved congregations set by General Assembly from time to time.
12. The Departing Fellowship is responsible for incorporating or organizing a legal entity (“New Congregation”) into which the Departing Fellowship’s assets may be transferred and from which legal obligations to The Presbyterian Church in Canada will be legal, valid, binding, and enforceable.
 13. The New Congregation must agree in writing that any assets transferred to it from The Presbyterian Church in Canada at nominal cost to the New Congregation shall revert back in their entirety to The Presbyterian Church in Canada if any of the following occurs: (i) the New Congregation ceases to exist or otherwise materially amends its organizing structure within 15 years of the transfer of such assets; (ii) the New Congregation or its minister does not adhere to orthodox Christian belief as set out in the Nicene Creed and the Apostle’s Creed as determined by The Presbyterian Church in Canada and such non-adherence continues for at least six months after receiving written notice of such determination by the denomination; (iii) the New Congregation attempts to sell any of such assets to any person or entity other than The Presbyterian Church in Canada without the prior written consent of The Presbyterian Church in Canada (not to be unreasonably withheld); (iv) the New Congregation has a worshipping community of fewer than twenty members for any continuous six month period; and (v) the New Congregation attempts to use the assets to secure any obligations to third parties, including by way of mortgage or other security, without the prior written consent of The Presbyterian Church in Canada (not to be unreasonably withheld).
 14. Upon receiving written agreement from the New Congregation outlined in step 13, the Trustee Board and Treasurer of The Presbyterian Church in Canada shall arrange a determination of the fair value of any and all such assets not restricted to use within The Presbyterian Church in Canada and all liabilities of the Departing Fellowship. The Treasurer shall, on behalf of The Presbyterian Church in Canada, transfer any and all assets to the New Congregation at nominal cost (\$1.00) once the New Congregation has ensured to the satisfaction of the Trustee Board and Treasurer that all Departing Fellowship liabilities have been satisfactorily addressed and that neither the Trustee Board nor the denomination generally will have any liabilities due to the Gracious Dismissal process that has not been properly compensated. All costs related to such transfer shall be borne by the Departing Fellowship.
 15. The Departing Fellowship, the Presbytery and The Presbyterian Church in Canada will undertake such other actions and execute such other documents as may be necessary or prudent to effect the Gracious Dismissal, all acting in good faith.