

**The Anglican Church of Canada  
Governance Working Group**

**LEGAL AND CONSTITUTIONAL ISSUES  
PRESENTED TO THE CANADIAN CHURCH  
BY THE PROPOSED ANGLICAN COVENANT**

**Executive Summary**

**Introduction**

As requested by General Synod, the Governance Working Group has identified the legal and constitutional issues presented by a decision to adopt or not adopt the proposed Anglican Communion Covenant.

The GWG's Memorandum identifies four broad areas of concern:

**1. Lack of Definitional Clarity**

Because the Covenant is intended to bind those Churches which adopt it, there are concerns about the imprecision or ambiguity of important terms used in the Covenant, which makes it difficult to know with certainty the meaning, scope and operation of the Covenant:

- communion
- The Anglican Communion
- Church
- Faith
- a shared mind
- relational consequences
- incompatible with the Covenant
- controversy and controversial action
- commissions and councils of the Communion

**2. Procedural concerns**

The procedures contained in section 4 of the Covenant raise a number of concerns:

The multiple roles of the Standing Committee creates uncertainty about the authority and jurisdiction granted to it under each role and cumulatively.

There is a lack of both substance and detail in the rules of process to be followed.

There are no criteria for actions or decisions which are deemed to be "controversial", which is what initiates the procedure under section 4.

The Covenant does not contain the normal procedural fairness that is fundamental in Canadian jurisprudence.

The rules around the establishment, application and length of moratoria are ill-defined or absent.

The proposed Covenant does not provide rights for appeal.

The outcomes for a Church declining to implement recommended "relational consequences" are unspecified.

### 3. Constitutional Issues for the Canadian Church

It is not clear how the Covenant's use of "Church" applies to the Canadian Church, which is composed of a confederation of ecclesiastical entities. This is important both for determining the process that will need to be used in considering whether to adopt the Covenant, as well as for determining which parts of the Canadian Church might be subject to "relational consequences".

While General Synod has authority to decide whether or not to adopt the Covenant, there needs to be a determination about what consultation with (or approval from) Ecclesiastical Provinces and Dioceses is necessary—either as a legal requirement or prudent practice.

Determining whether adopting the Covenant will affect "doctrine", or will entail an amendment to the Declaration of Principles or certain parts of the Constitution, will affect the required consultation process, the voting procedure to be used by General Synod, and the number of General Synods which would be required to adopt the Covenant.

It is not clear what is intended to be the relationship between the Covenant and the foundational and constitutional documents of the Anglican Church of Canada, the Ecclesiastical Provinces, or the Dioceses.

There is a concern about whether General Synod can make the commitment required in the Covenant that all parts of the Canadian Church (the Ecclesiastical Provinces, Dioceses and parishes) will uphold the affirmations and commitments in the Covenant, and that there be a mechanism in place to ensure such compliance.

Given the confederal nature of the Province of Canada, it is not clear how "relational consequences" would be applied if some part of the Canadian Church does not comply with the Covenant.

There is a concern that future amendments to the Covenant would be automatically binding on the Canadian Church.

There is a concern about whether overwhelmingly episcopal participation in the decision-making processes in the Covenant sufficiently recognizes the strong synodical place of the laity within the Canadian Church.

There is a concern about whether adopting the Covenant might have consequences in civil law.

### 4. Consequences of Non-Adoption

Not adopting the Covenant does not affect the membership of the Anglican Church of Canada in the Anglican Communion.

How do non-covenanting churches relate to the actions of the Standing Committee?

Apart from section 4.2 of the draft text, are there any substantial consequences to the Canadian Church if it chooses not to adopt the Covenant.

#### Comments invited

The GWG invites comments about these legal and constitutional implications and consequences for the Canadian Church in making the decision whether or not to adopt the Covenant.

Comments should be received by September 30, 2011, and should be addressed to the Governance Working Group and sent either by email to [gwg@national.anglican.ca](mailto:gwg@national.anglican.ca) or by regular mail to Church House, 80 Hayden Street, Toronto, ON M4Y 3G2.