

The Anglican Church of Canada

MEMORANDUM

To: Council of General Synod

From: David Jones, Q.C.
Chancellor of General Synod

Date: 23 April 2018

Subject: **Oaths and Declarations and possible amendment to Canon XXI**

This Memorandum addresses two concerns which have been expressed by persons who hold the “traditional view of marriage” if the amendment to Canon XXI (the Marriage Canon) as currently worded passes at General Synod 2019:

- A. Would such a person be unable to subscribe to the Oaths and Declarations required for ordination or upon taking up a new charge?
- B. Would such a person be subject to discipline for holding something contrary to the Doctrine of the Anglican Church of Canada?

The “traditional view of marriage”

The “traditional view of marriage” refers to the lifelong union between one man and one woman with a view to procreation.

The Preface to Canon XXI treats the traditional view of marriage as being a Christian ideal to which all might aspire.

However, the Regulations to Canon XXI deal with a number of matters which are not consistent with the traditional view of marriage, including:

- The remarriage in the Church of divorced persons.¹

1. See Parts III, IV and VI of the Regulations in Canon XXI.

- A different set of prohibitions to marriage than those contained in the Table of Kindred and Affinity in *The Book of Common Prayer*.²
- An agreement that procreation of children will not occur.³

When General Synod amended Canon XXI in 1967 to permit the remarriage of divorced persons in the Church, it recognized that some clergy did not accept that possibility, and enacted section 11 d) to make it clear that no minister would be required to solemnize such a marriage:⁴

- 11 d) The discretion of a minister to decline to solemnize any particular marriage shall not be abrogated by this Canon.

Taking the Preface and the Regulations together, it is clear that Canon XXI does not *define* “marriage” but regulates the circumstances in which a minister may solemnize a marriage in Church.

Canon XXI does not deal with marriages which are not performed by the Church (for example, a “civil marriage” or a marriage performed in another denomination or religion), and does not determine whether such marriages are valid or how the partners or offspring of such marriages are to be recognized in the Church.

-
2. See section 3 a) in Part I of the Regulations which provides that consanguinity or affinity are now to be determined by reference to the federal *Marriage (Prohibited Degrees) Act*. See also section 3 b) and sections 17 a) ii) and iii) in Part III for additional prohibitions of relationships similar to consanguinity and affinity.
 3. See section 16 a) in Part III of the Regulations which contemplates that the parties to a marriage may agree that there shall be no sexual intercourse between them permanently or for a limited time or from time to time for reasons of age or health or other serious cause.
 4. See also section 29 d):

If the incumbent of a parish declines for reasons of conscience to solemnize a marriage pursuant to permission given under this Part [IV dealing with “The Remarriage of a Divorced Person Whose Former Partner is Still Living”], the said incumbent shall refer the applicants to another priest designated by the bishop for investigation and report and permit that priest or another priest to solemnize the marriage in his or her Church.

No parallel provision is contained in the current wording of the proposed amendment to Canon XXI.

OATHS AND DECLARATIONS

The concern is whether, if the proposed amendment to Canon XXI were passed, a person who holds the traditional view of marriage would be unable to subscribe to the Oaths and Declarations required for ordination or upon taking up a new charge.

The starting point to answer this concern is to review the actual wording of the Oaths and Declarations required in the four Ecclesiastical Provinces:⁵

Canada

Canon 4 The Licensing of Clergy

3.(3) Deacons and Priests at their ordinations and Bishops at their consecrations, and on such other occasions as the diocese requires it, and the Metropolitan at his or her installation, shall take and subscribe the following declaration:

I, N, do solemnly declare that I profess the faith set forth in the Scriptures and in the Catholic Creeds and affirm my allegiance to the doctrine of the Anglican Church of Canada as set forth by the Book of Common Prayer and in the Ordinal; in public prayer and in the administration of the Sacraments I will use the form of the Book of Common Prayer and none other except so far as shall be ordered by lawful authority;

(to be declared by priests, deacons and suffragan, coadjutor and assistant bishops)

I will pay true and canonical obedience to the Bishop of _____ and to his/her successors, in all legal and honest demands;

(to be declared by diocesan bishops)

I will pay true and canonical obedience to the Metropolitan of Canada and to his/her successors, in all legal and honest demands;

(to be declared by all but the Metropolitan)

I will pay true and canonical obedience to the Canons which have been or are from time to time passed by the General Synod, the Provincial Synod and the Synod of the Diocese of _____.

5. The forms of Oaths and Declarations contained in *The Book of Common Prayer* and *The Book of Alternative Services* are set out in the Appendix to this Memorandum.

(to be declared by the Metropolitan)

I will pay true and canonical obedience to the Canons which have been or are from time to time passed by the General Synod and the Provincial Synod.

Ontario
Canon IV The Licensing of Clergy

3. Oaths and subscriptions shall be taken at ordination as deacon and priest and consecration as bishop and on such other occasions as shall be required by the diocese in accordance with the forms in use in the diocese concerned.

The following is the form recommended by the Province, which the dioceses generally follow:

I, _____, do solemnly make the following declarations:

- a) I profess the faith set forth in the Scriptures and in the Catholic Creeds and affirm my allegiance to the doctrine of the Anglican Church of Canada as set forth in the Book of Common Prayer, in the Ordinal, and in the Book of Alternative Services;
- b) In public prayer and in the administration of the Sacraments, I will use the form in the Book of Common Prayer or the Book of Alternative Services and none other, except so far as shall be ordered by lawful authority;
- c) I will pay true and canonical obedience to the Bishop of _____, and to his/her successors, in all legal and honest demands;
- d) I will pay true and canonical obedience to the Canons which have been, or shall be, from time to time passed by the General Synod, the Provincial Synod, or the Synod of the Diocese of _____.

Rupert's Land
Canon VI C6.00 Oaths and Subscriptions

C6.01 The following oaths and subscriptions shall be taken at the ordination of a priest or deacon and on such other occasions as may be required by a diocese:

(a) Declaration of Assent

I, A.B. do solemnly make the following declaration: I assent to the Solemn Declaration adopted by the first General Synod in 1893 (as printed in the Book of Common Prayer), and to the Book of Common Prayer, and of the ordering of Bishops, Priests, and Deacons; I believe the doctrine of the Anglican Church of Canada as therein set forth to be agreeable to the Word of God; and in Public Prayer and Administration of the Sacraments, I will use the form in the said book prescribed and none other, except so far as shall be ordered by lawful authority.

(b) Oath of Canonical Obedience

I, A.B. do swear that I will pay true and canonical obedience to the Bishop of ... in all things lawful and honest. So Help Me God.

(c) The Declaration of Submission to Synods

I, A.B. do willingly subscribe to and declare that I assent to and abide by the Constitution and Canons of the General Synod, Provincial Synod and the Synod of the Diocese of ... that are lawfully in force from time to time.

C6.02 The following oaths and subscriptions shall be taken by a bishop-elect before his consecration:

(a) The Declaration of Submission to the Synods, as set out in paragraph C6.01 (c) hereof; and

(b) the Oath of Due Obedience to the Metropolitan, as follows:

In the name of God, Amen. I, A.B. chosen Bishop of the Church and See of ..., do profess and promise all due reverence and obedience to the Metropolitan of Rupert's Land and his successors. So Help Me God, through Jesus Christ Our Lord.

**British Columbia and Yukon
Canon 7 Oaths and Subscriptions of the Clergy**

Oaths and subscriptions shall be taken at Ordination as Deacon and Priest and Consecration as Bishop and on such other occasions as shall be requested by the Diocese. The following form shall be used:

"I..... do solemnly make the following Declarations:

I..... profess the faith set forth in the Scriptures and in the Catholic Creeds and affirm my allegiance to the Doctrine of the Anglican Church of Canada as set forth in the Book of Common Prayer and no other except so far as shall be ordered by lawful authority;

I will pay true and canonical obedience to the Bishop of and his or her successors in all legal and honest demands; I will abide by the Canons which have been or shall be from time to time passed by the General Synod, the Provincial Synod and the Synod of the Diocese of

Witness: _____ Signature: _____"

providing always that when appropriate, these words shall be used:

"I will pay true and canonical obedience to the Bishop providing episcopal oversight within (name of Designated Territory) and his or her successors in all legal and honest demands; I will abide by the Canons which have been or shall be from time to time passed by the General Synod and by the Provincial Synod and I will abide by the policies and practices mandated by (name of Anglican Institution serving the Designated Territory)."

[Underlining added.]

All of the above versions expressly contemplate that the Canons of General Synod may be amended from time to time, and that obedience is required to the Canons *as amended from time to time*. In other words, the oath, declaration or subscription of canonical obedience is *not static*; it does not refer to or cast in concrete the content of the Canons as at the date the oath or declaration was taken. A person who has taken the oath, declaration or subscription is immediately bound by an amended Canon from the moment the amendment is made.

Apart from the express wording of the commitment, it would of course be unworkable if the oath, declaration or subscription only bound the person to the static content of the Canons at the moment when the oath, declaration or subscription was made. The result would be

different versions applicable to different persons in different time frames. And it would effectively give a veto to every individual to decide whether they are or are not bound by any particular amendment.

Accordingly, it is not a question of a person being unable to take the oath, declaration or subscription *at some point in the future*—as noted above, an amendment applies from the moment it is adopted by General Synod (unless the text of the amendment provides a different effective date).⁶

The question then is whether a person who holds the traditional view of marriage would be unable to continue in their ministry and continue to be bound by their existing oath, declaration or subscription of canonical obedience if the proposed amendment to Canon XXI permitting the marriage of same sex persons in the Church were to pass at General Synod 2019.

In my view, the proposed amendment should not cause any issue with the oath, declaration or subscription taken by a person who holds the tradition view of marriage because:

- For fifty years, Canon XXI has permitted the remarriage of divorced persons in the Church but has also allowed any minister to decline to solemnize such a marriage.
- A minister who holds the traditional view of marriage can with sincerity take the oath, declaration or subscription of canonical obedience precisely because of the conscience clause contained in section 11 d). Taking the oath recognizes that the Anglican Church of Canada permits the marriage of divorced persons in the Church but does not require any minister to perform such a marriage.
- However, a minister who cannot accept that others in the Anglican Church of Canada may solemnize the marriage of divorced persons in the Church, should not have taken the oath, declaration or subscription in the first place because the doctrine and canons of the Anglican Church of Canada recognize the marriage of divorced persons by the Church.

Similarly, if the proposed amendment were passed, no minister who holds the traditional view of marriage would be required to solemnize a same sex marriage: the existing

6. As currently drafted, the proposed amendment to Canon XXI contemplates that it would come into effect as of the first day of January following its adoption by General Synod.

conscience clause in section 11 d) would apply. Accordingly, all that continuing to be bound by the oath, declaration or subscription of canonical obedience would require is for such a person to acknowledge that the Anglican Church of Canada would permit (not require) some ministers (not them) to solemnize same sex marriages. A minister would only be unable to continue to honour their existing oath, declaration or subscription of canonical obedience if he or she could not accept that other ministers in the Anglican Church of Canada would be permitted to solemnize same sex marriages.

In addition to the marriage of divorced or same sex persons, the phenomenon of dual doctrinal views being accommodated in our Church is not new: for example, the ordination of women as priests or bishops; the meaning of the Eucharist; whether marriage is a sacrament; the adoption of a Canadian prayer book in 1918 or the more recent authorization of *The Book of Alternative Services*. Each of these issues could raise an issue of a minister being able to take or continue to be bound by the oath, declaration or subscription of canonical obedience if it were determined that there is only one permitted view. The genius of our Church has been to be able to accommodate a breadth and variety of views within our one body, maintaining respect for those of a different view.

THE POSSIBILITY OF DISCIPLINE

The second concern is whether a person who holds the traditional view of marriage might be subject to discipline for holding such a view if the proposed amendment to Canon XXI were to pass.

The existing conscience clause in section 11 d) means that no minister is required to solemnize any marriage, so there would be no basis to discipline a minister who declined to officiate at a wedding because it was not consistent with the traditional view of marriage.

There would also be no issue if the person were to hold the traditional view of marriage as a Christian ideal, as set out in the Preface to Canon XXI, provided they recognize the provisions in the Regulations which permit marriages in the Church in other circumstances.

As long as the person accepts that General Synod had amended the Canon and that others in the Church may solemnize same sex marriages, there would be no disciplinary issue.

APPENDIX A

Oaths contained in *The Book of Common Prayer*

The Ordering of Priests

Page 651 – *The Bishop*, Will you then give our faithful diligence always so to minister the doctrine and sacraments, and the discipline of Christ, as the Lord hath commanded, and as this Church hath received the same, according to the commandments of God, so that you may teach the people committed to your cure and charge with all diligence to keep and observe the same?

Answer. I will do so, by the help of the Lord.

The Consecration of Bishops

Page 661 – *The Oath of due obedience to the Metropolitan.*

In the Name of God. Amen. I *N.* chosen Bishop of the Church and See of *N.* do profess and promise to hold and maintain the Doctrine, Sacraments and Discipline of Christ, as the Lord hath commanded in his holy Word, and as the Anglican Church of Canada hath received and set forth the same; and I do promise due obedience to the Metropolitan of *N.* and to his Successors. So help me God, through Jesus Christ.

Oaths contained in *The Book of Alternative Services*

The Ordination of a Bishop

Page 635 - . . . *the archbishop requires the following promise from the bishop-elect.*

In the name of the Father, and of the Son, and of the Holy Spirit, I *NN*, chosen bishop of the Church and see of *N*, solemnly declare that I do believe the holy scriptures of the Old and New Testaments to be the word of God, and to contain all things necessary to salvation; I do solemnly promise to conform to the doctrine, discipline, and worship of the Anglican Church of Canada; and I do pledge myself to render due obedience to the Metropolitan of *N* and to his successors. So help me God, through Jesus Christ.

The Ordination of a Priest

Page 645 – *The bishop says to the **ordinand**,*

Will you be loyal to the doctrine, discipline, and worship of Christ as this Church has received them? And will you, in accordance with the canons of this Church, obey your bishop and other ministers who may have authority over you and your work?

*The **ordinand** answers,*

I am willing and ready to do so; and I solemnly declare that I do believe the holy scriptures of the Old and New Testaments to be the word of God, and to contain all things necessary to salvation; and I do solemnly promise to conform to the doctrine, discipline and worship of the Anglican Church of Canada.

*The **ordinand** then **signs** the above declaration in the sight of all present.*