

MEMORANDUM

To: Members of General Synod

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

Date: 22 June 2016

Subject: **ISSUES IN DEALING WITH RESOLUTION A051**
(the motion to amend the Marriage Canon)

1. The Primate and the General Secretary have asked me to prepare this description of various issues which may arise in the legislative session when General Synod is dealing with Resolution A051 to amend Canon XXI (the Marriage Canon).

Resolution A051

2. Resolution A051 (the “main motion”) is drafted to respond to the requirements contained in Resolution C003 passed by the 2013 General Synod. There is an annotation at the end of this memorandum explaining how Resolution A051 does this.
3. Once the main motion is moved and seconded, General Synod will “own” the motion—General Synod can amend the main motion in any way it sees fit.

Amendments to the main motion

4. Amendments must be moved and seconded. Prior written notice of the text of the proposed amendment should be provided to the presiding officer: *Rule 16 e) of the Rules of Order and Procedure*.
5. Because only the main motion if passed would actually amend Canon XXI, only the main motion must be passed by a two-thirds majority of each Order voting separately as required by *section 11 c) i) of the Declaration of Principles*.

6. Accordingly, voting on an amendment to the main motion would be done by the three Orders voting together: *section 4 of the Declaration of Principles¹ and Rule 18 b) of the Rules of Order and Procedure*; and the threshold for an amendment to the main motion to pass is a majority (50% plus one): *Rule 18 b) of the Rules of Order and Procedure*.

Requisitioning a vote by Orders on an amendment to the main motion

7. Prior to the vote on an amendment to the main motion being taken, any six members of General Synod may require the vote to be taken by Orders, voting separately in the sequence of laity, clergy, bishops: *Rule 19 of the Rules of Order and Procedure*.
8. If a vote by Orders is requisitioned on an amendment to the main motion, the threshold for the amendment passing is a majority (50% plus one) in each of the Orders: *Rule 19 of the Rules of Order and Procedure*.
9. Abstentions are not counted in calculating whether the majority is met: *Rule 18 b) of the Rules of Order and Procedure*.

Requisitioning a vote by Dioceses on an amendment to the main motion

10. If there were a vote by Orders (and only if there were a vote by Orders) which passed an amendment to the main motion, it would be possible to requisition a vote by Dioceses on that amendment: *Rule 20 of the Rules of Order and Procedure*.

A vote by Dioceses is not available if either (a) the vote on the amendment was not by Orders, or (b) the preceding vote by Orders was defeated.

The Indigenous Spiritual Ministry of Mishamikoweesh and the Territory of the Central Interior² have the status of dioceses.

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1. The Declaration of Principles was amended by General Synod 2013 to provide for all members of General Synod to vote together at the same time as one body, except where the Declaration of Principles, the Constitution or the Rules of Order and Procedure require voting by Orders. This is a change from previous practice, where the Order of Bishops voted separately from the combined Orders of Clergy and Laity.
 2. The Territory of the Central Interior is in the process of changing its name to the Territory of the People.

11. A request for a vote by Dioceses must be made by any six members, two from each of three different dioceses: *Rule 20 a) of the Rules of Order and Procedure*.
12. The request must be made immediately following the affirmative vote by Orders, prior to General Synod having moved on to the next item of business: *Rule 20 a) of the Rules of Order and Procedure*.
13. Ex officio and non-diocesan members of General Synod vote with the diocese in which they are normally resident if laity, or canonically resident if clergy: *Rule 20 a.1) of the Rules of Order and Procedure*.
14. The vote of each diocese is determined by the majority of the members of all Orders of that diocese voting together. If the votes in the diocese are equal, that diocese is not counted. *Rule 20 b) of the Rules of Order and Procedure*. Abstentions are not counted in determining the majority: *Rule 18 b) of the Rules of Order and Procedure*.
15. If the majority of the dioceses vote in the negative, the question is defeated. If there is a tie, the question is passed (on the basis of the previous affirmative vote by Orders): *Rules 20 c) and d) of the Rules of Order and Procedure*.

Voting on the main motion

16. Because the Marriage Canon deals with doctrine,³ the main motion must be passed by a two-thirds majority in each of the three Orders (Bishops, Clergy and Laity), at two successive sessions of General Synod: *section 11 c) i) of the Declaration of Principles*.
17. Accordingly, when the main motion (with or without amendment) comes to a vote at General Synod 2016, that vote will be taken by Orders.
18. To be passed, the main motion (with or without amendment) must receive a majority of two-thirds of the votes cast in each of the Orders.

3. Only *canons* dealing with doctrine, worship or discipline must be passed by a two-thirds majority in each of the three Orders at two successive sessions of General Synod. Matters dealing with doctrine, worship or discipline which are not contained in a *canon* are not subject to section 11 c) i) of the Declaration of Principles. Accordingly, motions dealing with matters of doctrine which are not in a *canon* may be passed by a majority of one General Synod voting together (or a majority voting by Orders if such a vote is requisitioned under Rule 19).

19. Abstentions are not counted in calculating whether the two-thirds majority is met: *Rule 18 b) of the Rules of Order and Procedure.*

Requisitioning a vote by Dioceses on the main motion (with or without amendment)

20. If the vote on the main motion (with or without amendment) is passed by two-thirds in each of the three Orders, it would be possible for there to be a vote by Dioceses: see paragraphs 10 to 15 above.

If the main motion (with or without amendment) is passed by General Synod 2016

21. If the main motion (with or without amendment) is passed by General Synod 2016, that would constitute “First Reading”. It would then be referred to the diocesan and provincial synods for consideration and comment (not consent) during the ensuing triennium: *section 11 c) i) of the Declaration of Principles.*
22. The motion as passed at First Reading would then be brought to the next General Synod (2019) to be considered at Second Reading.
23. At Second Reading, General Synod 2019 could amend the motion passed at First Reading, provided that any such amendment would have been in order when the motion was considered at First Reading: *s. 11 e) i) of the Declaration of Principles.*
24. General Synod 2019 would decide whether or not to pass the motion (with or without amendment) at Second Reading.
25. If Resolution A051 (with or without amendment) is given Second Reading, the resulting language of Canon XXI would make clear the circumstances in which solemnization of same-sex marriage is permitted in the Anglican Church of Canada.

Some other procedural matters

26. No member (except the mover) may speak more than once on a particular motion, except with the permission of General Synod, or if permitted by the chair to explain or answer a question: *Rules 10 d) and 11 a) of the Rules of Order and Procedure.*

27. Debate on a particular motion is normally closed when the presiding officer recognizes the right of the mover (not the seconder) to speak for a second time in order to reply and close debate: *Rule 11 a) and b) of the Rules of Order and Procedure*. The mover may choose not to take the opportunity to say anything further in closing the debate.

However, debate on the particular motion will not be closed simply because the mover speaks a second time if permitted by the chair to answer a question or explain, or permitted by General Synod to speak a second time in the debate: *Rules 10 d) and 11 a) of the Rules of Order and Procedure*.

28. Alternatively, any member *who has not yet spoken* may move that debate be closed. The motion to close debate must be seconded. The presiding officer has discretion not to accept such a motion if
- a) there is written notice of a proposed amendment to the motion for which debate would be closed, or
 - b) the presiding officer is of the opinion that closing the debate would abuse the rules or deny members an adequate opportunity for discussion.

If accepted, a motion to close debate is itself not debatable, and requires a two-thirds majority in order to pass.⁴

29. There can only be two amendments pending at any given time (so: the main motion, an amendment to the main motion, and an amendment to the amendment): *Rule 17 o) of the Rules of Order and Procedure*.
30. Any three members may require that the names of those who vote for or against a motion shall be recorded in the minutes: *Rule 18 e) of the Rules of Order and Procedure*.

4. Existing Rule 16 i) requires a vote to close debate to be passed by two-thirds of the Order of Bishops voting separately and two-thirds of the combined Orders of Clergy and Laity. Resolution A070 would amend Rule 16 i) to require a vote to close debate to be passed by two-thirds of the three Orders voting together.

If the main motion (with or without amendment) is not passed by General Synod 2016

31. If the main motion (with or without amendment) is not passed by General Synod 2016:
- this would not be equivalent to passing a motion to the opposite effect (such as a motion specifically prohibiting solemnization of same-sex marriages). Not passing the motion simply means that the motion was not passed.
 - the same or similar motion could be brought at any subsequent General Synod.⁵
 - there may be differing understandings about whether, under the current state of ecclesiastical law in the Anglican Church of Canada, the solemnization of same-sex marriages is prohibited or could be permitted.
32. Determining whether our current Canadian church law permits or prohibits same-sex marriages would require consideration of at least the following:
- (a) General Synod has “... authority and jurisdiction to ... define the doctrines of the Church in harmony with the Solemn Declaration adopted by this synod”: *Section 6 i) of the Declaration of Principles*. There is no requirement for General Synod to put matters of doctrine in a canon. Some matters of doctrine are included in canons; others are not.
 - (b) Although General Synod has enacted Canon XXI, it does not contain either a definition of “marriage”, or a specific prohibition against solemnizing same-sex marriages. It does refer to the “requirements of civil law”, and to persons “duly qualified” to enter into marriage.
 - (c) At the time Canon XXI was enacted in its current form in 1967, civil law did not recognize marriages between persons of the same sex, so same-sex persons would not at that time have been “duly qualified” to enter into marriage; the four references to “man and

5. *Rule 21 of the Rules of Order and Procedure* only prevents a question that has been determined from being reconsidered at the *same* session of General Synod (unless two thirds of the members voting together agree).

woman” and “husband and wife” are not surprising. General Synod could not have contemplated same-sex marriage when it enacted Canon XXI.

- (d) In 2005, Parliament enacted the *Civil Marriage Act* which permits marriage between “any two persons” (thereby making it clear that persons of the same sex are “duly qualified” to enter into marriage). This is the civil law throughout Canada.
- (e) In the absence of a prohibition by General Synod against same-sex marriages, Provincial Synods have authority and jurisdiction with respect to “... the authorization of special forms of prayers, services and ceremonies for use within the province, for which no provisions have been made under the authority of the General Synod or of the House of Bishops of The Anglican Church of Canada”: *Section 7 viii) of the Declaration of Principles*.
- (f) In addition, bishops retain some inherent “powers, jurisdiction and authority”: *Section 9 of the Declaration of Principles*.

Annotation on How the Elements of Resolution A051 relate to Resolution C003 from General Synod 2013

Resolution C003 from General Synod 2013 directed Council of General Synod to prepare a motion for General Synod 2016 to make two specific types of amendments to the Marriage Canon (Canon XXI):

- [1] to allow the marriage of same-sex couples in the same way as opposite sex couples, and
- [2] to include a conscience clause so that no member of the clergy, bishop, congregation or diocese should be constrained to participate in *or authorize* such marriages against the dictates of their conscience.

Resolution A051 accomplishes this by doing the following:

Paragraph 1 sets out the principle that the Canon applies to all persons whom civil law permits to marry.

1. This General Synod declare that Canon XXI (On Marriage in the Church) applies to all persons who are duly qualified by civil law to enter into marriage.

Paragraph 2 makes the four changes in language which are required to achieve this result.

2. The following consequential amendments be made to Canon XXI:
 - (a) in paragraph 2 of the Preface, delete the words “of the union of man and woman in”;
 - (b) in paragraph 4 of the Preface, substitute the word “partners” for “husband and wife”;
 - (c) in section 16 a) of the Regulations, substitute “the parties to the marriage” for “a man and a woman”;
 - (d) in section 17 b) of the Regulations, substitute “the partners” for “husband and wife”.

Paragraph 3 puts in place the conscience clause required by C003.

C003 requires the conscience clause to apply to four specified types of actors: a member of the clergy, a bishop, a diocese, and a congregation.

C003 also contemplates that the conscience clause would allow any of the four specified types of actors to decline to either *participate in* or *authorize* the solemnization of same-sex marriages.

Section 11 d) of the existing Canon preserves a minister's discretion to decline to solemnize any particular marriage, so no additional language is required in the draft resolution to put in place a conscience clause for individual ministers to refuse to solemnize a same-sex marriage.

Because all marriages are solemnized by ministers, the consequence of a diocese, bishop or congregation exercising the right contemplated by C003 not to authorize same-sex marriages, paragraph 3 is drafted to prevent ministers from solemnizing such marriages if any of those three has exercised the opt out:

3. The following be added to section 11 of the Regulations
 - e) A minister shall not solemnize a marriage between persons of the same sex if:
 - (i) the diocesan synod has enacted a Canon to prohibit the solemnization of marriages between persons of the same sex in the churches and other places of worship in the diocese by any bishop or member of the clergy licensed in the diocese;

C003 contemplates that a diocese may decide not to authorize same-sex marriages in that diocese. A diocese acts through its synod (with the concurrence of the diocesan bishop). This provision requires such a decision to be enacted in a diocesan Canon.
 - (ii) the diocesan bishop has issued a written and public direction prohibiting the solemnization of marriages between persons of the same sex

in the churches or other places of worship in the diocese by any bishop or member of the clergy licensed in the diocese;

C003 contemplates that a bishop may decide not to authorize same-sex marriages in that diocese. This provision requires such a decision by the bishop to be in writing and public.

or

- (iii) the congregation has passed a resolution at a duly constituted meeting of the members of the congregation prohibiting the solemnization of marriages between persons of the same sex in the congregation's church or other place of worship.

C003 contemplates that a "congregation" may decide not to permit the solemnization of same-sex marriages. Paragraph 3 e) iii) of the draft resolution requires such a decision to be made at a duly constituted meeting of the members of the congregation. Diocesan constitutions and canons have provisions which will determine the requirements for such a meeting.

- f) Provided that none of the provisions of paragraph 11 e) applies, where a minister under paragraph 11 d) [of the existing Canon] declines for reasons of conscience to solemnize a marriage between two persons of the same sex, the minister shall refer the persons to another priest and permit that priest or another priest to solemnize the marriage in the minister's church or other place of worship.

Paragraph 3 f) addresses what must happen if an individual minister exercises the discretion contained in section 11 d) of the existing Canon.

4. This resolution shall come into effect on the first day of January after being passed by General Synod at Second Reading.

In order for there to be a window of time for bishops, dioceses and congregations to be able to decide whether to exercise their ability to opt-out of the revised Canon, paragraph 4 provides that the revised Canon will not come into effect for some months after having been passed at second reading by General Synod.