

A Reflection on a Memo

This past summer's General Synod was a painful event for many Anglicans, as the motion to amend Canon 21 was defeated in the House of Bishops. Many Anglicans who support same-sex marriage felt betrayed, and parishioners, clergy and diocesan offices are grappling with what to do next.

Some diocesan bishops announced they would proceed to allow same-sex marriages anyway among parishes within their jurisdiction,¹ and a substantial number of dioceses are in a period of consultation to discern what the appropriate next steps are. For those who proceed, most have pointed to the General Synod chancellor's memo of 2016 as evidence of their legal power to proceed on a *de facto* local option basis. Most of us are not lawyers, and depend on the General Synod chancellor to interpret and apply canon law. As part of our process of discernment, it is appropriate that we consider what the chancellor wrote, and what direction the memo does, and does not, offer.

In his memo to the Church,² Chancellor David Jones wrote that a defeat of the proposed changes to Canon 21 does not explicitly forbid same-sex marriages, or affirm that all Anglican marriages must be opposite-sex, within the legislation. The Canon itself, he writes, does not define marriage as opposite-sex:

(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.

A second important point in the memo is that we understand that bishops have the authority to oversee all liturgies conducted within their dioceses, which provide some flexibility and sensitivity to local pastoral needs. Provincial Synods can provide for the authorization of these liturgies and prayers:

(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.

Provision of pastoral and sacramental care for faithful gay and lesbian Anglicans is clearly seen to belong under the umbrella of local pastoral needs. This interpretation has led many Anglicans to expect that the option to marry needs to be provided for all faithful adults.

Collectively, this is taken to be strong evidence of a diocesan bishop's authority to proceed with providing for same-sex marriages within the diocesan's jurisdiction.

The weight of this memo needs to be considered carefully, however. It is an opinion piece, or as the chancellor himself has said, an interpretation of the law, to which people may assent or from which they may dissent. It is somewhat disquieting to consider that the content of the memo itself has not been affirmed collectively by the House of Bishops, General Synod, or any other Anglican legislative body.

Everyone seems to grant that it is within the Preamble to Canon 21 that opposite-sex parties to marriage are named. Legal experts³ contend, however, that a Preamble to legislation is not extraneous or of less weight than the points of the legislation itself. Rather, Preambles are intended to provide contexts into which legislation is to

¹ For example, Niagara diocese: <https://www.cbc.ca/news/canada/hamilton/anglican-church-niagara-same-sex-marriage-1.5215450> [accessed November 11, 2019].

² https://www.anglican.ca/wp-content/uploads/Memorandum_about_Procedures_for_considering_Resolution_051-v11.original.1466972432.pdf [accessed November 11, 2019].

³ <https://livingchurch.org/covenant/2019/07/08/the-scope-of-the-marriage-canon-against-the-chancellors-memo/> [accessed November 19, 2019].

be interpreted. The Preamble itself was voted on as a separate motion in General Synod in 1965.⁴ Even more disquieting, Section III, Sub-section 16 *within* Canon 21 refers to the Preamble in such a way that its weight within the legislation is affirmed:

“Marriage” as defined by this Canon means that union described in the Preface of this Canon and further described in section 17 of this part. With respect to marriage so defined, a man and a woman may nevertheless, for reasons of age or health or other serious cause agree to marry upon condition that there shall be no sexual intercourse between them permanently or for a limited time or from time to time.⁵

The limits of the authority of bishops to authorize liturgies (such as Anglican marriage liturgies without reference to the sex of the persons involved) has also been raised within the ecclesiastical legal community. Diocesan bishops, or local synods, may supplement or complement national liturgies which are already in place, but they cannot *contravene* them.⁶

Taken together, these points raise troubling questions about the chancellor’s 2016 memo, and how it has been somewhat carelessly adopted within the Church.

For many Canadian Anglicans, the ship has sailed, and same-sex marriages will be authorized and used regardless. All the more reason, however, that our processes of discernment need to be robust, patient and wise. In my experience, we have been quite good at small group processes, conversations and personal stories. All of us are painfully aware that we are not dealing with theological abstractions, but human beings – our brothers, sisters, friends or selves. To have confidence in the Church’s direction, however, I long for thoughtful exposition of scripture (which collectively is arguably not as clear-cut as many people assume) and other instruments of Christian discernment of God’s desire for his Body. If we are being obedient to God, we cannot fail. If we are being disobedient, we cannot succeed. God help us all.

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⁴ The vote in favour of adopting the Preamble was carried by a margin of 74 to 8 in the House of Laity, 93 to 9 in the House of Clergy, and 31 to 3 in the House of Bishops.

⁵ https://www.anglican.ca/wp-content/uploads/221_canon_XXI.pdf [accessed November 19, 2019].

⁶ Ajit John, “The Scope of the Marriage Canon,” *op cit.*, paragraph 10.