MEMORANDUM RE PROPOSED AMENDMENTS TO THE MARRIAGE CANON

Four motions to amend Canon XX - the Marriage Canon - will be proposed for final adoption at General Synod 2004:

1. An amendment respecting the Place of Marriage

2. An amendment to repeal Part V of the canon respecting the admission of divorced persons to Holy Communion

3. An amendment respecting impediments of relationship

4. An amendment respecting applications by divorced persons for permission to remarry.

The amendments resulted from recommendations made by a Task Force that reported to General Synod in 2001. A copy of a slightly abridged version of the Task Force report is attached for the information of members of General Synod 2004.

As required by the Declaration of Principles, the proposed amendments to the Marriage Canon were referred to provinces and dioceses for consideration. The Synods of the Ecclesiastical Provinces of Rupert's Land and Canada adopted motions proposing that the retention of Matrimonial Commissions be optional for dioceses. The Synod of the Ecclesiastical Province of Ontario defeated a similar proposal. At the Synod of the Ecclesiastical Province of British Columbia and Yukon the bishops agreed that Commissions are unnecessary and there was no formal response to the proposed change. As a result of the resolutions adopted in the Provincial Synods of Rupert's Land and Canada it is probable that there will be a motion at General Synod to amend the motion to amend the canon respecting applications by divorced persons for permission to remarry.

It may be helpful for members to know what General Synod did in 2001 with respect to recommendations of the Task Force that did not require changes in the Canon.

General Synod 2001 referred to the Faith, Worship and Ministry Committee the recommendations with respect to liturgies for the blessing and dedication of civil marriages and proposing a rubric to allow adaptations of marriage services for the renewal of marriage vows.

General Synod 2001 concurred in the recommendations of the Task Force (1) that the Church should not bless common law relationships and that couples in such relationships should be encouraged to enter into a formal marriage and (2) that the

Guidelines and the form of service for a Marriage between a Christian and a person of Another Faith Tradition be posted on the Anglican Church of Canada web site.

General Synod 2001 concurred in the Task Force's commendation of continued use of the *Pastoral Guidelines for Interchurch Marriages Between Anglicans and Roman Catholics in Canada* when one party to an intended marriage is a Roman Catholic.

Background

In 1998 the General Synod requested that a task force be created to review the Marriage Canon with particular reference to:

(a) the difference between a civil marriage and a religious marriage,

(b) alternatives to the current matrimonial commissions,

(c) revision of the forms of application to remarry,

(d) the provision requiring marriages to be held in church buildings,

(e) the relationship of the *Table of Kindred and Affinity* to the *Marriage (Prohibited Degrees) Act*, and

(f) common law relationships.

The Council of the General Synod established the task force in March 1999 with the following terms of reference:

(a) to review *Canon XXI - On Marriage in the Church* - particularly with reference to issues raised in the General Synod Act, but not restricted thereto;

(b) to consult as appropriate;

(c) to meet twice, in mid-1999 and late 2000;

(d) to prepare amendments to Canon XXI, if indicated; and

(e) to report to the Council of the General Synod in the Fall of 1999 and Spring of 2001.

Process

The Task Force met at St. Michael's House in Oakville on May 27 and 28, 1999 and November 2-3, 2000.

In January 2000 the task force sent a memorandum/questionnaire to all diocesan bishops, chancellors and matrimonial commissions inviting discussion of specific

questions and other issues related to the Canon and requesting responses and comments.

The questionnaire was not intended to be a scientific opinion survey but rather a means of obtaining input from dioceses and gaining some sense of current opinion about some of the issues.

Copies of the memorandum were sent to the editors of all diocesan newspapers three of whom ran stories about it which generated responses to the General Secretary and letters to the editor.

The number of responses was disappointing. No responses were received from 14 dioceses. Seven of those dioceses had, however, responded during the previous triennium (1995-1998) to requests for comments about matrimonial commissions and as to whether marriages should take place outside church buildings.

Responses to the latest questionnaire were received from

2 diocesan bishops and the Bishop Ordinary
1 bishop and the senior clergy of the diocese
1 bishop with his Matrimonial Commission
1 Matrimonial Commission plus the diocesan leadership team
4 other Matrimonial Commissions
1 diocesan doctrine, worship and ministry committee
6 deanery or regional clerici
6 parish groups or vestries
13 priests
28 laity
1 bible study group
1 diocesan Mothers Union council and 7 parish Mothers Union branches in the same diocese

Many respondents answered only one question. Some answered two or more, but not all. Others addressed all issues. The nature of the responses covered a spectrum from simple Yes or No or one-line answers to thorough discussion of the issues and what underlies them.

Among responses that did not directly answer questions were one from a priest who, without reasons, would not make any change in the Canon, a few who advocate a liturgy to recognize the end of a marriage, an anonymous respondent who would forbid divorce let alone remarriage, and several who

expressed views, both pro and con, about same-sex relationships. The task force did not consider that same-sex relationships fell within its terms of reference.

CIVIL MARRIAGE, RELIGIOUS MARRIAGE AND COMMON-LAW RELATIONSHIPS

It will be helpful to set out our understanding of the terms "civil marriage", "religious marriage" and "common law relationships". What is the difference between a civil marriage and a religious marriage?

The concepts of civil marriages and religious marriages vary depending on local, i.e. national, law. A nation's marriage customs and practices are the result of the nation's history and culture. Where Christianity has been the prevalent religion, Christian tradition will have strongly influenced that history and culture.

Marriage is a human institution. It is not specifically Christian. Christian churches have developed theologies of marriage. The form of service used by a minister of religion should manifest the theology of that minister's church.

Most jurisdictions in modern Europe and North America now provide for ceremonies conducted by civil officials for those who do not wish to marry by a religious rite. In some countries such as France civil marriage is universal. That is, only a civil marriage creates a marriage relationship in law. The civil ceremony may be followed by a religious ceremony. For Roman Catholics that is obligatory.

Where a civil ceremony is not mandatory either a civil ceremony or a religious ceremony has the same legal effect. Either satisfies the requirements of the law and is registered in such manner as the law prescribes.

Some historical background is required to put the present situation in Canada in context.

Except for Québec and aboriginal communities, Canada largely inherited its early marriage customs and practices from England.

In Europe in the early middle ages marriage was regarded as a personal and secular matter, almost entirely outside the law. The initial commitment or betrothal was normally accompanied by some measure of family agreement, marriage contract and dowry. Betrothal could not be lightly set aside, and led to the marriage proper which was almost always effected by the physical move of the new bride into the husband's home. The move was an occasion for procession and feasting. Religious ceremonial, including prayers of blessing on the new couple,

were often included, but the rough and ready rule was that voluntary cohabitation, publicly entered into, created the marriage bond. The birth of children to a cohabiting couple, free to marry, was usually taken as prima facie evidence that they were in fact married, and could create parental obligations on the part of both partners. Capacity to marry was important. Both partners had to be capable of free consent. Consanguinity was avoided and rules limiting choice in class, race and citizenship were strictly applied, as was consent by the bride's father.[1]

The history of the legal regulation of marriage and its consequences is one of competition between the Church, the State and the ordinary people. In early English law both ecclesiastical and civil courts were concerned with questions about the validity of marriages. Rights to inherit property turned on such questions. Church courts dealt with the succession of personal property. The common law courts dealt with real property, i.e. land, including a widow's right to dower and matters of primogeniture - the right of the eldest legitimate son to succeed to his father's freehold land.

"In Western Europe prior to the Council of Trent in 1563 no religious ceremony was necessary; the only requisites were declaration by the parties that they took each other as husband and wife, *per verba de praesenti* in which case the marriage was binding immediately, *per verba de futuro*, in which case it became binding as soon as consummated."[2]

In 1563 the Council of Trent decreed that the celebration of marriage before the parish priest or the local ordinary or a priest appointed by one of them in the presence of at least two witnesses was essential to the validity of a marriage. As England had broken from the Church of Rome the decree did not apply there. Informal or, as they came to be called, common law marriages were legally recognized in England and Wales until they were outlawed in 1753.

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1 *An Honourable Estate, the report of a Working Party established by the Standing Committee of the General Synod of the Church of England*, (London: Church House Publishing, 1988), para. 46.

2 *The Oxford Companion to Law* (Oxford: Clarendon Press, 1980), page 253.

In that year Parliament passed what is commonly referred to as *Lord Hardwicke's Act*. Its formal title was *An Act for the better preventing of clandestine marriages*. After 1753, until 1836, the only legally recognized marriages in England and Wales, except for Jews and Quakers, were those entered into by the marriage ceremonies of the Church of England. Marriages in any place other than a church or public chapel, and without either banns or licence, were null and void.

While one might think the Act was designed to strengthen the "establishment " of the Church of England, it had other motivations. The primary motive was probably the protection of affluent families. Stephen Parker in *Informal Marriage, Cohabitation and the Law, 1750-1989*[3], at page 35 says:

> It would be hard to find a better description of patriarchy's view of clandestine marriage than that provided by the early nineteenth-century novelist and historian Tobias Smollett (1830, vol. III, p. 100):
>
> > The practice of solemnizing clandestine marriages, so prejudicial to the peace of families and so often productive of misery to the parties themselves thus united, was an evil that prevailed to such a degree as claimed the attention of the legislature. The sons and daughters of great and opulent families, before they had acquired knowledge and experience, or attained to the years of discretion, were everyday seduced in their affections, and inveigled into matches big with infamy and ruin; and these were greatly facilitated by the opportunities that occurred of being united instantaneously by the ceremony of marriage, in the first transport of passion, before the destined victim had time to cool or deliberate on the subject.
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> The law, which enabled marriage to be formed by the simple exchange of promises without preliminaries, was therefore seen as facilitating seduction or rashness, to the disruption of 'great and opulent families'.

That was the sort of clandestine marriage that the 1753 law sought to prevent. The requirement of banns served the purposes of the upper classes. Banns ensured notice of one's intention to marry outside his or her class. Pressures could then be

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3 (Houndmills [England]): Macmillan, 1990).

brought to bear if one was over 21; objection could be made if one was under age. Parker says, at page 47:

> Despite the fact that marriage in a church was now compulsory, the Act was the first major attempt by civil authorities to make the formation of marriage a secular matter. Hardwicke himself was anti-clerical and explicitly set himself against an extensive view of Church powers and we can assume that he intended to use the church as part of a registration system rather than concede any real ground to it.

The provisions of the 1753 Act remained relatively intact in England until 1836 when a new Marriage Act allowed for a superintendent registrar of marriages to issue a certificate entitling the persons named in it to marry each other and allowing them to contract a marriage in a building registered for religious worship 'according to such form and ceremony as they wish to adopt' or to contract their marriage in a register office in the presence of a superintendent registrar with no religious ceremony at all.

When English colonies were established in what is now Canada there were often no clergy or insufficient clergy to make religious marriages readily accessible. The first colonial legislatures enacted laws in an attempt to provide some regulation of marriage. For instance, the Nova Scotia House of Assembly, at its first session in 1758, passed an Act making either public notice or a licence a prerequisite to marriage. In 1793 the House passed an Act that declared that "all prior marriages solemnized by Magistrates and other lay persons, if the parties had cohabited, are made valid and the issue of such marriages are made legitimate." The preamble recited that "in some parts of the Province, owing to the remote situation of the inhabitants from any Clergyman, in the early settlement of the same, divers marriages have been heretofore irregularly solemnized before magistrates and other Lay Persons, otherwise than as by law required." In 1795 another Act was passed in Nova Scotia authorizing the Governor to "appoint fit and proper persons within any townships or districts where no regular or licensed clergyman does reside, to solemnize marriages between parties who have resided there for at least one month." A 1793 statute in Upper Canada authorized justices of the peace to solemnize a marriage when there was no parson or minister of the Church of England living within 18 miles of either party. The justices were directed to solemnize marriages "according to the form prescribed by the church of England."

At later times, in many Canadian jurisdictions, only ministers of religion were licensed by governments to solemnize marriages. Now, however, civil marriages performed by judges, court clerks, marriage commissioners, etc. are authorized.

In the territories and in the common law provinces the legislation respecting civil ceremonies requires that the parties declare that they know of no impediment to their marriage. Each party is required to call on all present to witness that he/she takes the other to be his/her lawful wedded wife/husband. The officiant declares them to be husband and wife.

The early law of marriage in Québec derived from the pre-French Revolution *ancien droit français*. It also was dominated by interests centring around landed property and the protection of the legitimate family, i.e. the extended family represented by the bloodline. The moral conceptions of the Roman Catholic church prevailed. The legitimate family was dominated by the husband/father who exercised substantial power over the person and property of the wife and children.

In 1866 the Parliament of the United Provinces adopted the *Civil Code of Lower Canada*. It presumed a religious affiliation for all Quebeckers and was interpreted to allow the civil nullity of a marriage that was not performed according to the rules of the church to which the couple belonged. Marriage by secular officers of the state has been available in Québec since 1969.[4]

The relevant current law of Québec is found in *The Civil Code of Québec*[5] which came into force in 1996. A marriage must be contracted openly, in the presence of two witnesses. As a general rule, notice of the intended marriage must be posted for 20 days at the place where the marriage is to be solemnized. The marriage may be solemnized by a clerk or deputy clerk of the Superior Court or by a minister of religion. The officiant is required to read the following articles of the *Civil Code* to the intended spouses in the presence of the witnesses:

> 392. The spouses have the same rights and obligations in marriage.
>
> They owe each other respect, fidelity, succour and assistance.
>
> They are bound to live together.
>
> 393. In marriage, both spouses retain their respective names, and exercise their respective civil rights under those names.
>
> 394. The spouses together take in hand the moral direction of the family, exercise parental authority and assume the tasks resulting therefrom.

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4 *Québec Civil Law: An Introduction to Québec Private Law*, ed. John E. C. Brierley and Roderick A. Macdonald (Toronto: Emond Montgomery Publications Ltd., 1993), pages 11-14, 232.

5 Statutes of Québec, 1991, c. 64.

> 395. The spouses choose the family residence together.
>
> In the absence of an express choice, the family residence is presumed to be where the members of the family live while carrying on their principal activities.
>
> 396. The spouses contribute towards the expenses of the marriage in proportion to their respective means.
>
> The spouses may make their respective contributions by their activities within the home.

The officiant requests and receives, from each of the intended spouses, a declaration of their wish to take each other as husband and wife. The officiant then declares them united in marriage.

There does not seem to be any extensive literature dealing with marriage customs and traditions in aboriginal communities in what is now Canada. Such customs and traditions did exist and the law generally has recognized marriages by aboriginal custom. The Cree tradition apparently included several elements. The man had to obtain the consent of his intended wife's parents and offered them valuable presents such as game, horses, canoes, furs, etc. He was required to promise the future produce of his hunt to his wife's parents until he had proved himself capable of supporting his family and the first child was born. The bride's consent was a prerequisite to marriage. A day-long ceremony began with the elders preparing the man who was ritually cleansed with the smoke of burning sweet grass. He then offered a special marriage pipe to one of his new relatives or to an elder and all present smoked the pipe to purify their minds and bodies. The chief draped a marriage blanket around the shoulders of the couple who then ate from a single plate to signify their willingness to share everything in the future. A wedding feast and a ceremonial circle dance followed. If the man was a white fur trader the couple were then escorted to the traders' fort where the bride exchanged her native garments for western dress. The man then escorted his bride to his quarters.[6]

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6 Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth Century Canada,* chapter 1, (Toronto: The Osgoode Society, 1991).

Canadian courts usually, but not always, recognized as valid marriages entered into in accordance with aboriginal custom so long as they had the characteristics of voluntariness, permanence and exclusivity.[7]

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7 Norman K. Zlotkin: *Judicial Recognition of Aboriginal Customary Law in Canada: Selected Marriage and Adoption Cases*, [1984] 4 Canadian Native Law Reporter 1.

In a recent case in Alberta the court declined to recognize an alleged marriage by custom because it lacked many of the features of a marriage in the tradition of the Blood Band. The court noted the testimony of an elder that traditional marriage by custom had not been practised in recent years but had given way to either church marriages or common law relationships. The court attributed the change to the influence of non-native society where common law relationships are very common, rather than to a modernized exercise of the aboriginal right of marriage by custom.[8]

In summary, the expression "civil marriage" has two meanings - (1) it is a marriage solemnized by a functionary of the state and (2) it is a marriage recognized as legal whether solemnized by a state functionary or by a minister of religion. A religious marriage, on the other hand, is one solemnized by a minister of religion and entered into by the parties in accordance with the theology or doctrine of the church or religion in which it is solemnized.

The expressions "common law marriage" and "*de facto* marriage" are applied today to any heterosexual couple who are cohabiting. While such relationships do not attract all of the legal consequences of legal marriages they are recognized in many social policy statutes if the cohabitation has endured for a prescribed minimum period of time or if there are children of whom the couple are the parents. For some couples cohabitation is a preliminary to marriage; for others it is a permanent alternative.

RESPONSES TO THE QUESTIONNAIRE AND THE TASK FORCE'S CONCLUSIONS AND RECOMMENDATIONS

Although our conclusions and recommendations should not be considered as having been dictated by the results of the questionnaire, we find that, in most cases, we are in substantial agreement with the opinions of the majority of the respondents.

The growing popularity of civil marriages, i.e. marriages solemnized by government appointed functionaries, and the high incidence of common law relationships in today's society led us to pose these questions:

> Should the church abandon the marriage "business" in favour of universal civil marriage?
>
> Should the church offer liturgies for the blessing of

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8 *Manychief v. Poffenroth,* [1995] 2 Canadian Native Law Reporter 67.

1. Civil marriages?
2. Common law relationships?

SHOULD THE CHURCH ABANDON THE MARRIAGE "BUSINESS" IN FAVOUR OF UNIVERSAL CIVIL MARRIAGE?

Respondents say No by a 2 to 1 margin (29-13). The majority see sacramental and pastoral reasons for continuing to offer marriage liturgies. A parish group sees no need for a civil ceremony for those who seek the blessing of God and the church. A bishop and his senior clergy make the point that many find their way into the faith community when they come to the church to be married. Some of those who favour a change take a benign position - they do not advocate the change but would not oppose it if legislatures moved in the direction of universal civil marriage. For example, the Algoma Doctrine, Worship and Ministry committee says:

> **While the majority of our group would favour this, we did not reach a consensus. We are, however, agreed that the church should support a genuine and universally available civil procedure. We also agree that an opportunity for Christian marriage and or the blessing of civil marriage should be retained.**

Under the Canadian Constitution the law respecting the solemnization of marriage is the responsibility of the provincial legislatures. It is unlikely that the legislatures of all provinces and territories will, in the foreseeable future, enact laws requiring that marriages be solemnized by government appointed functionaries.

We see no reason for the church to advocate that legislatures take such action. Nor do we see any reason for the church to oppose such action if a legislature moves in that direction. We therefore do not recommend that the General Synod take any action on this issue.

SHOULD THE CHURCH OFFER LITURGIES FOR THE BLESSING OF CIVIL MARRIAGES?

This question was answered unanimously in the affirmative. The responses demonstrate a lack of awareness, even by some clergy, that The Anglican Church of Canada provides liturgies for the blessing of civil marriages. There are forms for such services in *The Canadian Book of Occasional Offices* (1964) and in the later loose-leaf publication, *Occasional Celebrations of The Anglican Church of Canada*. Because such services are not found in either the *Book of Common Prayer* or in the *Book of Alternative Services*, their availability is not generally known among the laity. **We note that the 1979 ECUSA *Book of Common Prayer* includes such a form of service (page 433).**

Some respondents expressed concern that a divorced person can be remarried in a civil ceremony and then seek blessing, thereby evading the Commission. Some bishops require couples in that situation to go through the Commission process before a blessing is given.

> **Our recommendation: Because civil marriages are now both available and popular throughout Canada, we recommend that an appropriate liturgy or liturgies for the blessing or dedication of a civil marriage be included in any future book of liturgies developed by The Anglican Church of Canada.**
>
> **We also recommend that a rubric allowing the use of appropriate adaptations of marriage services for the renewal of marriage vows be included in any revision of the Book of Common Prayer or the Book of Alternative Services.**

SHOULD THE CHURCH OFFER LITURGIES FOR THE BLESSING OF COMMON LAW RELATIONSHIPS?

A majority of respondents say No. Several say that when such a couple asks for a blessing they should be encouraged to marry. A few of those would require that the couple first seek forgiveness and then separate or at least abstain from sexual activity until married.

Among the minority who would offer blessing to such couples some would do so only if the relationship has endured or flourished for a significant period of time. Some would offer the church's blessing to all relationships.

> **Our recommendation: We recommend that the Church should not bless common law relationships and that couples in such relationships who seek the church's recognition of their unions be encouraged to enter into a formal marriage after being prepared for marriage in the same way as any couple seeking marriage in the church.**

We turn now to the issue of Ecclesiastical Matrimonial Commissions. In our questionnaire we posed the question:

HAVE MATRIMONIAL COMMISSIONS OUTLIVED THEIR USEFULNESS?

Close to two-thirds of those who answered this question say Yes. Those who favour continuing the Commissions see them as useful in a pastoral way.

Those who have gone through the process see it as bureaucratic and judgmental. Some object to delays in the processing of applications. Some clergy are seen as using the Commissions to make decisions they want to avoid making on their own. There is a recognition that, with or without Commissions, there is a responsibility to discuss past relationships, and obligations arising from them, with all couples approaching marriage.

One respondent cited the case of two Anglican priests, both divorced, who were married by a United Church minister rather than apply to the Commission.

The process is seen as selective or discriminatory, e.g. it does not deal with a divorced person whose former spouse is deceased but who has obligations to children of the previous marriage. An extreme situation cited was that of a couple, each of whom had a previous common law relationship that resulted in children, living in a current relationship that also produced offspring. They were not required to go through the process that a divorced couple faced.

A widower who married a woman who had been divorced for 25 years says that if he had it to do over again he would choose a civil marriage and his relationship with the church would be simpler and less stressed.

One feature that appeared in a number of responses was the feeling that decisions about couples are made by nameless, faceless Commission members. Contrast the practice in the Diocese of British Columbia where the Commission offers to meet with applicant couples.

Again it is helpful to quote from some of the responses:

> **"We acknowledge the difficulties for those who have been divorced to have to speak about painful past circumstances. We insist that this should only be done in a spirit of understanding and charity, and not judgment. Part of the process of looking ahead to a life together, is to look at where you have come from. It is in the best interest of the couple to be open about their past.**
>
> **"We also feel that it is an exception to the church's teaching to give permission for remarriage while the former spouse is still living, and that calls for a different path to seek the blessing of the church. We think there is benefit to having a standardized form across the national church, so that there is a uniform process for Canadian Anglicans." (Parish Group, Riverview, NB).**

". . . the Commission has often played a critical role in dealing at arm's length with an application, in a situation where a priest may be under considerable pressure, or where there may be strong feelings in a parish where anonymity is practically non-existent. . . . This Commission does believe it is important that *all* couples contemplating marriage should have solid preparation and ongoing support, but do not believe the Commissions should be dissolved in the meantime, until such ministry is provided and understood for all couples who come to the Church for marriage, or seeking blessing of a civil marriage (but not a common law relationship)." (Moosonee Commission).

". . . I have wondered as time went on if it would be better to use some wisdom and prayerful guidance myself in making the final decision to officiate at the marriage of a couple, where divorce is an issue. I have never sent in an application which I did not personally support: in other words, I have never expected the Commission to do my 'dirty work' and deny marriage to someone. . . .May the church set us free to make the decisions, to deal pastorally with the people." (Canon Greg Physick, North York, ON).

"There is no flexibility - sometimes the applicant's former spouse is now married and so no hope of reconciliation; they may be older, have been separated and divorced for many years yet they must still go through the same process as a young applicant with small children and just recently divorced." (Canon Jim Woolley, Mississauga, ON).

"Commissions continue to have a role in enabling the church to maintain the unique sacramentality of Christian marriage, while at the same time extending Christ's ministry of reconciliation to the divorced. The realities arising from marital breakdown need to be addressed, and doing so is not to place any person in a position of inferiority, or to subject them to a stricter standard. Both marriage and re-marriage require special attention and ministry, but they are not identical pastoral situations.

"In the case of remarriage after divorce where the former spouse is still living, the granting of permission is more than approving a couple's readiness to enter into a sacramental union, it also requires the exercise of the power of dispensation from vows, rather than proceeding by way of an annulment, that is a distinctive and basic principle of the present Canon.

> "The vital role of the Commission is to mediate this discretionary authority, according to the guidelines laid out in the Canon, so that this episcopal discretion is not exercised in arbitrary ways. Having applications go through the Commission to the Bishop also enables the parish priest to come alongside the couple as a co-applicant with them rather than having to stand apart from them as a decision-maker." (The Rev. Jonathan Eayrs, member of the Commission in the Diocese of Nova Scotia and Prince Edward Island).

In summary, some of the salient arguments advanced in favour of retaining commissions are:

- the discipline of the Commission is a stabilizing factor
- the Commission's open doors for those who wish to enter a new marriage and are prepared to reflect on the past and the future in an atmosphere of love and pastoral care
- they protect couples from the biases of clergy
- they remove pressures from clergy and are a back-up for them; they deal with the parties at arm's length;
- they discourage those who lack serious Christian intent
- without commissions, some clergy will marry all comers; they are necessary until we are able to provide solid support and preparation for all couples
- they ensure realization of the seriousness of divorce
- they provide a ministry of reconciliation to divorced persons
- to treat remarriage as inconsequential and local denies the values and ethos of the church

On the other hand, those who advocate abolishing the commissions make valid arguments

- in most cases the commissions are not directly involved with the applicants; that is the function of the clergy involved with the parties

- responsible clergy do not submit applications they do not support; they do not hide behind the commissions and wish to be free to make the decisions and deal pastorally with their people

- clergy are entrusted with decisions about first marriages; they should be trusted with decisions when divorced persons are involved

- applicants find the forms bureaucratic, intrusive and juridical; such forms impede pastoral relationships

- application fees are seen as a form of indulgence; (we note that one provincial government has recently abolished fees for marriage licences)

- scheduling of Commission meetings results in undue delays

- many commissions are cloaked in anonymity

- the process is inflexible - it makes no allowance for cases where there is no hope of reconciliation because the former spouse has remarried or instances where the applicant has been separated and divorced for many years

- decisions are based on an assessment of the probable stability of the proposed marriage; such assessments are not a prerequisite to any other form of blessing; if the issue of stability is valid it should be assessed for all marriages

On balance, it is the view of the task force that the church's pastoral role toward couples approaching marriage should be predominant and that the role is best performed by the clergy who are in personal contact with the couples. While ministry to all those intending marriage is important and essential, a past divorce presents a dynamic requiring special and thoughtful treatment during the marriage preparation process.

Our recommendations: The Task Force recommends repeal of the provisions of the Canon requiring application to an Ecclesiastical Matrimonial Commission for permission to marry according to the rites of the church when a party to the intended marriage is a divorced person whose former spouse is still living.

We recommend that the decision as to whether such parties may marry according to the rites of the church be made by the incumbent after appropriate consideration of the matters presently required to be considered by matrimonial commissions.
We recommend that paragraph 8 in Schedule E to the Canon, which outlines specific issues to be addressed in marriage preparation, be amended to direct attention to consideration of all past relationships of the parties.

Matrimonial commissions are also charged under Part III of the Canon with responsibility for determining marital status, i.e. whether a purported marriage constitutes a marriage within the meaning of the Canon. Such applications are rare.

We recommend that authority to determine marital status be conferred on diocesan chancellors.

FORMS OF APPLICATION

It is our opinion that the form of application for permission to remarry that was authorized several years ago and that is sold by the Anglican Book Centre is too legalistic and that it hinders, rather than helps, both clergy and applicants as they attempt to deal with issues of a pastoral nature. Although Part VII of the Canon says forms of application may be authorized by the Council of the General Synod, we do not consider that Commissions are restricted to using forms so authorized. Several Commissions have developed and used their own forms without seeking authorization from the Council.

Our recommendation: We recommend that, until matrimonial Commissions are abolished, all Commissions be encouraged to adopt forms of application that are more pastoral in content. We recommend that commissions refer to forms now in use in other dioceses, particularly British Columbia, Ontario and Québec. If the General Synod accepts our recommendation that applications be determined by incumbents, similar forms of application should be used in that process.

We recommend that the practice of requiring certified copies of divorce decrees or judgments be discontinued and that photocopies of such documents be accepted as proof of the granting of divorces.

THE TABLE OF KINDRED AND AFFINITY AND THE MARRIAGE (PROHIBITED DEGREES) ACT

The Table of Kindred and Affinity was first promulgated by Archbishop Parker in 1563. It originally contained many more prohibitions than are now found in the *Table*. When the Marriage Canon was revised in 1946 the General Synod removed prohibitions in respect of sisters-in-law, brothers-in-law, aunts and uncles by marriage, and nieces and nephews by marriage. That brought the church's rules in line with changes in the secular law that had been enacted by the Canadian Parliament in 1882, 1890, 1923 and 1932. The Table as so amended is found in the 1959 *Book of Common Prayer* at page 562 and in section 3 of Canon XXI.

From 1946 to 1991 the secular law and the Table parallelled each other.

Among marriages that continued to be forbidden were those between persons related as uncle and niece or as aunt and nephew. Between 1975 and 1984 nine couples so related successfully petitioned Parliament for the enactment of Private Acts exempting them from the prohibition and authorizing them to marry. Two other Private Acts in the same time period authorized the marriage of a divorced person with the niece or nephew of that person's former spouse. In most of those cases the parties were close in age; some had been living together and some had had children together.

Parliament did not want to be faced with an endless queue of couples whose relationships fell within the prohibited degrees.[9] Parliamentary committees studied the matter between 1984 and 1990.

A Senate committee sought the views of all major religious denominations in Canada. The responses covered a spectrum ranging from approval by the Jehovah's Witnesses who found a proposed bill to be in harmony with their practice, to strong objections from the Greek Orthodox Church which retained many prohibitions including one against marriage of a godparent with either a godchild or the parent of a godchild (spiritual affinity). In 1984 the then Primate, Archbishop Scott, wrote to the Senate Committee as follows:

> My personal opinion is that the reasons for prohibiting marriage between "in-laws" are not of very great importance. However, I

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9 Between 1980 and 1982 three couples related as step-parent and step-child were exempted from the impediment by "Personal Bills" enacted by the United Kingdom Parliament. Those Bills prompted that Parliament to reform the law. See *No Just Cause: The Law of Affinity in England and Wales* (London: CIO Publishing, 1984).

> would favour the continuance of the prohibition of uncle/niece and aunt/nephew marriages for social reasons rather than genetic ones.
>
> Marriages of adoptive parents with adopted children should certainly be prohibited, as well as marriages between brothers and sisters related by adoption. Genetic factors are not an issue in such relationships but family structure and solidarity require such a prohibition.

In 1985 the church's Sub-Committee on Marriage and Related Matters informed the Senate Committee that it was their opinion that marriage between step-parents and step-children should continue to be prohibited and that the prohibition should be extended to marriage between adoptive parents and adopted children and between brothers and sisters by adoption.

The Senate Committee sought the advice of Dr. Abby Lippman, an eminent geneticist and an associate professor at McGill University, about genetic and eugenic concerns. She said the risk for recessive disease in children born to first cousins (who were not prohibited from marrying) is less than one per cent and that the best guess for recessive diseases in uncle-niece or aunt-nephew matings is slightly higher - perhaps one to two per cent. She saw no need to prohibit such marriages.

Several Bills for reform of the prohibitions were introduced in the Senate in the 1980s but for various reasons died on the parliamentary order paper. In 1990 the *Marriage (Prohibited Degrees) Act* was passed and it came into force in December 1991. That Act says:

> **2.(1) Subject to subsection (2), persons related by consanguinity, affinity or adoption are not prohibited from marrying each other by reason only of their relationship.**
>
> **(2) No person shall marry another person if they are related**
>
> > **(a) lineally by consanguinity or adoption;**
> >
> > **(b) as brother and sister by consanguinity, whether by the whole blood or by the half-blood;**
> >
> > **(c) as brother and sister by adoption.**

3.(1) Subject to subsection (2), a marriage between persons related by consanguinity, affinity or adoption is not invalid only by reason of their relationship.

(2) A marriage between persons who are related in the manner described in paragraphs 2(2)(a), (b), or (c) is void.

4. This Act contains all of the prohibitions in law in Canada against marriage by reason of the parties being related.

The Act and the Table may be compared as follows:

Both the law and the Table prohibit marriages between

A Man and his	A Woman and her
Mother	Father
Daughter	Sister
Sister	Brother
Grandmother	Grandfather
Granddaughter	Grandson

The law, but not the Table, prohibits marriages between such persons if they are related by adoption.

The Table, but not the law, prohibits marriages between

A Man and his	A Woman and her
Aunt	Uncle
Niece	Nephew
Stepmother	Stepfather
Stepdaughter	Stepson
Daughter-in-law	Son-in-law
Grandfather's wife	Grandmother's husband
Wife's grandmother	Husband's grandfather
Wife's granddaughter	Wife's grandson
Grandson's wife	Granddaughter's husband

The question we posed in our questionnaire was:

WHAT JUSTIFIES RETENTION OF PROHIBITIONS AGAINST A PERSON MARRYING A STEP-PARENT OR STEP-CHILD, A PARENT-IN-LAW OR A CHILD-IN-LAW, AN AUNT OR UNCLE, A NIECE OR NEPHEW?

Of those who gave a clear answer to this question a majority favour bringing the Canon in line with the secular law. Those who seek to justify the prohibitions cite, without any supporting arguments, "moral considerations", "God's Word", "genetic and psychological concerns", "psychological and spiritual damage to children", "psychological incest" (?) and "a long-held belief that marriages between blood relatives can produce children with physical or mental disabilities."

Many respondents recognize the danger in step-relationships of duress or coercion, vulnerability, issues of authority or power, dependence and abuse.

A member of the Commission in Nova Scotia and Prince Edward Island said:

> Canon law has always emphasized the importance of the totally free and independent choice being made by the bride and groom towards each other, and that any coercion constituted an impediment invalidating the marriage. If relative restrictions are related only to the fear of coercion, or trespassing on the freedom of the individual, there is no need to continue such, provided other assurances of freedom can be made.

None of the respondents advocated any doctrinal or theological justification for retention of the questioned prohibitions. We share the concern about issues of duress or vulnerability where one party has in the past been a child, e.g. step-child, who has lived in the same household as the other party and been treated by that person as a child. Because such marriages will rarely occur it is our view that they should not be prohibited but that proper inquiries made by an incumbent will reveal any impediment related to the absence of free and independent consent.

> **Our recommendation: We recommend that Canon XXI be amended to conform the impediments of relationship to those contained in the *Marriage (Prohibited Degrees) Act*. We further recommend that a provision be added to the canon expressly requiring the incumbent, when the parties to the intended marriage have previously lived in the same household and either party has been treated by the other as a child or a parent, to be satisfied that both parties freely consent to the marriage free from any duress, undue influence or coercion, past or present.**

PLACE OF MARRIAGE CEREMONIES

With respect to the provision in the Canon and in the rubrics requiring that marriages be solemnized in the "body of the church", except for sufficient cause, we asked:

WHY DON'T WE SOLEMNIZE MARRIAGES IN PLACES OTHER THAN THE "BODY OF THE CHURCH"?

This was the most popular question with 59 clear responses. Forty, or two-thirds, favour weddings outside the church building so long as the setting is "appropriate", "respectful", "respectable", "reasonable", "tasteful", "acceptable", or "makes the sacramentality of the occasion visible and is accessible to the Christian community." Nine would allow such settings only if the church is too small, for reasons of distance, or in exceptional circumstances. Several caution against extreme or sensational locations, the end of bungee-cords being most commonly cited as objectionable!

One woman quoted lines she attributes to a plaque in a garden at St. James Cathedral in Toronto:

> **One is closer to God in a garden**
> **Than anywhere else on earth.**

Others point out that God cannot be housed or contained.

> **"Surely I am mature enough to refuse the proverbial swimming pool wedding or bungee jumping scenario. Yes, the body of the Church can mean the building. Yet the Church as the people of Christ can surely gather in a beautiful garden or a chapel not necessarily dedicated as such in our eyes. I like to believe that God will smile upon, and bless, the couple for we can not limit God's presence to a building." (Canon Physick).**

Ten respondents oppose relaxing the present rule. A priest who has officiated at 800 weddings says no couple active in the church ever asked him for a wedding other than in the church although children of active members had done so.

> **". . . once the place is no longer prescribed, it will be difficult to preserve the focus of a *Church* marriage and a *worship* setting. While ordinations and mass Eucharists are celebrated in various large buildings or outdoor settings, these are planned and executed by the**

> **Church, whereas in many weddings the wishes of the couple and their families place inordinate pressure on clergy, who are sometimes only able to retain a measure of control because of the insistence that the setting be in a church building and the focus be on worship." (Moosonee Commission).**

Those who would retain the rule say the church building is a place of prominent Christian significance, that solemn sacraments should be celebrated in locations of suitable dignity, that couples who come into the church to marry demonstrate their humility before God, that sacred space emphasizes the spiritual blessing of the marriage, that other locations distract from the solemnity of the occasion, that the church is a public place where anyone may attend and, in theory, voice just cause against the marriage, and that insistence on ceremonies in sacred space is one of the church's last influences on powerful anti-Christian cultural trends. While ordinations and Eucharists sometimes take place outside church buildings, the church controls such services. In the case of marriages the wishes of the couple and their families may place inordinate pressure on the clergy.

Those who would relax the rule emphasize that God is not confined to consecrated buildings, that churches in some communities are too small, that there is a desire among some indigenous people for marriages outside the church building, that a non-Anglican bride or groom may get the impression we are inflexible, that the solemnity of the occasion can be preserved in other locations, that no setting makes the vows more important or permanent, and that couples who are refused a ceremony outside the church are alienated from the church.

> **Our recommendation: We recommend that the rule be relaxed to permit marriages outside church buildings but only if the incumbent is satisfied that the solemnity and religious nature of the ceremony is preserved.**

BANNS

Some jurisdictions still do not require couples to obtain a marriage licence when banns are published. **We therefore do not recommend any changes in the Canon in that regard.**

MIXED AND INTER-FAITH MARRIAGES

We note that in 1995 the National Executive Council [the predecessor of the Council of General Synod] approved for inclusion in *Occasional Celebrations*

guidelines and a liturgical text for Marriage between a Christian and a person of Another Faith Tradition.
We recommend that the Guidelines and the form of service be posted on The Anglican Church of Canada website.

We note the existence of *Pastoral for Interchurch marriages between Anglicans and Roman Catholics in Canada*, authorized by the Canadian Conference of Catholic Bishops and the House of bishops of the Anglican Church of Canada and commend its continued use when one party to an intended marriage is a Roman Catholic.

ADMISSION TO HOLY COMMUNION

Part V of the Canon (Section 26) says:

> In every case where a person who has been remarried, except as provided above in this Canon, whose former and present partners are both living, desires a ruling with respect to admission to Holy Communion, the case shall be referred by the incumbent to the bishop of the diocese for judgment. In arriving at this judgment the bishop shall have due regard for the spiritual welfare of the petitioner as well as the provisions of this Canon. The bishop shall give the judgment in writing to both the incumbent and the petitioner.

We understand that this provision has not been adhered to for several years. We therefore recommend that Part V of the Canon be repealed.

GENERAL

In the interest of making the Marriage canon, and indeed all of the Canons of the General Synod, accessible to more members of the Church we recommend that the contents of the General Synod Handbook be posted on The Anglican Church of Canada website.

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