

Is Motion 30 Constitutional?

An interview with Don Mathieson

Dr Don Mathieson is a former law professor at Victoria University and a member of the Waikanae parish. In 2012 he was honoured by being appointed an Officer of the New Zealand Order of Merit. He was also president of the Latimer Fellowship in 1997-8. Don acted as counsel for three applicants to the Judicial Committee of the Anglican General Synod challenging the constitutionality of clause 4 of Motion 30 passed by the Synod in May 2014.² Motion 30 allows for the recognition of same-sex couples in the Anglican Church and established a Working Group to prepare recommendations for the synod in 2016 concerning same-sex blessings.

Don, thank you for speaking with me. What prompted the applicants, for whom you acted as counsel, to apply to the Judicial Committee for a ruling of Motion 30?

The applicants sought an interpretation of the constitution of our church in relation to the constitutionality of clause 4 of motion 30, which enables recognitions of same-sex relationships to occur in the context of public worship. More generally, it also sought an interpretation of the constitutionality of same-sex blessings and same-sex recognitions. They applied under Canon IV of Title C, which entitles one full member of the church to make an application and, in this case, two clergy and one layperson applied, thus demonstrating the breadth of the support for the application.

It is important to make the point that there were three things up before the Committee because, if there was some objection to the jurisdiction of the Committee in relation to clause 4 of Motion 30, or because it was a decision of General Synod, then that objection would not apply to the issue of blessings and recognitions which are constitutionally questionable quite independently of clause 4.

So you presented the application in person as counsel. What was the outcome of the hearing?

The committee met in Auckland and it decided, after hearing submissions on jurisdiction only,

that it had no jurisdiction in the matter and that was the end of the case.

Even over the constitutionality of blessings and recognitions?

It did not seem to understand the significance of the three-fold division that I had made. It seemed to concentrate on clause 4 only. I regard that as intellectually indefensible.

And what were their reasons for declining to hear the application?

It would be difficult for me to summarise their ruling. Suffice to say that it seemed to think that it had no jurisdiction to rescind a decision of the General Synod by which it was itself appointed. But it wasn't, of course, being asked to rescind anything: it was actually being asked to interpret the constitution. And I'm quite clear that the constitution is not exempt from being interpreted, and that General Synod resolutions can properly be assessed to see whether they comply with the constraint imposed by the Fundamental Clauses of the Constitution (reasserted without alteration in 1992)

If the Judicial Committee does not have the jurisdiction, who does?

Well, the short answer is that nobody has jurisdiction! There is provision under the Church of England Empowering Act 1928 for a tribunal to be established to hear challenges to canons passed by the General Synod, but only once its own procedures have been completed. In the present case, that would not occur until at least 2019. The implication of the Judicial Committee's decision is that the General Synod can act as unconstitutionally as it likes until 2019, by which stage a significant number of Anglicans could have left the church!

So where does that leave us as a church now?

Well, General Synod is not meeting until 2016. In the meantime, a Working Group may or may not release a report in July of this year. Their task is to recommend to General Synod how our

Rev. Malcolm Falloon

² "Pathway to same-gender blessings," Anglican Taonga, <http://anglicantaonga.org.nz/News/General-Synod/forward>.

church might proceed to the blessing of people in same-sex relationships. It will be interesting to see whether the Working Group agrees with the Doctrine Commission who accepted that a constitution amendment would be required.

How does the Anglican Church change its constitution?

It will be very interesting to see what actual words are proposed for that change. The constitution is very clear that General Synod must not diminish the doctrine and sacraments of Christ in any way. The word 'diminish' is very important here, for if General Synod undermines the doctrine of the Church, even without explicit contradiction, they would still be acting unconstitutionally. If the Working Group concludes that making provision for same-sex blessings is currently unconstitutional, then it will need to give some consideration to the formidable questions that arise as to how you would get such a change through Parliament, for that would be what was required. I contend that it is in nobody's interest to have constitutional uncertainty about this matter.

Is there a distinction that can be made between allowing same-sex recognitions and approving same-sex blessings?

Well, I think it is vital to realise that recognitions lead to blessings, and blessings lead to marriage. In other words, the question that most people will ask themselves is, "Does the Anglican Church approve of same-sex relationships?" That is the question. The 'recognition' of these relationships - when two people are asked to stand up in church and the congregation is asked to note their relationship, with or without prayer, with or without applause, with or without approving words - that would constitute an approval. The difference between 'recognition' and 'blessing' is very thin. All that is involved is the addition of certain words such as, "We ask the Lord to bless this couple." But the approval that has already been granted by a recognition is also inherent in the blessing as well. And so as soon as you have recognitions it is a

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short step to blessings. Then you ask, "Well, what about same-sex marriage?" I would argue that, despite the ringing affirmation of the traditional understanding of marriage in clause one of Motion 30, once same-sex blessings are in place it will only be another short step to same-sex marriage. All that is necessary is the addition of the words, "You are hereby married!"

Bear in mind, also, that when a same-sex couple presents themselves for a blessing they will probably have already been married by a registrar under the Marriage Amendment Act 2013, and so you would be blessing people who have already been married under civil law. Although in words one can make a distinction, the difference between recognising, blessing, and marrying a couple, is a very thin one indeed.

Thank you again, Don, for speaking with me. Do you have any final comments?

Can I just say that I sympathise so much with those thousands of church members who are feeling helpless, not led in any particular direction, and ignorant of what is actually going on. This application to the Judicial Committee was designed to provide reassurance that there were people who were taking the matter seriously and doing something about it. There will be another opportunity fairly shortly through the churches for people to express their opposition to this unfortunate direction our church is taking. I would encourage people to take that opportunity and so show the voice of the people as opposed to the voice of a few determined liberals in the ecclesiastical hierarchy.

Those who would like more information about this case can contact Don via the Latimer Office.