

The Constitutional Framework of the General Synod

Alan T Perry

11 March 2008

The Constitutional Framework of the General Synod consist of three parts: the Declaration of Principles, the Constitution and the Rules of Order. Together these three documents define the jurisdiction of the General Synod and the Provinces of the Anglican Church of Canada, the composition of the General Synod and the rules for the conduct of its business.

Initially the General Synod was organized into two Houses: the “Upper House” consisting of the bishops and chaired by the Primate, and the “Lower House” consisting of clergy and laity and chaired by the Prolocutor. The two Houses met and deliberated in separate locations, with communication between the two in the form of Messages. Any motion other than a procedural motion which affected only one of the Houses required separate adoption by the two houses. A proposal to amend a Canon, for example, might be adopted by the Lower House, in which case a Message would be sent, via the Prolocutor, to the Upper House indicating that the amendment had been adopted. The Upper House would then debate the same amendment and send a Message back to the Lower House indicating whether it had also adopted it, or rejected it. This is known technically as a bicameral system of government. (“two chambers”) Since the 1960's the General Synod meets and deliberates as one body. (For Primatial elections, the Synod reverts to the traditional bicameral structure). Although it thus appears to be a unicameral body, it remains in fact a bicameral structure in that the bishops always vote separately from the clergy and laity, thus retaining a vestige of the old bicameral system. I refer to the current structure as quasi-unicameral. For clarity in what follows, I will refer to the two Houses, Upper and Lower, as though they continued to meet separately, even though this terminology is anachronistic. This will allow us to distinguish between the two Houses (Upper - bishops- and Lower - Clergy and Laity) and the three Orders (Bishops, Clergy and Laity).

In any organization there are certain acts of governance that are relatively simple to accomplish and others that are more difficult to accomplish. If we confine our thinking to the conduct of business at a meeting of Synod, examples of a simple act of governance would be the adoption of the minutes of the previous meeting or the granting of privileges of the floor. A more significant act of governance would be the adoption of a regular motion (Act of Synod) that determines the policy of the Church. At a higher level of significance is the adoption, amendment or repeal of a Canon. Next up is the adoption, amendment or repeal of a certain class of Canons having to do with doctrine or discipline. The most significant and most difficult is the amendment of the constitutional framework.

The Constitution and Rules of Order make provision to reflect these levels of significance by procedures to make the decisions progressively more difficult to achieve. At the lowest level, any simple motion to Synod requires a simple majority in each of the two Houses. Adoption or amendment of a Canon which does not have to do with Doctrine or Discipline requires a two-thirds majority in each of the two Houses. Amendment of a Canon dealing with Doctrine and Discipline requires a two-thirds majority of each of the three Orders on first reading, followed by referral to the diocesan and provincial synods, followed by a second reading, again with a two-thirds majority in

the three Orders.

Coming to the Constitutional Framework, amendments to the Rules of Order require a two-thirds majority in each of the two Houses. Amendments to the Constitution require a two-thirds majority in each of the three Orders and must be consistent with the Declaration of Principles, where applicable.

The Rules of Order also provide for invoking a higher level of approval on any controversial motion through the mechanism of a demand for a vote by Orders. (See Rule 19.)

Amendment of the Declaration of Principles requires two readings, as with Canons on Doctrine and Discipline. In addition, amendments to sections 6, 7 and 8, which allocate jurisdiction between the General and Provincial Synods, must be adopted by the Provincial Synods in order to take effect, with the provision that any Provincial Synod which does not consider the proposed amendment prior to the second reading will be deemed to have consented to it. The effect of this provision is to give the Provincial Synods the power to veto any reallocation of jurisdiction between the two levels of governance. Lastly, section 1, the Solemn Declaration of 1893, “belongs in a particular historic context and therefore cannot be altered or amended.” (Declaration of Principles, s.11(a)(i))

Apart from section 1, then, it is clear that the most difficult part of the constitutional framework to amend is sections 6, 7 and 8 of the Declaration of Principles, followed closely by the other sections of the Declaration of Principles.

In the absence of an historical study of the development of the Constitutional Framework of the General Synod, on examination it appears that the first part of the Framework, the Declaration of Principles, is intended, as its name suggests, to outline the basic principles that are to be preserved in framing the Constitution of the Synod, whilst the details of the application of these principles are contained in the Constitution. As an example, section 3(a) specifies that the highest decision-making body in our Church must include the voices of three Orders: bishops, clergy and laity. In other words, it is an important constitutional principle that no one Order alone may make binding decisions for the whole Church. This is a distinctive, albeit not unique, feature of the governance of the Canadian Church. Again, section 3(f) states that diocesan representation at the General Synod is to be by delegations of a size relative to the sizes of the dioceses. (There was some debate in first forming the General Synod as to whether diocesan representation was to be proportional or equal.) The inequality of diocesan representation is balanced by the requirement in section 5(e) that the Rules of Order must provide for voting by dioceses (see Rules of Order section 20). In effect, then, it would appear that the framers of the Constitutional Framework intended to reflect the higher importance of principles of organization over details by requiring a higher level of approval to amend these principles than to amend the details.

If the above suggestion of a distinction between the nature and purpose of the Declaration of Principles and the Constitution is correct, then there is a problem in the current version in that some of the Constitutional details have snuck into the Declaration of Principles. For example, section 3

of the Declaration of Principles, specifying the membership of the General Synod, is repeated verbatim by the equivalent section 8 of Constitution. The Governance Working Group report, presented to the General Synod in 2007, noted that, given the difficulty entailed in achieving the high level of approval for amending the Declaration of Principles, the inclusion of the details of membership in the Declaration of Principles, as well as the Constitution, makes it inordinately difficult to amend these provisions. The Working Group's recommendation was that this problem be remedied by repealing section 3 of the Declaration of Principles. (See Motion A021). For similar reasons, the Working Group also recommended the deletion of sections 4 (on the presidency of the General Synod, mirrored in Constitution section 3) and 5 (on voting, mirrored in the Rules of Order) of the Declaration of Principles. (See Motion A021)

But is this wholesale deletion of sections of the Declaration of Principles the best way forward? Clearly it would achieve the proposed goal of making the Constitutional Framework easier and less cumbersome to amend, and there is certainly an argument to be made that this goal is desirable. But is it suggested here that there is in fact a set of constitutional principles that could be maintained in the Declaration of Principles. Retention of these principles would thus clarify and strengthen the Declaration of Principles, retaining the higher level of approval for amendment of the principles, whilst allowing the details to be subject to a lower level of approval for amendment. Such an approach would remove the barriers to change where such barriers are arguably inappropriate - at the level of detail - whilst retaining impediments to change where such impediments are desirable - at the level of principle.

How would this work in practice? Examination of section 3 of the Declaration of Principles reveals a series of constitutional principles that are desirable to preserve:

- the highest decision-making body of the Anglican Church of Canada includes all three orders - bishops, clergy and laity (3(a));
- clerical and lay members of General Synod must legitimately represent the dioceses they are elected to represent, through the device of requiring that they be members of, or eligible to be members of, the diocesan synod that elects them (i.e., no parachute delegates are to be permitted) (3(e));
- diocesan delegations are to be proportional in size to the dioceses they reflect, and must include equal numbers of clergy and laity (3(f));
- youth members are to be included in the General Synod (3(h));
- certain non-diocesan jurisdictions may be represented in the membership of the General Synod (3(g and i))¹.

Specifying the last of these principles in a permissive manner, and leaving out the actual jurisdictions intended would allow for the relatively easy inclusion of other similar jurisdictions, such as aboriginal members representing parishes under the jurisdiction of the National Indigenous Bishop as a quasi-diocese, or the future elimination of any such jurisdiction in the event that it ceases to be

¹ Canadian Forces and Religious Orders. It is not clear in a vote by Dioceses how these members are to vote.

a feature of the life of the Canadian Church. For example, in the unlikely event that the General Synod decided on a policy of strict pacifism, including a ban on the members of the Anglican Church of Canada serving in the military in any capacity, there would obviously cease to be Anglican military chaplains and a Bishop Ordinary to the Canadian Forces, which would necessitate removing the representation of this jurisdiction from the Constitution. Leaving the details out of the Declaration of Principles would facilitate such a change, were it to become desirable.²

Given this approach to the Declaration of Principles, rather than deleting section 3 it could be revised to read:

3. Membership

- a) The General Synod of the Anglican Church of Canada shall be organized in three Orders: the Order of Bishops, the Order of Clergy and the Order of Laity.*
- b) Members of the Orders of Clergy and Laity shall be members of the diocese synod, or eligible to be members of the diocesan synod, of the diocese they represent.*
- c) The number of clergy and lay members elected by each diocese shall be determined relative to the size of the diocese as determined by the number of licensed clergy in that diocese.*
- d) Each diocese shall elect the same number of lay members as clergy members.*
- e) Each diocese shall be entitled to elect or appoint one youth representative in addition to the clergy and lay members it is entitled to elect.*
- f) Other non-diocesan jurisdictions in the Church may also be entitled to representation as specified in the Constitution.*

Section 8 of the Constitution, on Membership, would then be retained as at present, fleshing out the above principles with the necessary detail. Section 8(a) of the Constitution might now be seen as redundant, but this redundancy is not of great importance, and it has the advantage of making the rest of section 8 clearer.

Section 4 of the Declaration of Principles contains no apparent principles, but rather only some constitutional detail which might well be transferred to the Constitution at section 3, as suggested by the Working Group.

Section 5, on Sessions and Voting, contains a mixture of principle and detail. The assessors at General Synod 2007 noted the division of certain details about voting rules into two separate parts of the constitutional framework, and so there is certainly room for careful simplification in this section. This section establishes the quasi-unicameral nature of the Synod, specifying that “the three

² I am not here advocating such a change. The military chaplaincy is a valuable service to our Canadian Forces and the members of General Synod in this constituency are equally valuable contributors to the life of our Church. I merely use the example for illustrative purposes, without any disrespect or offense intended toward the Bishop Ordinary to the Canadian Forces, the chaplains, other Anglican military personnel, or their families.

Orders shall sit together” (5(a)), but that “bishops shall vote independently as one Order and members of the clergy and laity shall vote together unless a vote by Orders is called for.” (5(b)) The task force proposes to transfer the first of these details to the Constitution, leaving it unclear whether they intend thereby to eliminate the routine practice of having the bishops vote separately, thus transforming the Synod into a truly unicameral body. The question that needs to be addressed explicitly is whether the retention of the old division into two Houses for voting purposes is really helpful. In effect it gives the bishops a collective veto on each and every motion, which undermines the advantages of sitting and debating together. I suggest that it would make more sense to have the whole body vote together, except when a vote by Orders is required, either because of the nature of the subject matter, or because such a vote has been demanded pursuant to the Rules of Order (Rule 19). This is the current practice of the Synod of the Province of Canada. If such a change is intended, then the principle of being a unicameral body should be retained in the Declaration of Principles, and the Rules of Order changed (Rule 18(b)) to reflect the unified system of voting. If the bishops do wish to exercise a veto on a specific issue, the mechanism would remain for a demand for a vote by orders (Rule 19) which would have to be invoked explicitly.

The other principle that is evident in section 5 of the Declaration of Principles is the above-mentioned principle of providing for a vote by dioceses to balance the proportional representation of the diocesan delegations, thus preventing a few large dioceses from dominating the Synod.

These principles could then be included in the Declaration of Principles as follows:

4. Sessions

*The three Orders shall normally sit and vote together, except where specifically provided for in the Constitution, Canons or Rules of Order.*³

5. Voting by Dioceses.

*The Rules of Order shall make provision for a vote by dioceses where demanded.*⁴

Motion A022 proposed to make sweeping changes to the level of approval required to amend the Constitutional Framework of the General Synod. The goal was to render straightforward changes less cumbersome, whilst retaining safeguards against constitutional changes being made without sufficient consultation.

³ The Declaration of Principles provides for the agenda to include separate meetings of the three Orders (5(g)), and for voting by Orders on specific matters. Curiously, when the three Orders meet separately there is no obvious provision for the chairing of the three bodies. In addition, as noted above, the Synod reverts to the bicameral structure for a Primate election. The Rules of Order also include a provision to demand a vote by Orders. Something like the suggested wording establishes that voting together is the norm, whilst voting or sitting separately is a permitted exception to the rule.

⁴ Splitting these provisions into two sections clarifies the two subject matters, but also rather neatly obviates the problem of having to renumber all subsequent sections and the several cross-references which would be required by deleting the current section 4.

The above suggestions regarding the Declaration of Principles in fact would obviate the bulk of the problems with the current system of amending the constitutional framework. If the above suggestion of moving to a true unicameral structure is adopted, then voting on matters such as constitutional and canonical amendments should be done by Orders in all cases. Currently, for example, amendments to non-doctrinal canons require a two-thirds approval by Houses. Elimination of the Houses for all purposes but Primatial elections would suggest that a two-thirds vote by Orders should be required for canonical amendments.

Motion A022 also proposes to remove the requirement for second reading from Canons regarding discipline, retaining it only for canons having to do with doctrine. It is not clear why it is felt that matters of discipline require less consultation than doctrine. More controversial, however, is the proposal that most amendments to the Declaration of Principles, with the exception of sections 6, 7 and 8, would no longer be subject to two readings. Instead, such amendments, along with amendments to canons dealing with discipline, would be sent to dioceses 90 days prior to the meeting of the General Synod. This is a very worrisome proposal, for it would remove effective consultation with the Provinces entirely, except where their jurisdiction is deemed to be at stake. It would also make it rather difficult for many dioceses to participate meaningfully in consultation on such legislation. The effect of a 90-day period for notice of motion would be that both diocesan and provincial synods would have to schedule their meetings within a three-month window prior to a meeting of the General Synod. It is easy to imagine how such a flurry of activity would generate Synod fatigue for those who have to participate in two or even three Synod meetings within three months, and how meaningful consideration of amendments to the Declaration of Principles and disciplinary canons would be all but impossible. The only alternative would be that the synods would have to delegate the power to comment on proposed legislative amendments in these two sensitive areas. Even if this route were taken, 90 days is still a very short period of time for clear and sober reflection on significant legislative amendments. We must work at human speed and not Internet speed.

The explanatory note provided with Motion A022 correctly notes that matters of greater significance are subjected to a requirement for a higher level of approval. It is clear that the Working Group feels that the higher level of approval is an impediment to efficient change, but the need for efficient change must be balanced against the need for effective consultation with those who are affected by such change. Perhaps with the minor rebalancing of the constitutional framework by retaining principles in the Declaration of Principles and shifting details to the Constitution and Rules of Order, as suggest above, the twin goals of needing to provide for efficient change of detail and protecting against hasty change of principle can be met in a proper balance. It is suggested that motion A022 then becomes superfluous, as it would remain clearly desirable to require two readings for any amendment to the Declaration of Principles as a whole, and not just sections 6, 7 and 8 as proposed. Neither has any strong reason been advanced to reduce the level of consultation regarding matters of discipline. The only changes to the amending formula that would be necessary would be to require votes by Orders for all amendments to the Constitutional framework and all Canons. This change would be necessitated to accommodate a shift to a truly unicameral Synod.