

General Synod - Constitution Alteration (Suspension from Duties) Canon 2001 Assenting Ordinance 2002

Explanatory Statement

Introduction

1. The Constitution Alteration (Suspension from Duties) Canon 2001 ("2001 Canon") was passed as a consequence of our Synod declining to assent to the Constitution Alteration (Suspension from Duties) Canon 1998 ("1998 Canon"). As such the 1998 Canon will not come into effect and is to be repealed by the 2001 Canon. Both canons deal with the circumstances in which a member of clergy licensed by the bishop of a diocese or resident in the diocese can be suspended from office where a charge has not been promoted to a tribunal.

2. The 1998 Canon sought to amend section 61 of the Constitution in 2 respects.

3. The first amendment sought to omit the words "as pending" and insert instead the words "has been promoted". The Standing Committee considered that this amendment was not objectionable. This amendment has been reproduced in the 2001 Canon.

4. The second amendment sought to insert a new sub section 61(2) in the following terms -

"(2) It is hereby declared that a synod of a diocese is empowered to make provision for a bishop of a diocese to suspend a person who is or may be liable to the jurisdiction of the diocesan tribunal from the duties of his or her office. In particular provision may be made for such suspension in any case where it appears to such bishop that the same is for the good of the diocese or any particular parish or organization of the diocese. The synod of each diocese is authorised by ordinance to define the occasions on which or conditions under which such power may be exercised and may provide for a person so suspended to receive income and accommodation including accommodation for him or her and his or her immediate family, during the period of suspension."

5. The Standing Committee was unable to recommend that the Synod assent to the 1998 Canon since it was concerned about the width of the powers proposed to be given under the proposed subsection 61(2). The Synod subsequently passed resolution 5/98 in the following terms -

“Synod withholds assent to the Constitution Alteration (Suspension from Duties) Canon 1998 because it considers that proposed subsection 61(2) is without adequate limits, in that:

- (a) it will enable the synod of a diocese to provide for a bishop to suspend a licensed member of the clergy on any grounds and, in particular, grounds which are unrelated to the allegations of misconduct, and
- (b) it will enable the synod of a diocese to authorise the suspension of a member of the clergy for an unlimited time.”

6. The Standing Committee considers that the 2001 Canon adequately addresses the reasons why our Synod withheld its assent to the 1998 Canon.

Suspension by bishop

7. The 2001 Canon includes a revised subsection 61(2) which permits a bishop of the diocese to suspend a person licensed by the bishop or any other person in holy orders and resident in the diocese where -

- (a) the bishop or some other person authorised by ordinance proposes to promote a charge against the person;
- (b) the charge will not allege a breach of faith, ritual or ceremonial; and
- (c) the charge relates to an offence that is punishable by imprisonment for 12 months or upwards of which the person has been charged or convicted or in respect to which the bishop has received a report from a lay person qualified to be a member of the appellate tribunal stating that there is a prima facie case the person having committed the offence.

8. A suspension under subsection 61(2) must be by written instrument signed by the bishop stating the intention of the bishop or other authorised person to promote the charge, the conduct complained of and the period of suspension. The period of suspension may not exceed 28 days and, in general, cannot be renewed if the period of suspension has lapsed and a charge has not been promoted during the period of suspension.

9. If during the period of suspension the bishop or other authorised person promotes a charge, the suspension of the person continues until the first meeting of the diocesan council thereafter. This enables a suspension under the existing section 61 (to be renumbered section 61(1)) to be considered and, if appropriate put in place with the concurrence of the diocesan council.

150 Report of Standing Committee & Other Reports & Papers

10. The suspension of a person from the duties of office under the proposed section 61(2) does not deprive that person of the emoluments appertaining to that office.

11. Under section 67(1)(c) of the Constitution, the 2001 Canon will not come into effect unless at least $\frac{3}{4}$ of the diocesan synods, including all of the metropolitan sees, have assented to it by ordinance with all such assents to be in force at the same time.

Recommendation

12. The Standing Committee recommends that the Synod pass the bill as an ordinance.

For and on behalf of the Standing Committee

ROBERT WICKS
Legal Officer

17 June 2002