

General Synod - Canon Law Repeal Canon 1989 Adopting Ordinance 1993

Explanatory Statement

Introduction

1. In 1989 the General Synod passed the Canon Law Repeal Canon 1989 as a provisional canon. The purpose of the provisional canon was to repeal all pre-1603 church law and such of the Canons of 1603 as were not intended to be replaced with new legislation because they were not considered appropriate for the present time.
2. In 1991 the Sydney Syhod declined to assent to the provisional canon firstly, because the previous Archbishop had indicated that he would not assent to any assenting ordinance and secondly, because the Synod was of the view that the provisional canon should not be used as a vehicle to repeal any pre-1603 canon law concerning ordination.

Canon Law Repeal Canon 1989

3. The Canon Law Repeal Canon 1989 was passed by General Synod in 1992 with the same purpose as the provisional canon.
4. The Legal Committee has reported that the main body of pre-1603 canon law consists of the rubrics in *The Book of Common Prayer* together with Lyndwood's Provinciale. This latter is a collection of local canon law of 1432 made in England. A large amount of material in Lyndwood's Provinciale consists of canons which today we would have little sympathy with and the canons dealing with ordination all appear to have been superseded by the Canons of 1603.
5. The former Archbishop agreed that the positive effect of the old law as to the apostolic and scriptural character of the church was adequately transferred to sections 1-4 of the 1961 Constitution. However, he identified certain Canons of 1603 to which the provisional canon applied which may need further consideration. These canons were Canons 9, 10, 13, 48, 59, 71, 75 and 80 to 84 which are entitled as follows -
 9. Authors of Schism in the Church of England censured.
 10. Maintainers of Schismatics in the Church of England censured.
 13. Due Celebration of Sundays and Holy Days.
 48. None to be Curates but allowed by the Bishop.
 59. Ministers to Catechise every Sunday.
 71. Ministers not to preach, or administer the Communion, in private houses.
 75. Sober Conversation required in Ministers.
 80. The Great Bible, and Book of Common Prayer to be had in every Church.
 81. A font of Stone for Baptism in every Church.
 82. A decent Communion table in every Church.
 83. A pulpit to be provided in every Church.
 84. A chest for Alms in every Church.

6. The Canon differs from the provisional canon in that it contains a provision which permits a Synod which adopts the Canon to elect that the provisions of one or more canons of the Canons of 1603 which are referred to in the Canon will continue to apply in the diocese.
7. Under the bill, the Canon will be adopted but without affecting the application, in this diocese, of those of the Canons of 1603 which the former Archbishop considered needed further consideration (being those of the Canons of 1603 referred to in item 5 of this explanatory statement.) Such Canons will continue to remain in force until repealed by the Synod of the Diocese. The titles of the Canons of 1603 which are to cease to have effect in this diocese (if they have effect anyway) are set out in the schedule to this statement.

Recommendation

8. The Standing Committee recommends that Synod adopt the Canon while electing to keep in force those of the Canons of 1603 referred to in item 5.

Schedule

No. of Canon	Title of Canon
1.	The King's Supremacy over the Church of England, in Causes Ecclesiastical, to be maintained.
2.	Impugners of the King's Supremacy censured.
3.	The Church of England, a true and Apostolical Church.
4.	Impugners of the public Worship of God, established in the Church of England, censured.
5.	Impugners of the Articles of Religion, established in the Church of England, censured.
6.	Impugners of the Rites and Ceremonies, established in the Church of England, censured.
7.	Impugners of the Government of the Church of England by Archbishops, Bishops, & c. censured.
8.	Impugners of the form of Consecrating and Ordering Archbishops, Bishops, & c., in the Church of England, censured.
11.	Maintainers of Conventicles censured.
12.	Maintainers of Constitutions made in Conventicles censured.
15.	The Litany to be read on Wednesdays and Fridays.
16.	Colleges to use the prescript form of Divine Service.
38.	Revolters after subscription censured.
39.	Cautions for Institution of Ministers into Benefices.
40.	An Oath against Simony at Institution into Benefices.
41.	Licenses for Plurality of Benefices limited, and Residence enjoined.
42.	Residence of Deans in their Churches.
44.	Prebendaries to be resident upon their Benefices.
65.	Ministers solemnly to denounce Recusants and Excommunicates.
66.	Ministers to confer with Recusants.
73.	Minsters not to hold private Conventicles.

77. None to teach School without Licence.
78. Curates desirous to teach to be licensed before others.
79. The Duty of schoolmasters.
85. Churches to be kept in sufficient Reparations.
86. Churches to be surveyed, and the Decays certified to the high Commissioners.
87. A Terrier of Glebe-lands, and other Possessions belonging to Churches.
88. Churches not to be profaned.
89. The Choice of Churchwardens, and their Account.
90. The Choice of Side-men, and their joint Office with Churchwardens.
91. Parish-Clerks to be chosen by the Minister.
92. None to be cited into divers Courts for Probate of the same Will.
93. The rate of *Bona notabilia* liable to the Prerogative Court.
94. None to be cited into the Arches or Audience, but Dwellers with the Archbishop's Diocese, or Peculiars.
95. The Restraint of Double Quarrels.
96. Inhibitions not to be granted without the subscription of an Advocate.
97. Inhibitions not to be granted until the Appeal be exhibited to the Judge.
98. Inhibitions not to be granted to factious Appellants, unless they first subscribe.
105. No sentence for Divorce to be given upon the sole Confession of the Parties.
106. No Sentence for Divorce to be given but in open Court.
107. In all Sentences for Divorce, Bond to be taken for not marrying during each other's Life.
108. The penalty for Judges offending in the premises.
109. Notorious Crimes and Scandals to be certified into Ecclesiastical Courts by Presentment.
110. Schismatics to be presented.
111. Disturbers of Divine Service to be presented.
112. Non-Communicants at Easter to be presented.
113. Ministers may present.
114. Ministers shall present Recusants.
115. Ministers and Churchwardens not to be sued for presenting.
116. Churchwardens not bound to present oftener than twice a Year.
117. Churchwardens not to be troubled for not presenting oftener than twice a year.
118. The old Churchwardens to make their Presentments before the new be sworn.
119. Convenient time to be assigned for framing presentments.

120. None to be cited into Ecclesiastical Courts by Process of *Quorum Nomina*.
121. None to be cited into several Courts for one Crime.
122. No sentence of Deprivation or Deposition to be pronounced against a Minister, but by the Bishop.
123. No Act to be sped but in open Court.
124. No Court to have more than one seal.
125. Convenient Places to be chosen for the keeping of Courts.
126. Peculiar and inferior Courts to exhibit the original Copies of Wills into the Bishop's Registry.
127. The Quality and Oath of Judges.
128. The Quality of Surrogates.
129. Proctors not to retain Causes without the lawful Assignment of the Parties.
130. Proctors not to retain Causes without the Counsel of an Advocate.
131. Proctors not to conclude in any Case without the knowledge of an Advocate.
132. Proctors prohibited the Oath, *In animam domini sui*.
133. Proctors not to be clamorous in Court.
134. Abuses to be reformed in Registrars.
135. A Certain Rate of Fees due to all Ecclesiastical Officers.
136. A table of the Rates and Fees to be set up in Courts and Registries.
137. The whole Fees for shewing Letters of Orders, and other Licenses, due but once in every Bishop's time.
138. The number of Apparitors restrained.
139. A National Synod the Church Representative.
140. Synods conclude as well the absent as the present.
141. Depravers of the Synod censured.

For and on behalf of the Standing Committee

MARK PAYNE
Legal Officer

1 September 1993