



APPELLATE TRIBUNAL OF THE CHURCH OF ENGLAND IN AUSTRALIA

TO THE MOST REVEREND SIR MARCUS LOANE K.B.E., M.A., D.D., PRIMATE OF THE CHURCH OF ENGLAND IN AUSTRALIA.

REPORT OF THE PRESIDENT OF THE APPELLATE TRIBUNAL.

Having received your Reference bearing date the 14th day of September, 1979 which contained questions set forth in the Schedule A thereto numbered 1, 2, 3, 4 and 5, and those set forth in the Schedule B thereto numbered 1, 2, 3 and 4, for the opinion of the Appellate Tribunal duly appointed under the provisions of the Constitution, the said Tribunal was convened at Sydney in the State of New South Wales on the 19th and 20th November, 1979.

After considering the questions set out in Schedules A and B the Tribunal was unanimously of the opinion:-

(i) that there was no matter involving doctrine within the meaning of section 58(1) of the Constitution which required the Tribunal to obtain the opinions of the House of Bishops and of the Board of Assessors and the House of Bishops

(ii) that there was no other matter upon which the Tribunal, in the exercise of its discretion, thought fit to obtain such opinions.

In considering the questions set out in Schedule A, and in the light of the material then before it, the Appellate Tribunal unanimously resolved that it should reconsider the opinion expressed on the 25th September 1974 in relation to the marriage of divorced persons. Having reconsidered the matter the Tribunal resolved by majority (Mr Justice Cox dissenting) that its previous decision should be departed from. In answering the questions the Tribunal assumed that they relate to the marriage of a divorced person whose former spouse is still alive.

The Tribunal is now of the opinion that there is no constitutional bar to the marriage of divorced persons.

The answers to the questions in Schedule A are as follows:-

Question 1.(a) Would the provisions of a Canon of General Synod which enabled a Bishop of a Diocese, if satisfied that the marriage of a divorced person would not contravene the teachings of Holy Scripture, to give consent to the solemnization of marriage of a divorced person by a celebrant in his Diocese be inconsistent with the Fundamental Declarations of the Constitution or any part thereof?

Opinion: The answer is No, Mr Justice Cox dissenting.

Question 1.(b) Would such provisions of such Canon be inconsistent with the Ruling Principles of the Constitution or any part thereof?

Opinion: The answer is No, Mr Justice Cox dissenting.

Question 2.(a) Would a Canon of General Synod containing the provisions referred to in Question 1(a) and which also enabled the Synod of a Diocese to regulate the practice and procedure in relation to applications for obtaining the consent of the Bishop of the Diocese to the solemnization by a celebrant of the marriage of a divorced person be inconsistent with the Fundamental Declarations of the Constitution or any part thereof?

Handwritten initials 'J.C.' in the bottom left corner.

Question 2.(a) continued

Opinion: The answer is No, Mr Justice Cox dissenting.

Question 2.(b) *Would such provisions of such Canon be inconsistent with the Ruling Principles of the Constitution or any part thereof?*

Opinion: The answer is No, Mr Justice Cox dissenting.

Question 3.(a) *Would a Canon of General Synod containing the provisions referred to in Question 1(a) and which also enabled the Bishop of a Diocese to make regulations not inconsistent with any ordinances of the Diocesan Synod concerning the practice and procedure in relation to applications for his consent to the solemnization of the marriage of a divorced person be inconsistent with the Fundamental Declarations of the Constitution or any part thereof?*

Opinion: The answer is No, Mr Justice Cox dissenting.

Question 3.(b) *Would such provisions of such Canon be inconsistent with the Ruling Principles of the Constitution or any part thereof?*

Opinion: The answer is No, Mr Justice Cox dissenting.

Question 4.(a) *In the light of the Family Law Act which provides only one ground for divorce namely "irretrievable breakdown of marriage", would a Canon which regulated the marriage of divorced persons according to the rites of the Church of England in Australia as set out in Question 1(a) but did not make express provision for consideration of the cause of breakdown of the marriage, the grounds on which dissolution was granted or any other particular matters, be inconsistent with the Fundamental Declarations of the Constitution or any part thereof?*

and

Question 4.(b) *Would such a Canon be inconsistent with the Ruling Principles of the Constitution or any part thereof?*

Opinion: The answer to the questions is No, irrespective of the provisions of the Family Law Act. (Mr Justice Cox dissenting).

In relation to questions 4(a) and (b) Mr Justice Cox, although dissenting from the majority answers was of the opinion that whether the correct answer to these questions was "No" or "Yes" in either case the answer would be irrespective of the provisions of the Family Law Act.

Question 5 *If the answer to either Questions 4(a) or 4(b) is "yes", then in the opinion of the Appellate Tribunal what considerations are to be expressly provided for in order that such a Canon may not be inconsistent with either the Fundamental Declarations or the Ruling Principles of the Constitution?*

Opinion: No answer is required.

The Tribunal then considered the questions set out in Schedule B and determined its answers to questions 1, 2, 3 and 4(i) and (ii) but time did not allow the matters raised by sub-questions 4A, 4B and 4C of question 4 to be considered. The consideration of these sub-questions was adjourned until the 4th February, 1980.

The answers to questions 1, 2, 3 and 4(i) and (ii) are as follows:

Question 1. *Would the admission of women to Holy Orders be consistent with the Constitution of the Church?*

Opinion: The answer is Yes, subject to the answers to questions 3 and 4(i) and (ii).

Question 2. *Does Chapter I, Section 3 of the Constitution preclude the ordaining of women into the sacred ministry as bishops, priests or deacons?*

Opinion: The answer is No.

Question 3. *Is there any doctrine or principle of the Church embodied in the Book of Common Prayer together with the Ordinal and the Thirty Nine Articles with which the ordination of women would be inconsistent?*

and

Question 4. *Legislation has been proposed for amendment of the Constitution by*

*i. adding to Section 4 a sub-section in the form*

*"(2) Nothing in this section prevents this Church from authorising by Canon the ordaining of women into the three orders of bishops, priests and deacons in the sacred ministry." And*

*ii. adding to Section 74 a sub-section in the form*

*"(6A) Notwithstanding anything in sub-section (6), in Chapters II to XII both inclusive and in the Table annexed to this Constitution words importing the masculine shall include the feminine."*

*Would such amendment of the Constitution enable the making of a Canon to authorise the ordaining of women?*

Opinion: The answer to the above questions is:

there is no doctrine of the kind referred to in question 3 with which the ordination of women would be inconsistent, but there may be a principle of the Church of England in Australia embodied in the Book of Common Prayer together with the Ordinal with which it is inconsistent. On that latter question the Tribunal does not find it necessary to express a final view. Assuming there is such a principle the Tribunal is of the opinion that the amendments proposed in question 4 would enable a canon to be made to authorise the ordaining of women. However, the Tribunal is of the opinion that in lieu of the amendment suggested in question 4(ii) it is preferable to amend section 74 by the deletion from subsection (6) of the words "in the case of lay but not clerical persons".

Pursuant to the provisions of Rule xviii made under section 63 of the Constitution I now forward in triplicate by certified mail the opinions of the Tribunal on the questions which have been answered by it.

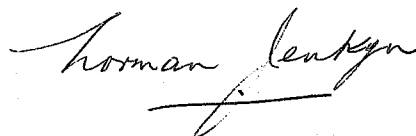
I regret that sub-questions 4A, 4B and 4C have not been answered. The Tribunal agreed to meet on 4th February 1980, but owing to my illness the resumed meeting was not held.

.../4

In these circumstances the Tribunal gives no answers and expresses no opinions in respect of sub-questions 4A, 4B and 4C.

As President of the Tribunal, after consultation through the Primate's Registrar Mr. J.G. Denton with the other members, I now forward the opinions of the Tribunal on the questions already answered by it and respectfully suggest that fresh terms of reference containing questions in the form of 4A, 4B and 4C be submitted by Your Grace to the Tribunal so as to enable them to be determined as soon as practicable after the end of March 1980.

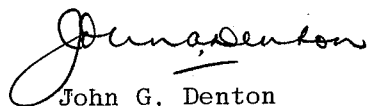
Given under my hand at Sydney aforesaid this *eightth*  
day of *February* 1980.



The Hon. Mr Justice Jenkyn (Rtd)  
President,  
Appellate Tribunal

Certificate under Rule xviii of the Constitution

I certify that the foregoing four pages comprise one of the three copies of the Report of the President of the Appellate Tribunal to the Primate dated 8th February 1980 and lodged in the Registry of the Primate at St. Andrew's House, Sydney.



John G. Denton  
Registrar for the Primate

Dated: 23rd February 1980