

**GARTH BLAKE S.C.**

Telephone: (02) 9223 9720  
Facsimile: (02) 9233 7416  
E-mail: gblake@wentworthchambers.com.au  
DX 397 Sydney

8<sup>th</sup> Floor, Wentworth Chambers  
180 Phillip Street  
Sydney, NSW 2000  
Australia

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The Revd Canon Gregory K Cameron  
Secretary  
Covenant Design Group  
St Andrew's House  
16 Tavistock Crescent  
London W11 1AH  
United Kingdom

Dear Gregory

**St Andrew's Text for an Anglican Covenant**

It was good to meet Archbishop Drexel Gomez, the Revd Dr Katherine Grieb and Dr Eileen Scully of the Covenant Design Group and yourself at the *An Anglican Covenant: Dividing or Reconciling* conference at General Theological Seminary, New York in the United States of America on 10-12 April, 2008.

I think that there are considerable problems with section 3.2 of the St Andrew's Text for an Anglican Covenant. I have highlighted these problems and made some suggestions to overcome them below (using the same Article numbers as in the St Andrew's Text):

- (3.2.1) The expression "to have regard to the common good of the Communion in the exercise of its autonomy" has no clear meaning, and is likely to be seen differently by different Churches. It would be more helpful if this commitment were limited to the affirmations and commitments of the Covenant. Each Church which adopts the Covenant should be prepared to abide by, rather than merely respect, these affirmations and commitments.
- (3.2.2) The scope of the expression "to respect the constitutional autonomy of all of the Churches of the Anglican Communion" is unclear. While one meaning of "respect" is "refrain from interfering with", there are several other meanings such as "to regard or show consideration for". If the intended scope of this expression is that a Church will not engage in activity in the territory of another Church except with consent, then an alternative expression could be "to refrain from undertaking any activity in the territory of another Church without the consent of the responsible body of that Church." If this is not the intended scope of this expression, then an alternative expression should be considered.
- (3.2.3) The grammar of the first sentence could be improved – the words "reflection to ..." are grammatically incorrect. Further, there is not a complete correspondence between the concepts in the first and second sentences. This

correspondence could be achieved by the inclusion of the word "listening" in the second sentence.

- (3.2.4) The word "understood" raises the question of "understood by whom." What is regarded as essential by one Church may be regarded differently by another Church. I doubt that the expression "the canon law of our churches" will be helpful in seeking a common mind about matters of essential concern. While I accept that some principles of canon law are common among member Churches, many would not be.
- (3.2.5) The precondition to action under this Article is proposed or enacted actions that "are deemed to threaten the unity of the Communion and the effectiveness or credibility of its mission." This expression or abbreviations of it appear in several places in the Procedural Appendix. It is puzzling that the Lambeth Conference is responsible for "guarding the faith and unity of the Communion" (see Article (3.1.4-II)), but a threat to the faith of the Communion does not have any consequence (unless it also constitutes a threat to the unity or mission of the Communion). The expression "unity of the Communion" only appears in Article (3.1.4-II); it is unclear whether the word "unity" in Articles (3.1.3) and (3.1.4-I) has the same meaning. The expression the "mission (of the Communion)" does not otherwise appear in the Covenant. Presumably the mission undertaken by each Church in Article (2.2.2) is the mission of the Communion. In view of the serious consequences that may follow upon a threat to the unity and mission of the Communion, the content of these expressions should be made clear by reference to other provisions of the Covenant.
- (3.2.5.e) There is an ambiguity in the first sentence. Presumably it is intended that the Church is not bound to adopt the course of action specified in the request. As the choice not to adopt "(the course of action contained in) the request" can give rise to consequences, a Church will be "bound" by its decision of non-adoption. The ultimate consequence of non-adoption of such a request of "relinquishment by that Church of the force and meaning of the covenant's purpose" is bound to create great uncertainty. Would this mean that the Church would no longer be a member of the voluntary association constituted by the member Churches of the Anglican Communion? If so, how would this relinquishment be reflected in the Constitution of Anglican Consultative Council? Would the Archbishop of Canterbury be bound to refuse to invite bishops of that Church to the Lambeth Conference and the Primate of that Church to the Primates Meeting? If not, what would be the effect of such a relinquishment?

The concept of a relinquishment of the force and meaning of the covenant's purpose should not be used. If the intention is that there be no punitive sanction where a Church "breaches" the Covenant in such a manner as to threaten the unity and mission of the Communion, then I consider that a

different mechanism should be used. Consideration should be given to the ultimate consequence being a declaration by the Anglican Consultative Council that the action of the Church is, or would be, incompatible with the faith, unity and/or mission of the Communion. This mechanism of a declaration of incompatibility is used in the human rights legislation of the United Kingdom, New Zealand and two jurisdictions in Australia. Where such a declaration is made, the law in question is not invalid. Parliament must then determine whether it wishes to amend the law in question.

A declaration of incompatibility by the Anglican Consultative Council would not affect the Church's status as a member of the Anglican Communion. It would give the Church in question the opportunity to reconsider its position. In this way, the autonomy of the Church would be preserved.

### **Procedural Appendix**

I have deep misgivings about the suggested process. Rather than making a detailed critique of the entire Appendix, I will make some general comments (using the same paragraph numbers as in the Procedural Appendix).

- 1.3 No time period should be specified.
3. There is a significant danger of the procedures becoming an instrument of oppression if they can be invoked by member Church X, Y or Z. The procedures should only be able to be invoked by an Instrument of Communion at the request of a Church or on its own initiative. An Instrument of Communion could seek advice such as provided by the Assessors before deciding to invoke the procedures.
4. There is a great danger in conferring a power on the Archbishop of Canterbury to make a request. If there were a successful appeal, the authority of the Archbishop of Canterbury would inevitably be diminished. Further, there are real issues of practicality. The Archbishop of Canterbury would need to observe the principles of procedural fairness and give the Church in question an opportunity to make submissions. It is not realistic to expect that the Archbishop of Canterbury would have the time to make the necessary evaluation.
5. Similar issues of practicality will arise if this power is conferred upon another Instrument of Communion. How could the Primates Meeting (with its large membership), the Lambeth Conference (with hundreds of bishops in attendance) and the Anglican Consultative Council (with a membership of over 70 persons) possibly make such an evaluation?
6. A specially appointed Commission is the only body that can realistically make an evaluation. Having a Commission appointed by the Archbishop of Canterbury would ensure that a body with appropriate expertise could be appointed. A

Commission with a small membership would be able to undertake a cost effective evaluation.

7. I doubt the utility of a mediation if there has been an evaluation that there is no threat to the unity or mission of the Communion.
8. If the Commission makes an evaluation that the action of a Church threatens the unity or mission of the Communion, the Anglican Consultative Council would need to observe the principles of procedure fairness and give the Church in question an opportunity to make submissions.

The procedure would be greatly simplified by adopting the following basic structure:

- (1) An Instrument of Communion at the request of a Church or its own initiative refers to a Commission to be appointed by the Archbishop of Canterbury the question of whether the action or proposed action is compatible with the faith, unity and/or mission of the Communion as expressed in the Covenant.
- (2) The Commission after allowing the Church concerned and other Churches the opportunity to make submissions, prepares a report for the Anglican Consultative Council containing a recommendation as to whether the action or proposed action is compatible with the faith, unity and/or mission of the Communion.
- (3) Where the report of the Commission contains such a recommendation, the Anglican Consultative Council, having given the Church in question an opportunity to make submissions, determines whether it should make a declaration that the action or proposed action is incompatible with the faith, unity and/or mission of the Communion. If it was thought that there should be a right of appeal, the Standing Committee could be empowered to make the initial decision with a right of appeal to the Council. The advantage of this course is that the Standing Committee could meet more expeditiously and at less expense than the Council. The disadvantage of this course is that there would inevitably be a question about the representative nature of the Standing Committee to make such a significant decision. This disadvantage can only be overcome by having the decision made by the Council.

If the Covenant Design Group wishes to recommend a structure along these lines, I am willing to draft a procedure for its consideration.

Yours sincerely



GARTH BLAKE S.C.