

## SEXUALITY OVERTURES

To the Venerable, the 144th General Assembly:

The Committee on Church Doctrine and the Life and Mission Agency Committee have conferred about overtures regarding sexual orientation since the spring of 2015. The two bodies submitted a joint report to the 2015 General Assembly (A&P 2015, p. 541–45) offering a program of meaningful listening and discussion marked by respect and trust to be used at the General Assembly in Vancouver. At the request of the 2015 General Assembly, the two bodies again cooperated to create the study document published in October 2015 entitled *Body, Mind and Soul: Thinking together about human sexuality and sexual orientation in the Presbyterian in Canada*.

Throughout 2016 and 2017 the two bodies met together occasionally and exchanged working documents of reports. It was agreed during the process of consultation that the Life and Mission Agency and the Committee on Church Doctrine would submit, in addition to their own reports, a joint report to the General Assembly, which sought to address the mutual concern of the need for the church to confess of its homophobia. (A&P 2017, p. 474–78)

While the two bodies, the Committee on Church Doctrine and the Life and Mission Agency Committee, communicated during this past year there is no shared report to the General Assembly. The following two reports have been extracted from the reports submitted by the Committee on Church Doctrine and the Life and Mission Agency Committee for ease of reference and use by the commissioners. While the two reports address similar overtures, the approach and recommendations are different.

### COMMITTEE ON CHURCH DOCTRINE

#### **RESPONSES TO “THE HISTORIC ARGUMENT CONCERNING HUMAN SEXUALITY” AND “WHAT THE BIBLE TEACHES ON CONVENATED MONOGAMOUS SAME-SEX RELATIONSHIPS”** (A&P 2017, p. 450–540)

In 2017, the Committee on Church Doctrine sent two substantive biblical arguments to The Presbyterian Church in Canada for study and report. Through the General Assembly Office both documents were translated into Korean. Further, some congregations, such as Markham Chinese Church, Ontario, translated the documents into other languages.

The Committee on Church Doctrine constructed an online tool that was intended to help the church in reporting back findings from their study. In part the design of this tool was in response to frustrations that the Committee on Church Doctrine experienced in trying to understand the responses to the *Body, Mind and Soul* document. Two issues arose from that round of responses. The first was that there was not a mechanism to indicate who was responding. Was this an individual? An individual on behalf of a group? An individual on behalf of a group with an official vote? An individual on behalf of a group who also submitted an individual response? And so on. The second was that there was confusion about evaluating the study and making a judgement about the content it addressed. There were two equally valid questions being asked, “What about the quality of the presentation?” and “What do you believe about the material presented?”.

The online tool designed for these two documents attempted to ameliorate these two issues. Respondents were asked to identify themselves. In discussions within the Committee on Church Doctrine, it became clear that requiring individuals to identify themselves may violate the ability of people to give truthful answers because we would not allow for anonymity. In order to protect individuals who deemed that they needed the security of anonymity, we allowed for anonymous results to be entered. Even with this anonymity we had much greater clarity about who was responding.

The ability to answer anonymously points to a deeper assumption about the online tool: it is not a statistically significant survey. The introduction of anonymity muddies the data collection. The tool was intended to gather as many opinions as possible in ways that could aid the Committee on Church Doctrine in its deliberations. The tool was designed to approximate as closely as possible good research design but at no point did the committee believe that it was a valid social science instrument. If it was, the committee would have designed it much differently.

The focus on the content of the two documents, as compared to their presentation, was also intentional. In focusing on these two documents, however, we may have limited the ability of respondents to creatively transcend a binary in the process of discernment. For this reason, while the tool was offered to all, it was not required. Various

respondents used the tool in different ways. Some used its basic outline to drive a discussion process. Others discarded it entirely and sent in longer written submissions. This diversity of response was entirely legitimate but has, perhaps, the unintended consequence of further distancing the online tool from statistical significance. There was “data” that did not fit within the broad format of the tool thus rendering the tool less scientific.

In all, the Committee on Church Doctrine received over 2,000 different responses. At its meeting in February, 2018, the committee received a report summarizing all of these submissions. The committee had invited the co-conveners of the Rainbow Communion, Robert Faris and Sue Senior, and the General Secretary of the Life and Mission Agency, Ian Ross-McDonald, to be present at this report. The discussion was broad ranging. Some questioned the usefulness of such a range of responses. Others were making sense of trends within the responses. All were keenly aware of the limitations of the process and were looking for meaningful interpretations. The results of the responses therefore informed all of the discussions of the Committee on Church Doctrine but did not determine the outcome of any recommendation.

The Committee on Church Doctrine will not be publishing the “results” of the online “survey” for three reasons. The first has been outlined above. The results are difficult to interpret because, while they have some significance, the “data” was never designed to produce a statistical result. To produce a report with “statistics” would be disingenuous to The Presbyterian Church in Canada. It is fair to say that while different individuals on the Committee on Church Doctrine interpreted the results in different ways, all felt deeply the passion of all respondents. The exercise produced a substantive result but not one that can easily be presented to The Presbyterian Church in Canada.

Second, it is not the practice of the Committee on Church Doctrine to recommend changes to the beliefs of the church by survey. Scripture warns against changing doctrine with the shifting winds. Surely doing doctrine by polls is to fall prey to this temptation. The response of the church helps the Committee on Church Doctrine understand the particular context in which we are called to witness to God’s ongoing presence in the world. It is not a plebiscite.

Third, within our polity as The Presbyterian Church in Canada, it is the right and responsibility of the General Assembly to make decisions regarding doctrine. The Committee on Church Doctrine presents recommendations, as it has in this report, but it is the General Assembly that discerns the will of God. In the case of human sexuality, if the General Assembly discerns that the subordinate standards are to change then all presbyteries will have a chance to prayerfully vote under the mandate of the Barrier Act. To present “survey” responses as if it represents the mind of the church on the matter of human sexuality would be to usurp the rights and responsibilities laid out within our polity.

Some may then ask, “Why go through this whole process? Is it not a charade?” Not at all. First, the Committee on Church Doctrine, the Rainbow Communion and the Life and Mission Agency had the opportunity to hear from over 2,000 different respondents. This engagement is not finished as individuals continue to sift through the responses. Second, perhaps because of the topic and perhaps because the documents were translated into other languages, there was a significant engagement with the material from English as second language respondents. Korean, Arabic and Chinese respondents were able to make a contribution to the church in ways that perhaps they have not been able to in the past. Finally, it was the goal of the Committee on Church Doctrine to present two biblical arguments before the church. In part it was our belief that The Presbyterian Church in Canada needs to wrestle with the Bible. The response to these two documents indicates that the church has indeed studied the Bible. There is still much work to be done in increasing biblical literacy within the denomination but the process stimulated a renewed engagement with Bible study.

## **HUMAN SEXUALITY**

As noted elsewhere in this report, corresponding members have voice but no vote. To ensure that the church has heard their voices, the Committee on Church Doctrine has agreed to record corresponding member’s concurrence with a particular motion. All corresponding members were given the opportunity to record their assent.

The following is supported by the following corresponding members (voice but no vote): Mr. Ross Bassingthwaite and the Rev. Dr. Kevin Livingston.

### **Background**

Over the past several years, the General Assembly has referred various overtures to the Committee on Church Doctrine that focus on questions of human sexuality and identity. These were referred to the committee beginning in

2015 and were also referred to the Life and Mission Agency, Justice Ministries. Eight of these overtures have asked for a change in the church's teaching on human sexuality, a request often expressed in terms of full inclusion. For example, the "therefore clause" of Overture No. 4, 2015 from the Presbytery of East Toronto states:

Therefore, the Presbytery of East Toronto humbly overtures the Venerable, the 141st General Assembly, (i) to cease ecclesial discipline in the courts of the church against ordained ministers of Word and Sacraments, diaconal ministers and elders where such discipline is based on such ministers and elders being in committed, faithful relationships with people of the same-sex, and (ii) to prepare through the Life and Mission Agency of the General Assembly, in consultation with Justice Ministries, a declaratory statement for the General Assembly that affirms that The Presbyterian Church in Canada is fully inclusive of every person regardless of sexual orientation and gender identity in all aspects of church life, including calling, designation, ordination and marriage equality as a matter of justice and hospitality; or to do otherwise as the General Assembly, in its wisdom, may deem best. (A&P 2015, p. 574–75)

The Committee on Church Doctrine understands that this and similar overtures invite a change in the doctrine and discipline of The Presbyterian Church in Canada in the following two areas. First and most fundamentally, these overtures have suggested a change in the definition of marriage. Presently the church's subordinate standards state that marriage is "a union in Christ whereby a man and a woman become one in the sight of God" (Living Faith 8.2.3) and that marriage "is to be between one man and one woman" (Westminster Confession of Faith, Chapter XXIV, I). The request for change, then, suggests a redefinition of marriage as "a covenanted monogamous relationship between two persons", which would be inclusive of those in same-sex relationships.

Second, these overtures have asked for a change in the area of ordination. Presently the church teaches that both those who are married (where marriage is defined as a relationship between a man and a woman) and those who are single (and celibate) may be ordained as teaching or ruling elders. The request for a change asks that persons who are in same-sex marriages, or in committed long-term same-sex relationships, also be eligible for ordination.

In addition to the overtures asking for a change in the church's teaching, there have also been 15 overtures that have asked the church to reaffirm its present teaching on these questions. This second group of overtures asks that the church reaffirm the historic teaching as it is expressed in our subordinate standards and as it is expressed in the Statement on Human Sexuality adopted by the General Assembly in 1994. See, for example, the "therefore clause" of Overture No. 21, 2015 from the Presbytery of Western Han-Ca:

Therefore, the Presbytery of Western Han-Ca, humbly overtures the Venerable, the 141st General Assembly, to prepare, through the Committee on Church Doctrine, in consultation with the Justice portfolio of the Life and Mission Agency, a reflective study paper for the use of the whole denomination to come to a deeper understanding of the issues raised in this and other related overtures, memorials and petitions, resulting in an appendix to the Statement on Human Sexuality (1994) which affirms the original content/intent of that report, and which addresses current literature on the subject of same-sex intimacy and relationships, with particular attention to (a) what it means to be faithful to the Word, the Holy Spirit and the church's prophetic vocation, in this particular cultural moment, (b) what it means concretely to form gospel communities which are truth-telling and love embodying, and where women and men, of whatever orientation or sex-history, may find that "fullness of life" which is promised as much to the unmarried, as to the married (Living Faith 8.2.2), and (c) what it means for a Presbyterian polity to navigate disunity in ways that are responsible to scripture, as our supreme standard, and to our vows at ordination; or to do otherwise as the General Assembly, in its wisdom, may deem best. (A&P 2015, p. 597)

Evidently, there are significant differences of opinion within The Presbyterian Church in Canada regarding God's intentions for human sexuality. These differences of opinion are mirrored within the Committee on Church Doctrine. Which is to say that, while this report and its recommendations represent the majority view of the committee, this is by no means a consensus report.

In presenting this report, the committee does not presume to know the full mind of the church on these questions; rather, what follows here is written with the confidence that this is an appropriate moment for the Committee on Church Doctrine to fulfill its specific mandate. The Committee on Church Doctrine is a committee of the General Assembly of The Presbyterian Church in Canada. It is the responsibility of this committee to consider and report on questions of faith and order that the General Assembly may refer to it from time to time. As the name of the committee suggests, its primary responsibility is to assist the church in understanding, articulating and, sometimes,

clarifying the church's theology. The committee seeks to do so always in obedience to scripture and in continuity with our confessional and doctrinal heritage within the Reformed tradition.

### **Summary of the Process from 2015 to 2018**

Over the past several years, the Committee on Church Doctrine has helped provide resources to aid the denomination in thinking about these questions of human sexuality and about the teaching of scripture. In 2015, the General Assembly asked the Committee on Church Doctrine and the Life and Mission Agency (Justice Ministries) to produce a study guide. This resulted in the production of *Body, Mind and Soul*, whose purpose was to promote and facilitate informed conversations about the topic of human sexuality and sexual orientation in The Presbyterian Church in Canada. This document was studied and many responses were submitted to the Committee on Church Doctrine and the Life and Mission Agency Committee that they reviewed and considered those responses.

In 2017, the Committee on Church Doctrine brought forward two major theological papers on the questions of human sexuality that had been referred to it. The first paper offered a theological argument for the historic teaching of the church and was entitled "The Historic Argument Concerning Human Sexuality". The second paper offered a theological argument for a new approach to the church's teaching on human sexuality and marriage, and was entitled "What the Bible Teaches on Covenanted Monogamous Same-Sex Relationships".

In addition to these two major papers, the committee produced a brief document entitled "Where from Here? An exploration of possible ways forward for The Presbyterian Church in Canada on questions of Human Sexuality." The three possible ways forward for the church were described as (in summary form):

- Option A – Maintain the present teaching and discipline of the church.
- Option B – Redefine marriage in a way inclusive of same-sex relationships.
- Option C – Maintain present teaching, but allow for blessing of same-sex relationships.

As the General Assembly sent these three documents to the church for study and report, the Committee on Church Doctrine provided an online survey so that members and various bodies of the church could communicate their opinions, comments and thoughts in relation to the major theological papers and the short "way forward" document. The Committee on Church Doctrine received over 2,000 responses (from individuals and from many sessions and presbyteries) and these were shared in full with the Life and Mission Agency Committee.

Finally, at the 2017 General Assembly, the Committee on Church Doctrine also brought a joint report with the Life and Mission Agency Committee on the need for confession and repentance for the church's homophobia. Such a call to confession and repentance was a key part of the Statement on Human Sexuality (1994), which stated:

The church is called to be a welcoming, nurturing, loving and supportive community, a true church family, where all are welcomed, nurtured, loved and supported. Sadly, the Christian church has frequently shunned homosexuals and failed to minister to them and with them. The church as a whole must repent of its homophobia and hypocrisy.

On a recommendation from the Committee on Church Doctrine and the Life and Mission Agency Committee (supported by those on all sides of this debate and discussion), the 2017 General Assembly adopted as follows:

That The Presbyterian Church in Canada repent of homophobia, as defined above, and hypocrisy by establishing a special committee to: 1) create a safe and respectful environment in which LGBTQ people can tell stories of harm done to them, of God's grace experienced by them, and of Christian ministry performed by them, even in the midst of the challenges that they have faced; 2) listen to the stories told by LGBTQ people; 3) draft an appropriate response regarding homophobia within the denomination; 4) name concrete actions that the General Assembly consider implementing; and 5) report to a future General Assembly within the next 3 years. (A&P 2017, p. 28)

The membership of this special committee has been established and has named itself the Rainbow Communion. The Rainbow Communion has begun to lay out its plans for a listening process in relation to those who have felt the deep pain of homophobia within the church. The Committee on Church Doctrine is grateful that the church is undertaking this important work.

### **Recommendation to Reaffirm of the Church's Traditional Teaching**

As noted at the outset, there are strongly divergent points of view within the church and within the Committee on Church Doctrine concerning these questions of human sexuality. However, as the committee has wrestled with these scriptural and theological questions over the past several years, a majority has come to the conclusion that there is insufficient exegetical, hermeneutical and theological support for a change in the denomination's doctrinal position on human sexuality. The traditional teaching of The Presbyterian Church in Canada is also consistent with that of most of the global church and is the near unanimous view of Christian history.

We do not question the theological integrity or faith of those who hold different positions. Sensitive theological and pastoral work are evident in the paper entitled "What the Bible Teaches on Covenanted Monogamous Same-Sex Relationships" and in a paper produced by the Life and Mission Agency that also recommended a change in the church's teaching. While these papers represent quite different approaches to the scriptures and anticipate very different conclusions to those represented in this report, we have learnt from the insights of those papers and have learnt from their approach to the scriptural texts and the theological traditions we share.

The conclusion of the present report to the General Assembly, however, is that these alternative arguments on human sexuality are not sufficient to justify a change in the church's teaching.

The theological paper produced by the Committee on Church Doctrine and entitled "The Historic Argument Concerning Human Sexuality" offers a biblical, coherent and relevant account of human sexuality. While that paper attends to the usual scriptural texts that address same-sex sexual activity, it also traces a positive biblical marital theology as expressed in the scriptures as a whole and within key Old Testament and New Testament texts. This approach also makes sense within the overall logic of the church's subordinate standards. As the General Assembly and the wider church wrestle with these questions of human sexuality and discern a way forward, we encourage the church to consider again the careful and prayerful theological work that is offered within "The Historic Argument Concerning Human Sexuality".

In view of the committee's wish to provide theological direction to the church and the majority's acceptance of the arguments laid out in "The Historic Argument Concerning Human Sexuality", this report recommends that the General Assembly adopt Option A of our 2017 report, which is described as follows:

Option A represents a decision that what the church has previously taught on questions of human sexuality is faithful to the teachings of scripture and to the theological heritage that is ours in the Reformed tradition – further, it entails a re-affirmation by the General Assembly of what the church has historically taught on these questions. Following this path would include a process of listening and confession for homophobic actions and attitudes, and would imply hospitality toward those who identify as LGBTQ – all are loved in Christ and welcomed in the church. But this option would not involve any practice of blessing same-sex relationships or of providing for the marriage of same-sex couples. Ordination as a ruling or teaching elder would be possible only for those who are single and celibate, or to those who are married (where marriage is an opposite-sex relationship).

Given the nature of the many and diverse overtures referred to the Committee on Church Doctrine (and the complex nature of these overtures all together), there are different recommendations that could have been proposed to reaffirm traditional teaching. One coherent way to do so, however, is by way of a recommendation not to grant the request for a change in the doctrine and teaching of the church. As a result, this report recommends that the prayer of the overtures asking for such a change not be granted.

### **Listening, Confession and Repentance?**

It is important to say that the majority of the Committee on Church Doctrine understands that this recommendation to reaffirm traditional teaching will be a source of pain to some within the church. We acknowledge the reality of this pain, in part because we feel it ourselves, and know that simple words in this report cannot respond adequately to the experiences of those who voice this pain. We also know that there is struggle and challenge for all who are involved in these difficult discussions within the church. While the weight of the biblical and theological evidence has led us to the point of this recommendation, it is nevertheless not an easy recommendation to bring forward, knowing it will be a source of pain for some fellow travellers on the journey of faith.

Here we believe it is also important to reaffirm that each one of us is created and redeemed in Jesus Christ, that we all have gifts for ministry that enrich the church immensely, and that we are all equally welcomed by Christ in his body. We affirm that, for all of us as followers of Jesus, our true identity is always found in the person of Jesus Christ. These truths of the gospel remain, regardless of our sense of identity, sexual-orientation or marital status.

Here it might also be asked how this recommendation to reaffirm the present and traditional teaching of the church is consistent with the process of listening, confession and repentance that has been initiated – a process which the Committee on Church Doctrine itself recommended. Aren't these two realities (an affirmation of traditional teaching and a process of listening, confession and repentance) in opposition to each other? The 2017 joint report on homophobia and repentance suggested that while the modern church in the west no longer practices such brutality (against gay and lesbian persons),

Its theological convictions against homosexuality, and its sometimes slow and subdued condemnation of homophobia, have been used to fuel hateful rhetoric and actions towards sexual and gender minorities. Church statements on homosexuality have been misused to justify those who would shun LGBTQ people, rejecting them from families and churches in the name of "tough love".

Some would argue that the best action for reconciliation would be the full inclusion of LGBTQ members. While this is the most straightforward path, it is not the only one. Should the Church choose to reaffirm its current position on human sexualities, the process of confession would need to study and recommend methods of pastoral care and reconciliation that are specific for LGBTQ people, as advised by members of the LGBTQ community themselves. (A&P 2017, p. 476, 477)

It is our view that the traditional teachings of the church on human sexuality and marriage are not inherently homophobic or hateful. This was also the case with the Committee on Church Doctrine in 1994 when it recommended an affirmation of traditional teaching and at the same time called for repentance in relation to the church's homophobia and hypocrisy. We are called to listen with compassion to experiences of hatred and marginalization, and to confess our sin and complicity in homophobia. As stated in "The Historic Argument Concerning Human Sexuality":

There is no place for hate or homophobia in the church of Christ. Homophobia implies a fear of those who are attracted to people of the same-sex. We are called to love one another – and you cannot love if you hate or fear. As stated earlier in this report, "love" in the New Testament is close to the idea of loyalty. It means acknowledging that we are connected to other people as fellow image-bearers of God and that we seek God's best for them, even when we may disagree with them. This is true regardless of one's views concerning human sexuality. (A&P 2017, p. 501)

To affirm the traditional doctrine of marriage and of human sexuality is to uphold a particular vision of creation and redemption in Jesus Christ, and we believe that making such an affirmation is consistent with an intention to love and welcome all, in the name of Christ.

### **Final Comments**

We offer this report and these recommendations as an expression of our mandate to provide theological direction to the General Assembly, and as an expression of our conviction that the church's present teaching is faithful to the scriptures, to our theological traditions and to our life in Christ. Or, to put it another way, there is insufficient basis in the scriptures or within our theological tradition for the requested change in doctrine. We understand that this does not mean an end to the discussion of human sexuality within The Presbyterian Church in Canada; and we understand that it does not foreclose upon the Assembly's continued wrestling with the question whether it is possible to implement changes to our polity that uphold our clear doctrine and teaching while also creating some space for those who may dissent from it. We submit this report with its recommendations to the General Assembly that it may do what, in its wisdom, deems best.

#### **Recommendation No. 1                      Adopted/Defeated/Amended**

That in the light of the above report and summary, the prayers of Overture Nos. 5, 23, 24, 30 and 35, 2015, Overture No. 21, 2016 and Overture No. 19, 2017 be not granted.

#### **Recommendation No. 2                      Adopted/Defeated/Amended**

That the prayers of Overture Nos. 15, 16 and 29, 2015 and Overture Nos. 13 and 15, 2016 on listening, dialogue, study and timelines for study be answered by this report, by reports of the Committee on Church Doctrine to the previous two General Assemblies, and by the process of listening and confession initiated by the 2017 General Assembly.

## **VIEWS OF THE MINORITY RE HUMAN SEXUALITY**

The following is concurred in by: the Rev. Dr. Cynthia Chenard, the Rev. Mark Chiang, the Rev. Dr. Robert Faris, the Rev. Dr. Charles Fensham, Dr. Alexandra Johnston, the Rev. Jeffrey Murray, the Rev. Dwight Nelson and the Rev. Helen Smith.

The following is supported by the following corresponding members (voice but no vote): Dr. John Carr and the Rev. Dr. Mark Godin.

Members of the Committee on Church Doctrine have profoundly different views on the issues of the place of people of minority sexualities and gender in the church, on what constitutes God's will and on the matters of justice, inclusion, truth and faithfulness. This division reflects the division of The Presbyterian Church in Canada overall. Instead of seeking to find consensus, a slim majority on the committee decided that it was time to end the conversation. We believe that this premature closing of discussion constitutes a disservice to God and to God's church.

As a minority of the Committee on Church Doctrine, we wish the General Assembly to know our profound concern, not only for the failure of the committee even to try to move towards consensus through theological conversation, but also at the lack of safety and welcome experienced by LGBTQI members of the committee, and the absence of grace and care in the face of our concern for others and the pain that we carry within ourselves. The committee consists of 18 voting members (including the convener) and six corresponding members. Circumstance conspired that the convener, the Rev. Dr. Blair Bertrand, was unable to chair the meeting when the vote was taken. A member of the committee who would have supported the minority chaired the meeting and could not vote. Sixteen votes were cast and the margin of victory was 9 to 7. Sadly, the desire on the part of the majority to end discussion demonstrated to us a lack of willingness to continue together in seeking the peace and unity within the church.

Supporters of Recommendation Nos. 1 and 2 in this report expressed their belief that we have talked enough, listened to the church enough and spent time on the issue enough, and that the Bible is as clear on this matter as is their conviction. However, to say that talk is done when the special committee, the Rainbow Communion, set up by the 2017 General Assembly to listen to the voices of LGBTQI folk is still at the stage of making it safe for their stories to be heard demonstrates to us a belief that these voices do not really matter, or even that LGBTQI folk are not seen as truly part of the church. We cannot let such a diminishment of some of the most vulnerable folk in our denomination go unchallenged.

Seeking to satisfy the concerns of our colleagues on the committee, the minority supported this proposed amendment. Placing our trust in the Holy Spirit, we hope that turning to guidance from one of our subordinate standards, Living Faith, would help. The amendment reads:

That the Committee on Church Doctrine continues to affirm the teaching of our subordinate standard, Living Faith, on marriage, that,

- 8.2.3        Christian marriage is a union in Christ  
              whereby a man and a woman become one in the sight of God.

And as the church continues on its journey to repent from homophobia and harm being done to LGBTQI people, their families and relationships, the church can take its guidance from Living Faith,

- 8.2.6        The church is the family of God.  
              Here all should be valued for themselves.  
              We are one body in Christ:  
              together rejoicing when things go well,  
              supporting one another in sorrow,  
              celebrating the goodness of God  
              and the wonder of our redemption.

As the church listens to the pain of LGBTQI people and seeks to create a safe space for them through the work of the Rainbow Communion, it can take further guidance from Living Faith,

- 8.3.2        Love means seeking the best for others  
              and is the mark of a Christian.  
              Love for God leads to love for others.

We cannot claim to love God, whom we do not see,  
if we hate those about us, whom we do see.  
Love of God and of neighbour fulfills the law of God.

By such an amendment we expressed our recognition of the profound convictions of those colleagues who desire that the “traditional view on marriage” be maintained. We also sought, in the spirit of Christian charity, to express how our subordinate standards might guide us to act in repentance from homophobia consistent with the letter of repentance written by the Rev. Peter Bush, Moderator of the 143rd General Assembly. The amendment was defeated and the motion, with its preamble printed above, was passed.

We understand that there are many in the Presbyterian Church with the deeply held conviction that the only way to be faithful to God is to maintain the status quo, what they see as traditional and Orthodox beliefs concerning human sexuality and gender. On the other hand, there are many others who just as strongly hold to the conviction that the status quo is unjust and puts an intolerable burden on a minority within the church who are as much God’s children as anyone. Moreover, the minority has attempted to bring to the attention of the committee and the church that holding an intractable version of traditional doctrine has been demonstrated, in peer reviewed social research, to cause harm to LGBTQI people, particularly LGBTQI youth.<sup>1</sup>

In seeking a way forward that will not continue to do harm, we turned to one of our subordinate standards, Living Faith, cited above in the amendment that “Christian marriage is a union in Christ whereby a man and a woman become one in the sight of God” (Living Faith 8.2.3) but our interpretation of this is guided by other passages in Living Faith including those in the amendment and a later passage, “Justice opposes prejudice in every form” and “stands with our neighbours in their struggle for dignity and respect”. (Living Faith 8.4.6)

Recent decades have seen The Presbyterian Church in Canada struggling to come to terms with its past, specifically with the church’s involvement with Indian residential schools and with the overall subjugation of Indigenous peoples. If the church sincerely wishes to learn a lesson from the spiritual damage done as typified by residential schools, then we cannot be quick to tell any group of people that they must conform to our image of what it means to be good human beings. Therefore, if we as a minority were to bring recommendations before the General Assembly, we would move:

1. That the General Assembly recognize the reality of diversity of opinion within The Presbyterian Church in Canada concerning what God might be saying through the scriptures about LGBTQI relationships and the substantial support for both of the biblical studies on marriage and LGBTQI covenant relationships presented to the 2017 General Assembly.
2. That in seeking to bring welcome and healing to LGBTQI Presbyterians, notwithstanding the traditional teaching on marriage as represented in Living Faith 8.2.3., the General Assembly recognize the faithfulness, mutual love and support, joy and comfort LGBTQI people experience in their covenanted relationships.
3. That given the traditional teaching of The Presbyterian Church in Canada on marriage and the long-standing practice of pastorally accommodating heterosexual Presbyterians who are in violations of that teaching due to divorce, the covenanted relationships of LGBTQI persons be accorded equal justice and equity rather than discrimination based on sexual orientation.

## Endnote

<sup>1</sup> Attention is drawn to the following studies on the impact on LGBTQI persons of discriminatory and abusive practices. For example:

Newman, P.A., Fantus, S., A review of research on the bullying of sexual minority youth, 2015.

Newman, P.A., Fantus, S., Woodford, M.R., and Rwigema, M-J. “A Social Ecology of Bias-Based Bullying of Sexual and Gender Minority Youth: Toward a Conceptualization of Conversion Bullying”, *Journal of Gay and Lesbian Social Services*, 2017, p. 27, 47.

“Pray That God Will Change You: The Religious Social Ecology of Bias-Based Bullying Targeting Sexual and Gender Minority Youth – A Qualitative Study of Service Providers and Educators”, *Journal of Adolescent Research*, p. 1–26.

Meyer L.H. & Dean L., “Internalized Homophobia, Intimacy, and Sexual Behavior among Gay and Bisexual Men”, *Stigma and Sexual Orientation: Understanding Prejudice against Lesbians, Gay Men, and Bisexuals*, Herek, G.M. (ed.) Thousand Oaks: Sage Publication Inc., 1998, p. 163.

Franklin, K., “Unassuming Motivations: Contextualizing the Narratives of Antigay Assailants”, *Stigma and Sexual Orientation: Understanding Prejudice against Lesbians, Gay Men, and Bisexuals*, Herek, G.M. (Ed.) Thousand Oaks: Sage Publication Inc., 1998, p. 1–23.

**TIMELINE** (A&P 2017, p. 542)

The 2017 General Assembly passed a recommendation that included a timeline for responding to various aspects of the overtures pertaining to human sexuality. The Committee on Church Doctrine continues to hold to that timeline with one exception. For various reasons, the Committee on Church Doctrine was not able to present a discussion of church and state relations to this General Assembly. It is the intention of the Committee on Church Doctrine to do so at the next General Assembly.

Blair Bertrand  
Convener

**LIFE AND MISSION AGENCY COMMITTEE**

**WHY IS THE CHURCH TALKING ABOUT SEXUALITY?**

The Presbyterian Church in Canada has been discussing sexuality and sexual orientation for many decades. Congregations and presbyteries of the church initiated the current discussion about sexuality in 2015 when they submitted overtures with different and competing prayers and requests on this issue to the General Assembly for consideration.

**WHY DOES MORE THAN ONE COMMITTEE RESPOND TO THE OVERTURES? DO THEY CONSULT?**

At the request of courts and of previous General Assemblies, referred overtures about sexuality were sent to both the Committee on Church Doctrine and the Life and Mission Agency (Justice Ministries) and expect responses from both committees. Members of these committees have consulted regularly, shared documents, submitted shared reports, cooperated on *Body, Mind and Soul* and have met together since 2015.

**WHAT HAPPENED AT THE GENERAL ASSEMBLY IN 2017?**

Commissioners to the General Assembly in 2017 received and considered a variety of recommendations from both the Life and Mission Agency and the Committee on Church Doctrine about how to address the question of sexuality in the church.

Decisions related to sexuality made by the 2017 Assembly led to, among other things, the creation of the Listening Committee (Rainbow Communion) and biblical studies written by both committees referring to the church for study and report.

Commissioners also deferred to a future General Assembly the recommendations of the Life and Mission Agency (Justice Ministries) listed below “until such time as the Committee on Church Doctrine’s final report on this matter has been received and that the General Assembly, in its wisdom, has made a decision regarding The Presbyterian Church in Canada’s doctrine concerning same-sex relationships.” (A&P 2017, p. 551–52, 36)

Recommendation No. 11, 2017

That clergy in The Presbyterian Church in Canada be permitted for pastoral reasons to bless same-sex marriages previously conducted by civil authorities.

Recommendation No. 12, 2017

That The Presbyterian Church in Canada affirms the freedom of conscience and action of clergy who do not wish to bless same-sex civil marriages conducted by civil authorities.

Recommendation No. 13, 2017

That the Life and Mission Agency prepare orders of worship for the blessing of same-sex marriages conducted by civil authorities.

## Recommendation No. 14, 2017

That the following recommendation and the related portions of the above report be sent to sessions, presbyteries and synods for study and report back to the Life and Mission Agency by January 31, 2018, for consideration by the 2018 General Assembly:

That being in a same-sex civil marriage shall not be a reason to bar any person from candidacy or ordination as a minister of Word and Sacraments, elder, or designation of a diaconal minister.

## Recommendation No. 15, 2017

That the following proposed change to the definition of marriage and the related portions of the above report be sent to sessions, presbyteries, and synods for study and report back to the Life and Mission Agency by January 31, 2018, for consideration by the 2018 General Assembly:

Christian marriage is a union in Christ whereby two individuals, regardless of gender, become one in the sight of God.

### **WHAT DID PRESBYTERIANS SAY ABOUT THE BIBLICAL REFLECTION PRODUCED BY THE LIFE AND MISSION AGENCY?**

As part of the church's study and report on the biblical studies sent for review, both the Life and Mission Agency and the Committee on Church Doctrine received responses. Responses to an online questionnaire created by the Committee on Church Doctrine were shared with the Life and Mission Agency. The responses from the church revealed a diversity of understandings about the interpretation of scripture and a wide range of opinions about what the church is called to do regarding its policies and practices about same-sex marriage and the ordination of ministry candidates in same-sex marriages. A summary of some of the responses to the Life and Mission Agency's report is as follows.

Some respondents said:

- Non-traditional interpretation of scriptures will cause harm to the word of God and will harm the unity and effectiveness of The Presbyterian Church in Canada.
- Christ, as our Saviour and model, always points to inclusion, love breaking down barriers that divide and oppress.
- This study appeals to a "higher" [quotes in response] authority, "the supreme law of love", which would have us bless the sexual activity of homosexual people without reference to God's command to be holy (Leviticus 14:14, 1 Peter 1:16). I believe this is a counterfeit of Christ's command to "love one another" and forces it into a context he did not intend.
- The search for this doctrinal impossibility (one that perfectly reflects the will of God – Spirit led and Christ-inspired) will result in the continued useless expression of enterprise and energy of the church and I mourn these battles. Our discussions, our outreach and the expression of the ministry of Christ ought to be concerned with human relationships that reflect love, respect and a willingness to recognize the deeply rooted image of God that resides in every single person.
- The paper did not provide a clear and strong case for an affirmative view of same-sex marriage.
- Our session is prepared to welcome as church members, not just those who are same-sex oriented, but those who have entered into a same-sex marriage conducted by civil authorities. No church discipline would be applied; that is, we would allow some level of pastoral latitude.

At the request of people in the church and in order to receive additional feedback about the Life and Mission Agency's biblical reflection on sexuality referred by the General Assembly for study and report, Justice Ministries sought comments from former young adult representatives to the General Assembly. Six of the 52 young adult representatives who attended the General Assembly since 2015 responded to the request to speak with the department. Some of the comments received are below.

- Re the biblical reflection: liked how it was laid out and clear; liked how it broke the passages down.
- Our struggle is to learn how to talk to each other – what one young adult representative described as Christ centred disagreement.
- I want God's church to be successful and growing. I am praying God's will to be done. I hope that means becoming more inclusive.
- We need safe spaces where we can talk about this respectfully.
- I would be scared if my home congregation split up. We are small. If we split over this, it would be scary.

- I support same-sex marriage outside the church. I don't feel like it belongs in the church. Same-sex marriage – social reasons not a religious reason.
- This was the most talked about issue in the young adult representative spaces.
- We need a lot of prayer and patience. I hope the church can move forward being more just.
- My thoughts about same-sex marriage were and still are very much all over the board.
- My main question is how we meaningfully engage more voices and perspectives in the outcome, especially youth. When we vote on overtures on human sexuality (and many other topics of course), we are making decisions about people often without them.

## **RESPONSE TO OVERTURES REFERRED TO THE LIFE AND MISSION AGENCY (JUSTICE MINISTRIES)**

In addition to referring Overtures Nos. 4, 5, 15, 21, 23, 24, 26, 29, 30, 31, 32, 33 and 35, 2015, and Nos. 13 and 21, 2016 to Justice Ministries, two additional overtures were referred.

Overture No. 5, 2018 (p. XXX) was received from the Presbytery of Edmonton-Lakeland and was referred to the Committee on Church Doctrine and the Life and Mission Agency Committee. This overture requested that one theological position not be chosen over another as “the true and only understanding of The Presbyterian Church in Canada, but to live in tension and in diversity for the sake of unity in the church.” The overture requested the committees to work toward “some kind of freedom of conscience and action for ruling elders, teaching elders, congregations and presbyteries to opt in or opt out: of the solemnization of same-sex marriages; and the ordination of people in same-sex marriages.”

Justice Ministries and the Committee on Church Doctrine are both to respond to Overture No. 19, 2017 re full inclusion of persons regardless of sexual orientation and gender identity from the Session of Elmwood Church (London, Ontario).

This year, the Life and Mission Agency decided to request more time from the General Assembly to respond to the overtures about sexuality referred to it given that:

1. the Committee on Church Doctrine indicated that it needed more time to respond to overtures and outlined a schedule that stretched over a number of years as part of Recommendation No. 9, 2017 (A&P 2016, p. 541–42);
2. the Life and Mission Agency and the Committee on Church Doctrine were working on many of the same overtures and it would be premature to propose responses without responses from the Committee on Church Doctrine coming simultaneously;
3. repeatedly, it was said at the 2017 General Assembly that more time was needed by the church to listen, study and discern;
4. additional overtures continue to be received;
5. Recommendation Nos. 11–15 of the report Life and Mission Agency (Justice Ministries) submitted to the 2017 General Assembly were deferred for future consideration.

### **Recommendation No. 3**

### **Adopted/Defeated/Amended**

That permission be granted to submit a response to Overtures Nos. 4, 5, 15, 21, 23, 24, 26, 29, 30, 31, 32, 33 and 35, 2015; Nos. 13 and 21, 2016; No. 19, 2017; and No. 5, 2018 to a future General Assembly.

## **CANADIAN LAW AND SAME-SEX MARRIAGE**

Before reviewing the Civil Marriage Act 2005 that permitted same-sex marriage, it is important to note that the polity of The Presbyterian Church in Canada maintains that a minister may decline to perform a marriage if the minister considers there to be good and sufficient reason (A&P 1973, p. 268–270, 281, 38).

Throughout the discussion in the church about marriage, a concern has been repeatedly raised that if The Presbyterian Church in Canada were to permit ministers to officiate a same-sex marriage, all ministers could be compelled to officiate at same-sex marriages if asked to do so. In 2017, the Life and Mission Agency (Justice Ministries) received research advice from two lawyers about the implications of the Civil Marriage Act 2005. Dr. Rebecca Bromwich is a Professor in the Department of Law and Legal Studies at Carleton University in Ottawa. Dr. Bromwich is a ruling elder at St. Andrew's Church in Ottawa. Mr. Graeme Mitchell is the vice-chairperson of the Saskatchewan Labour Relations Board. Prior to this appointment, Mr. Mitchell was the Director of the Constitutional Law Branch for the Saskatchewan Ministry of Justice. Mr. Mitchell received the Distinguished

Service Award from the Canadian Bar Association, Saskatchewan, in 2014, for his contributions to constitutional law. Mr. Mitchell is a ruling elder at First Church in Regina. The research advice and commentary on this section provided by Dr. Bromwich and Mr. Mitchell does not constitute a formal legal opinion.

What are the implications for the polity of The Presbyterian Church in Canada in light of the Civil Marriage Act that became law in 2005 [RSC 2005, c.33]? The preamble to the Civil Marriage Act includes the following:

Whereas nothing in this act affects the guarantee of freedom of conscience and religion and, in particular, the freedom of members of religious groups to hold and declare their religious beliefs and the freedom of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs.

Whereas it is not against the public interest to hold and publicly express diverse views on marriage.

Section 3.1 of the Civil Marriage Act states:

For greater certainty, no person or organization shall be deprived of any benefit, or be subject to any obligation or sanction, under any law of the Parliament of Canada solely by reason of their exercise, in respect of marriage between persons of the same-sex, of the freedom of conscience and religion guaranteed under the *Canadian Charter of Rights and Freedoms* [section 2(a)] or the expression of their beliefs in respect of marriage as the union of a man and woman to the exclusion of all others based on that guaranteed freedom.

Section 3 of the Civil Marriage Act explicitly provides for freedom of conscience, religious belief and expression of beliefs on the part of clergy as well as freedom of conscience on the part of religious institutions. This is consistent with the right guaranteed under section 2(a) of the Canadian Charter of Rights and Freedoms.

The federal Cabinet sought the advice of the Supreme Court Canada prior to tabling the bill on same-sex marriage. In legal terms, the Cabinet submitted what is referred to as a reference to the Supreme Court of Canada. In response, the court stated:

Nothing in this Act (Civil Marriage Act) affects the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs

The following two individuals were asked to comment on the section Canadian Law and Same-Sex Marriage in 2017. As noted in the report, these comments did not constitute a formal legal opinion.

Dr. Rebecca Bromwich received her Ph.D. in 2015 from Carleton University's Department of Law and Legal Studies. She serves as the Studies Director of the Graduate Diploma on Conflict Resolution Program at Carleton University and is a Professor in the Department of Law and Legal Studies. She is a per diem Crown Attorney with the Ministry of the Attorney General in Ottawa. Dr. Bromwich provided research information on the section of the report Canadian Law and Same-Sex Marriage. She is a ruling elder at St. Andrew's Church in Ottawa.

Mr. Graeme G. Mitchell, QC, is the Vice-Chairperson of the Saskatchewan Labour Relations Board. From September 1984 to his appointment as Vice-Chairperson in March 2016, Mr. Mitchell served first as Crown Counsel and, from 1992 to 2016, as Director of the Constitutional Law Branch for the Saskatchewan Ministry of Justice in Regina. Mr. Mitchell was selected as the recipient for Canadian Bar Association (CBA) Saskatchewan's 2014 Distinguished Service Award. The press release by the CBA Saskatchewan announcing the award to Mr. Mitchell stated: "Over the years, Graeme has earned a national reputation as one of the leading public lawyers in the country. Regarded by many as one of the outstanding constitutional lawyers in Canada, he has appeared before the Supreme Court of Canada more times than any other counsel practicing law in Saskatchewan – over 40 cases that were addressed from 1985 to 2013." Mr. Mitchell is a ruling elder at First Church in Regina.

Dr. Bromwich and Mr. Mitchell offered research advice and commentary on this section concerning the Civil Marriage Act 2005. The Civil Marriage Act permits same-sex marriage. The act also provides for the "freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs". Dr. Bromwich and Mr. Mitchell affirmed Justice Ministries' understanding of the Civil Marriage Act 2005 that changing a denomination's practice to allow the blessing of same-sex civil marriage or to change the definition of marriage to include same-sex couples does not weaken the protections and rights of clergy and a religious organization enshrined in the Civil Marriage Act and the *Canadian Charter of Rights and Freedoms*.

**LEGAL OPINION ON CANADIAN LAW AND SAME-SEX MARRIAGE**

In addition to the advice received from two qualified lawyers during the research that was conducted in the last two years, a legal opinion has been sought. A legal opinion from a group of lawyers expresses legal analysis and conclusions about a question of law that indicates the legal effect of a matter and may identify legal risks that concerned parties should consider and evaluate. A legal opinion has been sought on the following basis:

If The Presbyterian Church in Canada were to consider proposals which would allow ministers to conduct same-sex marriages, and given the fact the church has a spectrum of belief on the matter and has historically allowed a spectrum of practice on various issues, any policy would provide for freedom of conscience and of action for the denomination's clergy and sessions with the understanding that no minister or congregation would be obliged to conduct or host same-sex marriages just as they have discretion now regarding traditional marriage. Some members of the church are concerned that if such a policy is approved and a minister refuses to marry a same-sex couple, the minister and/or congregation could be vulnerable to either a human rights challenge or a legal action based on discrimination or other grounds.

The legal opinion from the church's lawyers with Cassels Brock LLP follows:

Religious officials cannot be compelled to perform marriage ceremonies that contravene their religious beliefs. Civil marriage commissioners, on the other hand, who act as representatives of the government and are charged with solemnizing civil marriages, are not permitted to discriminate on the basis of sexual orientation and must perform same-sex marriage ceremonies, regardless of their privately held religious beliefs. This is consistent with the Supreme Court of Canada's 2004 decision in *Reference Re. Same-Sex Marriage*.

Ontario, Prince Edward Island and the Northwest Territories have enacted legislation that explicitly permits religious officials to refuse to perform, or allow sacred spaces to be used for, marriage ceremonies that do not accord with their religious beliefs, but most Canadian provinces and territories have not enacted legislation on this issue. However, applicable case law across Canada has made clear that it would be unconstitutional to compel religious officials to perform a marriage ceremony that is inconsistent with their religious beliefs.

As such, we believe that the PCC's proposed policy that permits, but does not require, its ministers to perform same-sex marriage ceremonies would be compliant with the applicable human rights legislation across Canada and consistent with the reported case law on this subject.

**Analysis**

In 2004, the Supreme Court of Canada issued its landmark decision in the *Reference Re. Same-Sex Marriage*. The court held unanimously that proposed federal legislation extending civil marriage to persons of the same-sex was consistent with the equality provisions of the Canadian *Charter of Rights and Freedoms* (the "Charter").<sup>1</sup> The decision also stated that the religious freedom guarantee under the Charter was expansive enough to protect religious officials from being compelled by legislation to perform civil or religious same-sex marriages or to use sacred places for such a purpose if doing so would run contrary to their religious beliefs.<sup>2</sup>

In 2005, in response to the *Reference Re. Same-Sex Marriage*, the federal government enacted the Civil Marriage Act,<sup>3</sup> redefining marriage to include same-sex unions. The preamble to the Civil Marriage Act states:

WHEREAS nothing in this Act affects the guarantee of freedom of conscience and religion and, in particular, the freedom of members of religious groups to hold and declare their religious beliefs and the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs;

In the wake of the *Reference Re. Same-Sex Marriage* and the *Civil Marriage Act*, several provinces enacted legislation explicitly stating that religious officials could not be compelled to perform same-sex marriage ceremonies if doing so would contravene their religious beliefs. In Ontario, both the *Human Rights Code*<sup>4</sup> and the *Marriage Act*<sup>5</sup> were amended in 2005 to permit a religious official registered under s. 20 of the Marriage Act to refuse to perform a marriage ceremony or to allow a sacred place to be used for solemnizing a marriage if doing so would be against the religious official's beliefs or the principles of their religion.

Prince Edward Island's *Marriage Act* was similarly amended in 2005 to permit any person who is authorized to solemnize a marriage under that legislation (including civil marriage commissioners) to refuse to do so if the marriage is not in accordance with the person's religious beliefs.<sup>6</sup>

In 2017, the Northwest Territories enacted a new *Marriage Act* which provides that a registered cleric is not required to solemnize or assist in solemnizing a marriage, or to allow a sacred place to be used for solemnizing a marriage or for an event related to the solemnization of a marriage, if doing so would be contrary to the cleric's religious beliefs or the doctrines of the religious body to which the cleric belongs.<sup>7</sup>

To date, Ontario, Prince Edward Island and the Northwest Territories are the only jurisdictions in Canada that have enacted legislation on this issue.

However, even in the absence of legislation, case law on this subject confirms that religious officials in Canada, unlike civil marriage commissioners, cannot be compelled to perform marriage ceremonies that contravene their religious beliefs.

In *Smith v. Knights of Columbus*,<sup>8</sup> a religious group refused to rent a church hall to a same-sex couple for their wedding reception. The British Columbia Human Rights Tribunal noted that "a person, with a sincerely held religious belief, cannot be compelled to act in a manner that conflict[s] with that belief, even if that act is in the public domain."<sup>9</sup> Although the Tribunal ultimately concluded that the religious group had failed to accommodate the complainants to the point of undue hardship (given that the religious group had entered into a contract with the complainants and refused to reimburse the complainants for their expenses), they "accepted that the Knights could refuse access to the Hall to the complainants because of their core religious beliefs..."<sup>10</sup>

In *J. (M.) v. Nichols*,<sup>11</sup> a civil marriage commissioner was refused to marry a same-sex couple on the grounds that doing so would conflict with his religious beliefs. The couple brought an application in the Saskatchewan Human Rights Tribunal and successful in obtaining an order that the commissioner had discriminated against them and a further order for compensation. The decision was upheld on appeal. The court noted that the Supreme Court's decision in the *Reference Re. Same-Sex Marriage* was distinguishable as it dealt with the rights of religious officials to refuse to perform marriage ceremonies that contravened their beliefs, and did not address the rights of civil marriage commissioners to refuse to perform marriage ceremonies based on their personal religious beliefs. The court stated:

73 ... Mr. Nichols, in his capacity as a marriage commissioner acting as government, is not entitled to discriminate, regardless of his private beliefs. Mr. Nichols was wrong to believe he could follow a private policy, not authorized by *The Marriage Act*, which had the effect of discriminating against M.J.

74 ... I am sympathetic to the argument that a public official acting as government is at the same time an individual whose religious views demand respect. However, a public official has a far greater duty to ensure that s/he respects the law and the rule of law. A marriage commissioner is, to the public, a representative of the state. She or he is expected by the public to enforce, observe and honour the laws binding his or her actions. If a marriage commissioner cannot do that, she or he cannot hold that position.<sup>12</sup>

In *Reference Re. Constitutional Act, 1978*,<sup>13</sup> the Saskatchewan Court of Appeal rejected amendments to the province's *Marriage Act* that would have allowed civil marriage commissioners to refuse to perform same-sex marriages on the grounds that such a law would be unconstitutional. In reaching that conclusion, the court distinguished between civil marriage commissioners and religious officials, both of whom could register to perform marriages under the province's *Marriage Act*, noting that only the latter had the right to refuse to solemnize same-sex marriages on religious grounds given that religious officials perform a religious ceremony and not a government service.<sup>14</sup>

In *Dichmont v. Newfoundland and Labrador*,<sup>15</sup> a former civil marriage commissioner brought a human rights complaint alleging that the government's refusal to permit her to continue to serve as a marriage commissioner unless she was prepared to perform same-sex marriage ceremonies was discriminatory. On judicial review, the court cited *Nichols* for the proposition that civil marriage commissioners, unlike religious officials, perform a public service and could not discriminate in the provision of that service, regardless of their private religious beliefs.<sup>16</sup>

Most recently, in *Kisilowsky v. Manitoba*,<sup>17</sup> a former marriage commissioner brought a complaint to the Manitoba Human Rights Commission on the same grounds as the complainant in *Dichmont*, and was unsuccessful in obtaining an order that the province's policy requiring all civil marriage commissioners to

perform same-sex marriages was discriminatory. On appeal to the Manitoba Court of Appeal, the court confirmed that only religious officials and not civil marriage commissioners could refuse to perform same-sex marriage ceremonies on religious grounds. The court also noted that the applicant could have registered to perform marriages as a religious official, in which case he would have been permitted to refuse to solemnize same-sex marriages.<sup>18</sup>

### Conclusion

The law is clear that a religious official, unlike a civil marriage commissioner, cannot be compelled to perform a marriage ceremony that is inconsistent with his or her religious beliefs. On that basis, we do not believe that the PCC's proposed policy permitting its ministers to refuse to perform same-sex marriage ceremonies would expose the PCC or its ministers to liability on the basis of discrimination, or on any other ground.

### References for the Legal Opinion

<sup>1</sup> *Reference Re. Same-Sex Marriage*, [2004] 3 S.C.R. 698.

<sup>2</sup> *Reference Re. Same-Sex Marriage* at paras. 56-60.

<sup>3</sup> S.C. 2005, c. 33.

<sup>4</sup> *Human Rights Code*, R.S.O. 1990, c. H.19, s. 18.1(1).

<sup>5</sup> *Marriage Act*, R.S.O. 1990, c. M.3, s. 20(6).

<sup>6</sup> *Marriage Act*, R.S.P.E.I. 1988, c. M-3, s. 11.1.

<sup>7</sup> *Marriage Act*, S.N.W.T. 2017, c. 2, s. 28.

<sup>8</sup> 2005 BC H RT 544 [“Smith”].

<sup>9</sup> *Smith* at para. 113.

<sup>10</sup> *Smith* at para. 120.

<sup>11</sup> 2009 SKQB 299 [“Nichols”].

<sup>12</sup> *Nichols* at paras. 73-74.

<sup>13</sup> 2011 SKCA 3 [“*Marriage Commissioners Reference*”].

<sup>14</sup> *Marriage Commissioners Reference* at paras. 5, 12

<sup>15</sup> 2015 NLTD(G) 14 [“*Dichmont*”].

<sup>16</sup> *Dichmont* at paras. 88-89.

<sup>17</sup> 2018 MBCA 10 [“*Kisilowsky*”].

<sup>18</sup> *Kisilowsky* at paras. 88, 92.

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