

44/82 Use of the Surplice Canon 1977 Adopting Ordinance Amendment Ordinance 1982

This report was received by the Synod of the Diocese of Sydney in October 1983.

Introduction

1. The *terms of reference* are in Synod resolution 44/82 which reads -
 - "(1) That the second reading of the Use of the Surplice Canon 1977 Adopting Amendment Ordinance 1982 be referred to the next session of Synod and that a committee consisting of Bishop R. H. Goodhew (Chairman), Canons L. F. Bartlett and J. C. Chapman, the Rev. V. R. Cole, Messrs. G. R. Christmas and R. Tong be appointed to consider -
 - (a) the proposed amending ordinance and the extent to which the obligation to use a surplice may be dispensed with under the Use of the Surplice Canon 1977; and
 - (b) the extent to which the Synod should legislate to reflect the current attitudes and practices in the Diocese;
 and to report thereon to the next session of Synod.
 - (2) That the Legal Committee of the Standing Committee be asked to give their opinion on the bill."
2. *The membership* of the Committee comprised those persons named in the resolution. The Chairman was Bishop Goodhew and the Rev V. R. Cole was appointed Secretary.
3. The following meetings were held -

22 November 1982	15 June 1983
28 February 1983	30 June 1983
29 March 1983	15 July 1983
26 April 1983	
4. Canon Chapman was on leave during the June and July meetings.

Consideration of Proposed Ordinance

5. The proposed amendment ordinance seeks to insert a new sub-clause (d) to be added to clause 2 of the General Synod - The Use of the Surplice Canon 1977 Adopting Ordinance 1977. The new sub-clause is as follows -
 - "(d) in a place which is licensed for public worship on the nomination of the incumbent of the Parish and the Churchwardens of the Church after approval by a vestry meeting of the congregation concerned";
6. The Committee considered that the proposed sub-clause does not adequately deal with a number of matters. For example -
 - (a) The paragraph includes all places which are "licensed for public worship" including non-parochial chapels and the Cathedral but in relation to such buildings reference to the incumbent of the parish, etc, is inappropriate.
 - (b) The reference to "congregation" is not defined.
 - (c) There is no adequate definition of the length of period during which relief is to be given or the means by which relief may be terminated or varied.
 - (d) There is inadequate provision for minority views to be expressed or objections raised.

Present Law Concerning Use of the Surplice

7. The *Announcements of Divine Services and Clerical Vestures Ordinance 1949* states that the surplice is to be worn by the minister "saying the public prayers or ministering the sacraments or other rites of the Church".
8. Since then the *General Synod - The Use of the Surplice Canon 1977 Adopting Ordinance 1977* has provided relief from these requirements in three specific cases, namely, while conducting a service -
 - "(a) in a hospital,
 - (b) in a private house, or
 - (c) in a place which is not licensed for public worship, on such occasions as the Archbishop may approve generally or specifically from time to time."

9. For many years an *undertaking* has been required to be given by clergy seeking to be licensed in the Diocese which undertaking is to the effect that they should "use the surplice in all ministrations".

10. The Committee assumes that the proper interpretation of this undertaking is to be based upon the 1949 Ordinance as modified by the 1977 Adopting Ordinance.

11. The question arises as to what is included in the term "all ministrations". It is the view of the Committee that "ministrations" need not specifically apply to preaching. While the use of the surplice in the pulpit is common, nevertheless the Committee notes the view of Cripps that "the use of the black gown in the pulpit is not illegal, being sanctioned by the continuous usage of centuries uncontrolled by positive law or judicial decision". (H. W. Cripps 'A Practical Treatise on the Law Relating to the Church and Clergy 1937' p. 231.)

12. In accordance with the interpretation of "ministrations" given in item 9, and following the observations in item 11, the Committee believes that there are other occasions when the use of the surplice is not required in a meeting held in a building licensed for public worship.

13. For example, special evangelistic, youth or family services may be held under the provisions of Clause 18 of the Sydney Church Ordinance and Clauses 3 and 4 of An Act for the Amendment of the Act of Uniformity 1872. Provided that such a service did not purport to be a Prayer Book service, nor prevent such services being held at other times in that building, the Committee believes that the minister need not be governed by an obligation to wear the surplice on such occasions.

14. The Committee believes that the present law appears to accord more flexibility and relief than is often thought.

Present Attitudes and Practices

15. A Questionnaire was sent to Parish Ministers and 208 responses were received which revealed the following -

- (a) A great majority still wear the surplice for regular services.
- (b) A large group indicated desire to retain the surplice for regular services.
- (c) The balance desired some relief or alternative wear for regular services. A significant group preferred to dispense with the surplice altogether and to wear normal street clothing, e.g. suits. Another significant group would seek permission to wear an alternative to the surplice such as a modified surplice in the form of a gown, a white gown, an alb, an ecumenical alb or white cassock.
- (d) For special or occasional services and occasions the number wanting relief from the wearing of the surplice increased considerably leaving a small number wanting to retain the surplice. Those wanting relief were evenly divided on the alternatives of street dress and alternative gown or modified surplice.
The occasions included: Children or Family Services, Youth and Invitation, Guest or Outreach Services, small informal evening services, Weekday services, Preaching and heatwave conditions.
- (e) Significant groups wanted either the Parish Minister or Parish Vestry Meetings to have the choice of wearing or not wearing the surplice.
- (f) A number of letters and submissions were received from Parish ministers, members of Parishes and non-parish clergy. They in general reflect the same attitude as the questionnaires with a slightly stronger emphasis on the need for a redesigned surplice. Significant numbers defended the retention of the surplice and the need for relief from the use of it, as well as dispensing with it.

Extent to Which the Present Law May Be Changed Under the Use of the Surplice Canon 1977

16. The majority opinion of the Diocesan Legal Committee is annexed. This Committee has acted on the majority opinion that the General Synod Use of the Surplice Canon 1977 permits each Diocese to regulate by Ordinance the use of and relief from the use of the surplice without limitation.

The Extent to Which the Present Law Should Be Changed to Reflect Current Attitudes and Practices in the Diocese

17. *Diocesan Opinion* varies from removal of the surplice, to relief from its use in some circumstances, to retention of its use for all services. Legislation to provide for all views would be complex and difficult.

18. The opinion of those who feel that the use of the surplice is an important part of Anglican tradition needs to be respected. Some take the view that the majority Legal Committee opinion is wider than the intention of the 1977 Canon. Unilateral action by the Diocese to abandon the use of the surplice may have unforeseeable and regrettable effects and could destroy a principle of order and decency.

19. The Clergy survey and the submissions from Church members show that the desire for relief has strengthened greatly since the Synod committee studied the same problem and reported to the 1972 session. Retention of the use for all services is obviously against a significant body of opinion in the Diocese.

20. Relief should then be provided in as many circumstances as may be needed bearing in mind the opinions of both those who desire removal or of the more who desire retention.

21. *The Committee considered that it was no part of its brief to prepare an amending ordinance. We do, however, draw attention to the freedom from obligation listed in items 11 and 12.*

22. If Synod wishes to provide further relief the Committee is willing to continue its work and to prepare a suitable ordinance rather than to proceed with the proposed amending ordinance. While the Committee apologises for the delay that this course may occasion it is of the opinion that the issue is too important to be rushed.

23. In preparing an ordinance *setting out procedures for providing relief* the Committee would need to consider the following -

- (a) Who would dispense relief and in what circumstances?
- (b) Relief by ordinance in specified cases.
- (c) The role of the Archbishop in any provision for relief.
- (d) Protection of parishioners' rights.
- (e) The term of the relief and its variation or termination.
- (f) Provision for handling disputes.
- (g) Provision for acceptable dress when the surplice is not worn.

Modified Surplice

24. Strong opinion favours the redesign or modification of the surplice. Some have suggested a white gown opening at the front with simplified sleeves. The Archbishop has, we understand, authority to declare what is an acceptable design for a surplice. The committee believes that a suitable modification could provide an immediate and acceptable relief to many.

Annexures

25. The following annexures accompany this report -

1. Legal Committee Opinion (majority and minority)
2. Historical notes on the Surplice
3. "A Question of Uniform".

Recommendations

26. The Committee makes the following recommendations -

- (a) That the report of the Committee re Synod Resolution 44/82 Use of the Surplice Canon 1977 Adopting Ordinance Amendment Ordinance 1982 be received.
- (b) That the Synod request the Archbishop to appoint a committee to prepare an acceptable design for a modified surplice for submission to him for his consideration.
- (c) That the proposed amending ordinance be not proceeded with in its present form.
- (d) (i) That Synod resolve as to whether it is satisfied with the present situation described in the above report; or
(ii) Whether it wishes this or another committee to prepare another ordinance to provide further relief.

For and on behalf of the Committee

V. R. COLE
Secretary

July 1983

Opinion of the Legal Committee of the Standing Committee

Re 44/82 Use of the Surplice Canon 1977 Adopting Ordinance Amendment Ordinance 1982

MAJORITY OPINION (Mr G. R. Christmas, Canon J. R. L. Johnstone, Messrs. I. C. Miller, W. V. Saunders, C. M. Orpwood and P. W. Young, Q.C.)

This is a problem of statutory construction.

If one looks at the first clause in the Schedule of the General Synod Canon, it provides that "A minister . . . may be relieved of his obligations to use a surplice . . . in such cases as aforesaid . . .".

The question is, what are "such cases as aforesaid"?

There are two matters in the preamble to the General Synod Canon to which this expression could refer, namely -

- (a) The Diocese of Sydney's resolution at its Synod considered that with respect to "the conduct of services not held in licensed buildings or at public services surplices be no longer mandatory"; or
- (b) "That relief should be provided in the cases and to the extent decided in each diocese by the Synod of such diocese."

We prefer the second construction because -

- (a) The word "such" normally refers to the last antecedent which is the second preamble;
- (b) The Canon is a Canon of General Synod and was intended as the second preamble shows to apply Australia-wide and everybody knows that circumstances in the Diocese of Sydney and the rest of the Australian Church are not necessarily going to be the same; and
- (c) The Canon is a general enabling canon to empower all the Australian dioceses to exempt from the surplice in cases thought by each diocese to be appropriate.

We have read Mr Tong's opinion which adopts the contrary construction. Mr Tong may be correct but the case is one of impression and we have formed the opposite view. In our view, Mr Tong's construction would be correct if the second preamble had read "Relief should be provided in such cases to the extent decided in each diocese." However, we believe that the omission of the word "such" before "cases" in the second preamble and the insertion of the conjunction "and" gives force to the view we have taken.

We note that the policy decision of our Synod in making application for the 1977 Canon sought the exemption only for the specific cases referred in Synod resolution 42 of 1973.

The Committee points out that clause 2 of the 1977 adopting ordinance is invalid for it involves a sub-delegation outside the power of the Canon. If X gives legislative power to Y, that power cannot further be delegated to Z unless the original power specifically allowed sub-delegation.

MINORITY OPINION (Mr R. Tong)

The resolution contained in the first recital in the Canon expresses the Sydney Synod's view that surplices be not mandatory but with two exceptions, one where services are held in licensed buildings, and two, where the service is a public service. The recital then gives two examples of services which are not public services or services held in licensed buildings, namely private communions in homes and hospitals.

The second recital in the Canon appears to be a general statement of principle providing for the Synod of a Diocese to decide upon "the cases" to which relief should apply. When the recitals are read together "the cases" can only relate to services which are not held in licensed buildings, or which are not public services. When we come to Clause 1, we have the phrase "such cases as aforesaid" and while this refers to "the cases" in the second recital, if we read both recitals together "the cases" can be any services apart from those held in licensed buildings or public services.

Alternatively, one may read clause 1 in the Canon as permitting the non-use of a surplice in the cases contemplated in the recitals and additionally to the extent to which the obligation is dispensed with by Synod ordinance. This interpretation would depend upon "and" in line 3 of Clause 1 in the Canon to be taken as a co-ordinating conjunction rather than a sub-ordinating conjunction.

If, however, "and" is taken as a subordinating conjunction then one would need to interpret the clause as providing relief from the use of the surplice during services not held in licensed buildings or services being public services. The purpose then of the Synod ordinance is to define the cases and to provide machinery for the implementation of the Canon rather than provide a separate head of dispensing power. H. W. & F. G.

Fowler, *The King's English*, Oxford, 1931, p. 263 ". . . we mention that a subordinating conjunction may be known from the other kind by it being possible to place it and its clause before the previous sentence instead of after, without destroying the sense".

On balance - although a fine balance - it is my opinion that the draft amending ordinance is beyond the terms of the Canon.

February 1983

Annexure 2

Historical Notes on the Surplice

1. The surplice (*superpelliceum*) originated in the twelfth century as a linen garment to be worn over a fur-lined cassock. However, its ancestry, together with that of the alb, may be traced back to a white garment adopted by ministers in the fourth century. These ancient clerical fashions evolved from the formal wear of contemporary citizens. As secular fashions changed, ministers clung to old-fashioned "Sunday best". Thus, what began as secular became sacred by conservatism.
2. Prior to the Reformation, the surplice was worn by ministers conducting services other than Mass and by monks attending services in monastery chapels.
3. In the English Reformation, clerical vesture became an issue. In 1549 the chasuble or cope was retained for Holy Communion. For other services, the surplice was required. Martin Bucer opposed this distinction between services and urged that the "Mass vestments" should not be worn for Communion. He did so, not because they were wicked in themselves, but because they could give rise to superstition, they caused contention, they did not express simplicity in externals, they tended to identify the wearers with Rome and they inhibited Christian liberty.
4. Sweeping changes were made in 1552. Albs and vestments were banned. Bishops were to wear rochets and priests and deacons were to wear surplices.
5. When Elizabeth restored the Prayer Book of 1552 in 1559, a new rubric about vesture was introduced. This was based on her Act of Uniformity which required that the ornaments of ministers were to 'be retained and be in use' as was the case in the second year of Edward's reign. What she intended has been a matter of controversy ever since. Nevertheless church leaders of the day took it that the surplice was still the required dress for clergy. Various later documents expressed this view including Royal Injunctions, the Bishops' "Interpretations" and Parker's "Advertisements".
6. However, from as early as 1550 (with Hooper) there were clergy who refused to even wear the surplice. Indeed, in 1603 it was said that some ministers "would lose their credit if they were now forced to use the surplice".
7. The Canons of 1603 summarised and clarified the law as it then was. Clergy were not to be seen in public without coat or cassock, surplices were to be worn by clergy when ministering and by university students in chapel, graduates were to wear hoods and non-graduates the plain alternative. (It would seem that silk hoods had appendages or tippets hanging down in front from which the modern scarf originated: nongraduates wore a similar device but plain and not silk.) Copes were to be worn at Cathedral Communion. Although the official view of the church remained virtually unchanged from then until the last twenty years, there was intermittent opposition from 1550 until at least 1689 (Tillotson). Various attempts were made to abolish the surplice or at least make it optional legally. None of these succeeded.
8. Opponents of the surplice held that its requirement infringed Christian liberty, identified falsely with Rome or with the Old Testament priesthood, was not required by Scripture and therefore should not be required by the church, and that it was pompous. Supporters of the surplice said that in matters not specified by scripture the church had the right to determine, it was decent, seemly and orderly, and that it allowed easy recognition in accordance with the dignity of the task in hand. No holiness was attached to it (except perhaps by Laud); on the contrary, it was "indifferent". The very colour white was a symbol of joy. Perhaps other reasons subconsciously supported the surplice, as for example its associations with scholarship in an age of appalling clerical ignorance, and its use as part of the uniform which discouraged worldly attire.
9. The Oxford Movement began with a respect for proper church discipline and procedures. At that time, the surplice was restored for preachers instead of the black gown which had replaced it, and choirs also donned surplices. However, when the tractarian influence permeated to city parishes, the ornaments rubric was aired and vestments introduced. Litigation ensued and legislation was introduced to stamp out this practice. Clergy were gaoled for wearing vestments. Eventually a Royal Commission was set up to disentangle the disorder.

The only tangible result was the abortive book of 1928. The confusion at law and in practice remained, and the church learnt to live with it.

10. In 1949, the Diocese of Sydney enacted an ordinance which required priests and deacons to wear a surplice when "saying the public prayers or ministering the sacraments or other rites of the Church". The wearing of alb, chasuble, dalmatic or tunicle are expressly forbidden. This was based on a ruling of the Privy Council. Clergymen undertake to abide by this ordinance when they are licensed in this diocese.

11. In 1969, English Canon Law made provision for diversity in dress at the Holy Communion. Thus the use of vestments was unequivocally permitted. However, a clergyman must not change the tradition of dress in a parish church without suitable consultation with the Parochial Church Council.

12. In 1971, the Synod of Sydney appointed a committee "to investigate the desirability of maintaining the wearing of robes . . . in church services" etc. One thing led to another, and eventually a Canon was passed by General Synod in 1977 providing relief from wearing the surplice in certain circumstances. This Canon was adopted in the same year by the Diocese of Sydney and applied specifically to services in hospitals, private houses or places not licensed for public worship.

13. In 1982 the matter was raised again in Synod with a view to extending the application of the 1977 Canon to other circumstances.

Annexure 3

"A Question of Uniform"

1. Clerical uniform of one kind or another has had a long history in the Christian Church. The wearing of the surplice itself has been customary in the Anglican Church for over four centuries. (See "Historical Notes on the Surplice" - Annexure 2.) Reasons for and against it being worn have been canvassed since 1549. What might be the consequences of abandoning it now?

2. A brief summary of the arguments for and against are set out in para. 8 of Annexure 2. Additional arguments proposed in Australia in 1983 against it being worn are unmanliness and heat discomfort. It would seem that both these arguments could be met by design modifications. However, the question of uniform as such remains.

3. Those who argue for the retention of the concept of clerical uniform suggest the following. Ceremonial clothing serves to reflect the fact that something special is happening in the service, something of consequence, something demanding attention and respect. The Anglican Church has always held that things should be done "decently and in order", and to many, ceremonial clothing reflects this view. Whilst a church service must be seen as a continuum of ordinary everyday life, it is a crisis. Many therefore find it edifying to mark it off from the rest of the week in a way that is natural yet particular. Human beings tend to be ritualists in everyday life, and provided that such ritual is wholesome there can be no objection. Part of the essence of Anglican worship is a certain formality. The discipline of Prayer Book worship is a contract which protects both clergy and people from the excesses or idiosyncrasies of either. Approved clerical dress is part of this contract.

4. For the minister, to don special garb for a special task may help him to realise that he has special responsibilities towards God, and towards his people as their leader in worship. A clergyman is not a distinctive being, but when he conducts a service he performs a distinctive role. The uniform emphasises the distinctiveness of the role rather than the person. No Christian is "his own", he belongs to God: but Christians enjoy a relaxed freedom which allows them to participate or refrain from participating in a service when they are members of a congregation. A clergyman conducting a service has no such freedom. Whilst he must always be himself, he cannot afford to allow his personality to obtrude to the point of distraction. Acceptable ceremonial clothing promotes a helpful degree of anonymity submerging the person in the role.

5. Ceremonial clothing reminds worshippers that the roots of our faith and practice are in the past. It also reminds us that we have brethren in Australia and overseas who identify with us by wearing distinctive uniform. Whilst there is great variety in what is worn, the fact that it is recognisable as clerical uniform is a token of fellowship. To dispense with such distinctive dress unilaterally except on special or informal occasions could seem to be a breach of fellowship which we might live to rue.