

Day 5 – ANiC Parishes v Diocese of New Westminster – June 1 09

Today was another “standing room only” day in the Vancouver Courtroom to hear the opening statement of the Diocese’s counsel, George Macintosh, QC in the morning and the beginning of Bishop Ingham’s testimony in the afternoon.

Mr Macintosh advised the court that he would be calling four witnesses, Bishop Ingham, Rev Kevin Dixon, Doug McAdams and Rev Christine Rowe, although “there may be some slight adjustment among the latter three” he said. He also advised that he may end before Friday afternoon and that counsel agreed argument would still commence next Monday.

He began his opening statement by saying that “the Plaintiff’s (ie ANiC parishes’) case rests on the assertion that church properties... are held on trust for the congregations for the purpose of ministry consistent with historic, orthodox, Anglican doctrine and practice.” He then declared that the four ANiC parishes have “quit the diocese and the Anglican Church of Canada over the blessing of same-sex unions” and they have sought to maintain control of the church properties.

The diocese’s case relies heavily upon the assertion that the ACoC is an episcopal and hierarchical institution with sophisticated structures of governance, legislative and governing bodies at all levels, and internal ecclesiastical courts to resolve disputes. The constitution and canons set out the process for disputes and Mr Macintosh said they should have been used in this case.

He submitted that the court should not use its *cy pres* jurisdiction (where the carrying out of the original purpose of a trust is rendered impossible or impracticable, the court has a long standing inherent “*cy pres*” jurisdiction to restructure a trust in such a way as to allow the purpose to be carried out “as close as possible” or “next to” the original purpose). In a hierarchical church, he argues, the court should defer to the determinations of the Church, and in this case, the ACoC has determined that same sex-blessings are not in conflict with the core doctrine of the church. Also, he argued, the court only has jurisdiction to order a *cy pres* scheme where the original trust is impossible or impracticable – and in their view, this is not such a case.

There was an extensive review of case law as he tried to distinguish this case from those cited in Mr Cowper’s opening statement on behalf of the ANiC parishes last Monday. He also referenced a recent case in California where he argued the circumstances are similar to this case and where the court found in favour of the Episcopal Church over the local parishes.

Mr Macintosh highlighted the fact that the ACoC remains in communion with the see of Canterbury and continues to participate in the Anglican Consultative Council (ACC) and the Primates meetings. In contrast, he said, Bishop Harvey

was not invited to Lambeth and ANiC and ACNA are not provinces of the Communion, nor members of the ACC. He also relies upon the fact that the Archbishop of Canterbury said his office only recognizes one ecclesial body in Canada, that being the ACoC.

There was much emphasis on the fact that, within the Communion, there is only one province or diocese in a geographic location and that jurisdictions only overlap where there is consent.

He claimed that provincial autonomy, rather than interdependence, is a fundamental characteristic of Anglicanism and that each province is supposed to respect every other province's autonomy.

He emphasized that General Synod has jurisdiction over the definition of doctrine in the Church, and has used this power to effect many controversial changes (eg. new hymn book, re-marriage of divorced people, women's ordination and consecration). He did not refer to the Solemn Declaration, except to say that it was referred to by the Plaintiffs (ANiC parishes).

After more outlining of the structure and geographic boundaries of parishes, dioceses and the ACoC, he said the New Westminster Diocese has 78 parishes, and the ACoC has 1800 parishes, in contrast to ANiC which has 29 parishes.

He also touched on the history of the implementation of same-sex blessings in the diocese, and some of the events post June 2002, although Bishop Ingham began to explore that in more detail in the afternoon. He stressed that this is about "blessings, not marriage", and that no parishes or priests were required to perform same-sex blessings.

Mr Macintosh highlighted many quotes from the Panel of Reference Report, and that Archbishop Terry Buckle was prepared to cooperate with the recommendations. There was no mention of the fact that the Primate who commissioned the report in 2005 ignored the recommendations at the Dar es Salaam meeting in February 2007.

He outlined the issues from the Defendant's perspective saying they are:

1. What is the legal framework within which property is held in the ACoC?
2. Is there a trust over the properties, and if so, what are its terms?
3. Is any conduct of any party in breach of that trust?
4. And, if so, what is the appropriate remedy?

Bishop Ingham began giving his evidence in the afternoon, although he will continue tomorrow morning. After describing his Anglican and educational background, he discussed the comparative sizes of the province of the Southern Cone, claiming their website says 20,000 members, (although in private

conversations he had while visiting South America, he was told they only had “active membership of about 5,000”) and the ACoC, which he said has between 600,000 to 700,000 members.

He confirmed that Archbishop Venables also attended the 2008 Lambeth Conference, although he did not take communion at the opening Communion service. He also confirmed that “about 200 bishops” did not attend this Lambeth conference.

He said the debate on homosexuality in the church began after it was de-criminalized in Canada in the 1970s, and that the church chose to discuss it in the wider context of “human sexuality and whether homosexuality was an ordered or disordered form of it”.

He discussed the House of Bishops’ (HOB) first statement in 1979 saying this was a topic of serious discussion within the church and they called for “a deep dialogue and study of scripture”. He admitted they did not at that time indicate support for same sex blessings or for persons living together in same sex relationships. He said they were called “guidelines” and that “when they were distributed, then Primate, Archbishop Scott made clear these were not legislative rules, nor a final doctrinal statement, but simply a set of guidelines”.

He said there had not been much teaching on homosexuality prior to the 1970s and that the subject was not considered in very much depth at that time. There was teaching on marriage, but teaching of sexuality, the doctrine of marriage and place of homosexual persons in the life in the church really began in 1970s.

He discussed at length the process engaged in the early to mid 90s, including the 1992 General Synod (Ottawa) and the 1995 General Synod (Toronto) forums on human sexuality and the subsequent call to issue more resources. There was a study guide – *Hearing Diverse Voices* – that was widely circulated in the 90s, in which he said scripture was appealed to by all sides.

Following the publication of *Hearing Diverse Voices*, there was a push for the bishops to revise their 1979 guidelines in a manner that would keep their original intent. He said the 1997 HOB statement “contained much more generous language” about the positive contributions of gay and lesbian people in the church but they maintained they could not authorize or advise the blessing of same sex unions.

In this diocese, he said, there were several attempts to have the 1979 guidelines affirmed by synod, but they always failed. This was the context in which his election for bishop occurred. He described his ongoing efforts for study and dialogue on the issue, as well as commissioning a Task Force on a study of the issue. He also hired a professional facilitator from Ottawa to provide a “safe” place for all to express their views.

He claimed that same-sex blessings were happening “informally in other places”, including in Chicago, Delaware, Boston, and California, and that in the diocese of Rochester, the bishop had given his permission since the 1970s. He said he was of the view that we shouldn’t do it if it was wrong, but if it was right, it should be formalized. When questioned by Mr Justice Kelleher on his comment that this was happening “informally”, Bishop Ingham claimed he was “given information by the bishops that they had given their permission. I was told later that I was the first one to give official approval” so it was unclear.

He also claimed same-sex blessings are happening routinely in the Church in England, and that announcements for such blessings “appear in the Times and have so for many years along with other marriage announcements.”

He said he initially prohibited blessings when requested, but in 1998, “I was changing my mind about whether it was right or wrong by that time.” He said “I began with a traditional mindset but as I experienced pastoral care of gays and lesbians, I found them to be normal human beings.”

When asked to define “orthodoxy”, he said “I am greatly persuaded by Archbishop Rowan Williams” saying “he describes (it) as the conversation of the Church... broad and not narrow... and includes many streams of thought.” He said there were many views and it holds them together, there has “always been space to hold different views. We see this in the book of Acts. I do not see orthodoxy as a narrow tool to exclude people from the church.”

When questioned about the affidavits suggesting that what he was doing in 1998 was agenda driven on his part, to get to a certain conclusion, he said “My agenda was to hold groups of people together.... staying together while holding irreconcilable views. So, to create a dialogue – not to press a particular outcome”.

He noted that New Westminster was “the first diocese out of the gate in the Canadian church”, but now several of the large urban dioceses have moved in the same direction, including, Huron, Niagara, Toronto, Ottawa, and the Central Interior.

He then described the process of the various diocesan synod votes in 1998, 2001 and 2002 saying that his options as a bishop are to “give or withhold consent”. He called together, a “Council of Advice” after the 1998 Lambeth Conference, careful “to bring on those who represented the traditional view as well as those in favour of same-sex blessings.” The Council of Advice included Rev David Short and Rev Silas Ng, both of whom have since relinquished their licences to minister in the Anglican Church of Canada.

He discussed the twinning dialogue process between 1998 and 2001. He said “I

became aware since passing motion 9 in May (1998) that parishioners had never discussed these matters. I did not get a sense that the discussion had penetrated the diocese broadly as a whole.”

He struck three commissions – one on gay and lesbian voices, one on faith and doctrine and a third, the Legal and Canonical Commission. The Faith and Doctrine Commission was asked to prepare study papers so the parish dialogue could think through the theological issues and was not intended to advocate for a position. The chair of the committee informed him they would not try to create a consensus document, but they ended up including submissions on each side. That material was provided to the parishes in the twinning process.

The Legal and Canonical Commission found no impediment to implementation of civil or common law blessings.

The Commission on hearing gay and lesbian voices, he said “was somewhat different. It was created largely in response to the Lambeth Resolution 1.10” which called the Church to listen to the experience of homosexual persons. “Unlike the others which were balanced, this was to make their voices heard”, although he did seek an ex-gay voice but was not given any names by the conservative clergy he wrote to.

He claimed the dialogue process was not “driven”, saying they hired an independent facilitator who guided the process and trained other facilitators. He also said he did not want to challenge the authority of scripture as some had suggested. He said there was “good participation and healthy engagement but some parishes were particularly resistant.” He also said “when gay and lesbian people came to share their experience, a small number of parishes refused to listen.”

He asserted that this diocese had “the most thorough dialogue process in the Anglican Communion”. He said he met with a number of concerned clergy for “a wide ranging discussion” which at times was quite unfocussed. He suggested they meet again but be more focused, but agreeing on an agenda “proved very difficult”. He believed he proposed another meeting but the clergy said they would not meet, and that they would like a mediator. He suggested Archbishop Crawley or Dean Peter Elliott as mediators, but since the conservative clergy objected to those names, the meeting did not happen.

Just as the afternoon was ending, he began to discuss the HOB initial investigation of Alternative Episcopal Oversight, Bishop Ingham will continue on the stand tomorrow.

Please continue praying. It has been a difficult day for many of the parishioners who participated in the New West diocesan Synods and the twinning process, and who had a very different perception of the process than that being presented

in court today.

In Christ,

Cheryl Chang