

Day 10 – ANiC v Diocese of New Westminster – June 10, 2009

Stanley Martin began the morning discussing the separate legal case with respect to the Chun Bequest. Dr. Daphne Chun died in 1992 and left a property in Hong Kong “to the building fund of the Church of the Good Shepherd”. The property was sold and the funds set aside until they could purchase a new building. With interest, the fund is now worth about \$2.2 M.

Mr. Martin advised Mr. Justice Kelleher that, even if he should find against the parishes on the trust issues in respect of the other property and assets of the parishes, it was still open to him to find a specific charitable purpose intended to benefit the congregation of the Church of the Good Shepherd.

Citing a B.C. Supreme Court decision *Rowland v Vancouver College Ltd.*, Mr. Martin said that to determine whether a bequest gives rise to a specific charitable purpose, “the courts will look to the intention of the testator (Dr. Chun), the subject matter of the trust, and its object or purpose.” The intention of the testator can be determined from the construction of the will and from the surrounding circumstances, before and during the making of the will.

Mr. Martin gave more material to Mr. Justice Kelleher and then made 2 submissions:

1. This was a charitable trust for a specific purpose which was “necessarily for the congregation that Dr. Chun was part of – for the building needs of the congregation rather than the ACoC”, or alternatively,
2. If the money is controlled by the diocese, then a Cy Pres occasion arises as there is no reasonable expectation that the funds will be used by the diocese for the intended purpose.

On the second point, he explained that there were three Chinese congregations that have left the diocese of New Westminster. One left to affiliate with the Anglican Coalition in Canada (Emmanuel, Richmond) and the other two joined ANiC (Good Shepherd and St. Matthias & St. Luke). Good Shepherd has always been a parish for outreach to the Chinese community, and in fact, planted St. Luke in 1993 and Emmanuel in 1996. The diocese has no substantial Chinese congregation and it would be unlikely they would set out to build a new church for a Chinese congregation. Therefore, they would not be able to fulfill Dr. Chun’s specific charitable purpose.

Mr. Martin said the law takes a broad view of what the Testator intended when they made the specific bequest. A charitable trust never fails for uncertainty, he said. It is a matter of construction of the general purpose as distinct from specific purpose. Dr. Chun was a very successful professor and medical doctor at Hong Kong University and a lifelong Anglican. She attended St. Paul’s Anglican Church in Hong Kong. She retired in 1972 and moved to Vancouver in 1984, when she began

attending Good Shepherd. Both St. Paul’s H.K. and Good Shepherd were conservative in theology and worship. She suffered ill health and had limited mobility so was regularly visited by Good Shepherd’s interim priest, Rev Robert Yeung. She told Rev Yeung of her intention to leave her property to St. Paul’s and asked his opinion. After discussing the needs of Good Shepherd, and specifically their building needs, Dr. Chun changed her will and advised Rev Yeung of her

intention to leave the property to Good Shepherd since they needed the money more than St. Paul's did. It is clear that she was made aware of a specific need and her response was for the purpose of meeting that need.

After Rev Stephen Leung became rector, he visited her until her death in 1992 and conducted her funeral.

Her will was changed in January 1992 and the property was left "to the building fund of the CHURCH OF THE GOOD SHEPHERD of 808 East 19th Avenue, Vancouver, B.C. V5V 1K5." That wording, said Mr. Martin, indicates the bequest to the building fund should be read as creating a specific purpose trust. Other evidence from past vestry meetings showed the congregation was aware that this money was restricted in its purpose for a new building for Good Shepherd and could not be used to merely maintain the current building or for other purposes.

In this context, her desire was to meet the need of the congregation she knew, rather than the ACoC generally. The bequest was specific to the need – the growing congregation had outgrown the existing building and she wanted to assist them. The congregation voted unanimously to join ANIC so there is no likelihood there will be a congregation there if the diocese is given the church property and assets. Her charitable purpose would be defeated if those funds were not available to help this congregation obtain a new building.

In the diocese's affidavits, there is a reference to a Chinese service at St. Chad's, but they say nothing about the size of St. Chad's. Rev Stephen Leung, in his affidavit, said that the St. Chad's priest told him that 20 to 30 people were attending St. Chad's in 2003, and to the best of his knowledge, that number has not changed. Therefore, there is no need for the diocese to build a new Chinese church and that is another reason for a Cy Pres order in this case, said Mr. Martin.

Geoff Cowper, QC then stood to give his final remarks, which were so inspiring to the parishioners present that I am attaching them as an appendix to this report.

George Macintosh, Q.C. then began to present final arguments for the diocese. He gave a book of exhibits from the trial, a 300 page "Statement of Facts and Written Argument", a loose copy of an index to the written argument, and 2 volumes of law to the judge. He said he had highlighted a number of items in his "Statement of Facts" but that he wouldn't read it although he might rarely refer to the facts in it.

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He submitted that the issues are:

1. The governance structures of the ACoC ought to be and are determinative of the outcome regarding the 4 churches, such that the properties remain in the ACoC.
2. The parishes on the evidence have not made out the trust which they allege, and if they elect to leave the ACoC, they leave the church properties.
3. In the alternative, if the court finds the parishes did make out a trust, and they come into their Cy Pres argument, Cy Pres is unavailable at common law. There is no decision the parishes have offered where a Cy Pres analysis has even begun without a written declaration or trust deed. "Their Cy Pres claim begins on a sandy foundation", he said. They are asking the court to imply a trust which has been formulated for the first time in the lawsuit, for

the purposes of litigation.

“Turning to the facts, on their analysis, one thing they need to show is impossibility or impracticability as required by Cy Pres”, he said. “However, the [parishes] claim arises directly from their refusal to accept the Episcopal Oversight as it has been offered by Bishop Ingham, and as it has been very strongly endorsed by the House of Bishops, and as it has been very strongly approved by the current Archbishop of Canterbury’s Panel of Reference (POR), which ruled against the Anglican Network and in favour of Bishop Ingham and the diocese of New Westminster, on how Episcopal Oversight should be given to the [parishes] in respect of same-sex blessings”.

He read several sections of the POR Report and said the parishes claim “stems from their refusal to accept the Episcopal Oversight, and their further refusal to accept the conscience clause from Bishop Ingham”. In contrast, he pointed to a statement (which Mr. Macintosh referred to several times as a “Manifesto”) which Bishop Harvey and others signed on to in 1975, setting out their opposition to the ordination of women. That statement referred to the Solemn Declaration and said “the only way (they) could stay in the church was because of the conscience clause” which protected dissenters. Bishop Harvey testified that he has long since changed his mind on the ordination of women.

Mr. Macintosh said the parishes claim that this is an insurmountable divide and “we can’t stay” has to be tested and there are only 4 parishes out of the 78 in the diocese which have been so “intransigent”. The parishes would “convert their intransigence” for an unprecedented use of Cy Pres, he said. He compared the numbers of ANiC (29 parishes with an average Sunday attendance of 3500 people) with the ACoC (1800 parishes and approximately 625,000 members), saying “I have distilled from the evidence that other right thinking conservative Anglicans have taken a very different approach with respect to this”. He named Archbishop Terry Buckle as a strong conservative who at one time was on the same side of the dispute but has since “reconciled” with the bishop. He said Archbishop Buckle wrote to the POR thanking them and offering to cooperate with their recommendations. He also

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signed statements from the House of Bishops and the Metropolitans deploring the actions of Archbishop Venables and ANiC.

He referred to Rev Sarah Tweedale, who in an affidavit said she opposed the blessing of same-sex unions, but felt the conscience clause was sufficient to accommodate conservative clergy. She is currently on leave from St. Clement’s where she was rector from September 1999-May 2008. St. Clement’s, the only parish in the diocese to seek Shared Episcopal Ministry (SEM) received pastoral care from Bishop Hockin for a period of one year.

He said Rev John Oakes, incumbent of Holy Trinity in Vancouver also opposes samesex

unions, but has remained in the diocese. He referred to a letter Rev Oakes wrote claiming he changed his position and regretted recent statements of Essentials. He referred to other statements of witnesses (by affidavit) and claimed there is diversity within congregations. The parishes’ “allegations of impossibility need to be tested locally and across Canada”, he said.

He said that when the parishes ground their trust in “Anglicanism”, it needs to be recalled they are not part of the Anglican Communion and are not in any province of the worldwide Anglican Communion. “They seek purely and simply to take the churches out of the worldwide Anglican Communion and they may never be part of the worldwide Anglican Communion again. I would venture to say the struggle is uphill.”

He said that what matters, is not the views of a number of Anglicans from Africa, “but whether one is in the Communion as determined by the four instruments of communion – which they are not”. He continued “What is clear is that they are leaving the Communion because of their beliefs. The majority they have marshaled on their side amounts to nothing.”

He said the Anglican Communion has survived a 50/50 theological divide on women’s ordination.

He said that based upon the facts on the ground, the “plaintiffs” (parishes) comprise 2 groups:

1. The former priests of the ACoC, who were only enabled and had the right to preside in the properties on the basis of their oaths to the bishop; and
2. All the members of the 4 congregations as they stood in 2008, and voted to leave the Anglican Church. He said it is relevant to keep in mind the difference between a congregation and parish. A congregation, he said, is a group of church goers at a point in time and it changes many times. In a parish, there can be a different number of churches and congregations. He said this claim rests on 4 groups of church goers

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He said they voted to leave in 2008, but in reality, they left 6 yrs earlier in 2002 when they walked out after losing a vote in synod, boycotted synod for the remaining 6 years, stopped paying assessments to the church, and the priests effectively dropped out of the parish church activities in the diocese. They also started to affiliate with groups that eventually became ANiC and they started to pay money to those groups. He said they didn’t leave until after Gen Synod 2007 because that’s when they saw that the General Synod had a different viewpoint from theirs. He told Mr. Justice Kelleher “the evidence is overwhelming they quit the church”.

He noted that at least 3 of the church properties were established and church buildings “completed long before all except 1 or 2 of the plaintiffs joined the churches.” St. John’s opened the present church 59 yrs ago, St. Matthias and St. Luke opened 49 yrs ago, St Matthew’s opened 32 yrs ago and Good Shepherd opened 24 yrs ago, he claimed. He referred to buildings being consecrated by bishops to be set aside for use of the ACoC.

He said he didn’t think it was necessary for Mr. Justice Kelleher to determine the status of ANiC’s priests and bishops, except that, in his view, Bishop Harvey and Bishop Ferris and the priests are “very far from the worldwide Anglican Communion”. He quoted from the 2007 statement of the Council of General Synod which denied the legitimacy of the actions of the Southern Cone. He said a letter from the Archbishop of Canterbury to the bishop of Brandon in February 2008, said he could not “support or sanction” cross border interventions and he only

recognized “one ecclesial body in Canada”.

He said there was no canon of any body that permitted Bishop Venables to consecrate Bishop Harvey outside the Southern Cone and there is no jurisdiction for this to occur. “It is without precedent in the history of the Anglican world. I would submit the ACoC was correct when it called it invalid”, he said. He said Bishop Harvey was not invited to the Lambeth Conference in 2008 when every other bishop from Canada was invited and received communion from the Archbishop of Canterbury. He noted that Archbishop Venables did not receive communion at Lambeth 2008 and said the evidence did not clarify whether the Archbishop of Canterbury refused to give communion to him, or whether it was his decision to refuse it.

He said the parishes are seeking the formation of a new province (ACNA), where there are already two provinces in the same place (TEC and ACoC). They are seeking a province based on theology which is also unprecedented.

“It is the Anglican Consultative Council (ACC) to which you apply to become a province”, he said. “The ACC hasn’t yet received an application. All of us can only speculate on this”, so he speculated that the theological nature of the province “is completely contrary to what Anglicanism has been about from the outset. It has been a big tent which recognizes a diversity of views. . . They want to call themselves Anglican and the reality is that they keep sailing away from what Anglicanism is”.

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He said the Solemn Declaration is a constitutional document of the ACoC adopted by the first Gen Synod in 1893 and there is an irony in the parishes seeking to anchor their trust claim in the Solemn Declaration “since the ACoC, whose document it is, does not believe the Solemn Declaration is what the parishes say it is.” The ACoC does not believe it freezes doctrine or that it blocks the development of same-sex blessings. He cited as “overwhelming evidence”, the Legal and Canonical Commission report from George Cadman and Dr. Stephen Toope, and the General Synod Task Force on Jurisdiction Report in 2002, which clearly determined issues like this could be addressed by the most senior body that would “take hold of it”, and this is wholly inconsistent with the Solemn Declaration blocking it.

He referred to Bishop Victoria Matthews and the St. Michael’s Report that concluded that blessing of same-sex unions is not core doctrine and was not communion breaking. His point, he said, was that no one said the Solemn Declaration stops this, no one said this is inconsistent with the Solemn Declaration.

He said at the votes in 2001 and 2002, all were of the view it was perfectly lawful and there was no talk of the Solemn Declaration blocking this. The parishes “say we get to leave and take our churches because same-sex blessings violates the Solemn Declaration, despite the fact no court has ruled on this and no one in the church believes this.” He said the House of Bishops wrestled with the topic for several years and there was “not a hint from them that this was off-side from the Solemn Declaration.”

He said their have been massive controversies over the years, “most significantly” over slavery, which demonstrated that theological development was allowed “long before 1893.”

He claimed the parishes “formulated the trust within the four walls of the lawsuit”,

saying there was nothing in documents prior to 2001, when Dr. J.I. Packer wrote about it. He reminded Mr. Justice Kelleher that Rev Dixon hadn't heard of it, saying he was not being "glib", but that the Solemn Declaration just doesn't have the place the parishes say it does.

He said the word "unprecedented" has been used here a lot but that if the views of the parishes required them to leave, this would be the first time anyone would be able "to take the church with them." He said the implication of the parishes' claim is that "sincerely held differences" are the basis upon which this can occur.

Mr. Macintosh then summarized the law in support of his submissions.

He said the governance structure of the ACoC allows for theological issues to be adjudicated within the church – in the Supreme Court of Appeal of the ACoC. In his view, the civil law in Canada and the U.S. is very clear – the civil courts will leave religious/theological decisions to the church if there are such mechanisms.

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The property is part of "the parish" and the parish only exists as part of the diocese. He said the parishes' argument that theology should trump structure was "fallacious" and that it is "the structure everyone signed on to – it is the structure that allowed them to be in the big tent."

He said the parishes spoke and voted against same-sex blessings in 1998 and 2001 and "succeeded" when the bishop withheld his consent, even "though the majority was against them". He said, "As long as the process was playing out in accord with their viewpoint, they were there. As soon as it went against them, they leave . . . and seek to take church buildings with them."

He argued that the issue could've been so easily litigated within the church. As the parishes have portrayed this as the most important theological issue in the history of the Anglican Communion, "Canon 20 is tailor made for this situation". He said any decision of the bishop may be appealed under Canon 20.

He made two decisions that fall within Canon 20: (1) when he accepted the Synod decision in 2002 when the diocese asked him to; and (2) When he implemented the decision and issued the rite in 2003.

He said the parishes didn't utilize the structure to determine the theological issue and cited the Dorland case, where all four judges found in support of the larger church and against the dissenters who complained the larger church was adopting steps too conformist and liberal. This was upheld by the Supreme Court of Canada in 1887.

He said Bishop Michael Ingham's efforts on same-sex blessings to ensure fairness and to exercise caring and caution was "exemplary". He obtained considered advice on whether or not to proceed and the care he took was "really exceptional". Even in the debates beforehand, the bishop "proceeded with care and with inclusivity". He waited until 2003 to implement the decision.

Mr. Justice Kelleher asked "When you say he was cautious, etc. – is there legal significance to that?" Mr. Macintosh said if it is legally relevant, it is only so at the end of the Cy Pres argument, which he claimed, we shouldn't get to. He thought it would then be relevant that there is no way that this was "impossible" and that the parishes didn't have to accept same-sex blessings and they could have had Episcopal Oversight as approved by the POR and the bishop. The bishop "did everything to

ensure that people could stay, like Sarah Tweedale”, he said. “The patience and care he exhibited was remarkable.” He claimed all the church doors are open within the ACoC, all the congregations are welcome, and “obviously the hardest core dissenters would not return, but the churches are open”. He said for the congregations that remain conservative, the doors are open - as for those who have stayed.

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Turning to the law, he commended four of “the 100 or so cases you have” to Mr. Justice Kelleher. Those were Dorland, Itter and Howe, the Episcopal Church cases, and Varsani. He submitted that the other important law is statutory.

He said his most important argument, not addressed by the parishes, is that the structure of the church determines the outcome of what is to occur with the property as opposed to Trust law. The governance structure is determinative of the outcome today.

He said if the governance structure is not the answer, then the parishes have not made out a trust, and there can be no Cy Pres analysis if the parishes have not established a trust. There is no foundation.

On the governance structure, he said a central principle relating to church property disputes is that the courts avoid church doctrinal disputes whenever possible, and especially when internal mechanisms are in place. He cited Itter and Howe and the Dorland case in support of this proposition.

The courts give deference to the church on doctrinal issues and when the right of property is dependant upon doctrine, and doctrine is decided by the highest authority in the church, that should determine the matter. Here, he said, the St. Michael’s Report and General Synod 2007 both said it does not raise an issue of doctrine and this should be respected by the civil courts.

He referred to a number of American cases, saying the courts have also applied this principle of deference to churches. In response to Mr. Cowper’s view on the American cases (yesterday), Mr. Macintosh said the analysis here is identical. Whether the U.S. did so because of the 1st amendment doesn’t matter. What matters is that the analysis is the same (citing Itter and Howe is an example of that). He said the U.S. courts use exactly the same tools with respect to property disputes and defer to the internal church mechanisms.

The other U.S. approach in church property disputes is called the “neutral principles approach” (NPA).

The NPA is saying that the law of contract still exists and the courts will look at that. All the law that exists will be brought to bear as well. The reason that is so important he said, is that there are 8 decisions from the highest appellate court in the US.

Mr. Macintosh cited the recent Episcopal Church cases (Supreme Court of California) where the court said: “In this case, a local church has disaffiliated itself (from the larger church) . . . claim ownership (of the church properties) . . . (there is a) danger the courts will be entangled in church disputes. . .state courts must not decide doctrinal disputes.” He said the court ruled they should use NPA, including review of statutes. His submission was that “the reasoning is sound and well set out”. Even

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though the St. James parish held title to the property, the court held that St. James

had agreed to be bound by the rules of the national church and that the church was held in trust for the diocese.

He said the court first looks at the internal rules to see if they've determined the issue, then all you have to do is apply the rules and this is consistent with the NPA. He submitted that the Corporate Governance approach or the Church Structure approach has 4 advantages;

1. It respects the arrangements by which parties have agreed to govern themselves.
2. With respect to incorporated religious organizations, it is consistent with the law regarding charitable corporations.
3. It tends to preserve religious institutions by quashing bad decisions rather than dispersing properties.
4. It allows a church to regulate its own doctrines.

He quoted Professor Ogilvie and said that if you review all the cases where a trust is advanced, your chances of success are much better where the church is organized more congregationally.

He said the 2nd rationale (above) is consistent with law of charitable organizations. Under the law of England and the law of Canada, he submitted, "a gift of property to a corporate entity is absolute and not subject to any trust, unless there is an express trust involved in the transfer". He said the church is merely a voluntary association, no different from any unincorporated association, and subject to bylaws and statutes.

He referred to some cases from the Supreme Court of Canada on issues of freedom of religion and cited *Hofer v Hofer* as support for the proposition that it is not a violation of freedom of religion to deny the claim to property of the plaintiffs (in that case, the plaintiffs were a group that had ceded from the Hutterian colony).

He again referred to the American cases which considered the Dennis Canon, saying the court relied more broadly on the law of voluntary associations and that all it did was codify what was already in place in a unified church.

He said the American NPA has been expressly adopted by the Court of Appeal in Ontario in *Balkou v Gouleff* (1989), and by the Supreme Court of Canada (SCC), although he needed to get the specific references to the case in the SCC. It was pointed out that a footnote in the written submission said the reference to the adoption by the SCC might be in error and might have meant the U.S. Supreme Court.

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Mr. Macintosh submitted that property must always remain in the diocese; parishes are regulated by diocesan Canons; and ministry performed in the church buildings is also regulated by the Canons of the diocese and the ACoC.

He ended his submissions with respect to rights over church property by saying the rules of the church should apply and that's the end of the matter.

He then moved on to the "Alternative" argument in response to the parishes claiming there is a trust. Those who seek trusts when they leave the church, need to start with the Free Church of Scotland case, he said. Here, the parishes are asking the

court to imply a trust for historic orthodox Anglican faith and practice.

He said that Bishop Harvey characterized the Solemn Declaration as a trust document, but it doesn't have anything to do with property. "An implied religious trust should be approached by a court with trepidation", he said. The correct approach is deference to the church structures.

He disputed the claim that the basis of trust was something that happened in 1893 that allows the parishes to keep their properties. He said the parishes came to the court "with a trust that has been conceived and articulated for litigation" and you "cannot allow them to have a preferred right to the property". His submission was that everything in this dispute could've been resolved internally.

He said Free Church and subsequent cases have limiting principles and there cannot be a trust as the parishes allege. The SMR found these issues were not core doctrine and General Synod accepted that.

Tomorrow, Mr. Macintosh expects to be about 1-1.5 hours, and then Ms. Herbst will address the facts of the 4 churches and Chun bequest. He is confident they will be finished in the morning. Mr. Cowper will have an opportunity to reply and said he is content to start at 2pm. He advised Mr. Justice Kelleher that he will endeavor to finish by the end of the day.

Please continue to uphold these proceedings in your prayers, particularly tomorrow. It was a difficult day for members of the parishes who attended.

Cheryl Chang

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Exhibit "A" to Day 10 Report

ANiC Parishes v the Diocese of New Westminster

Final Remarks – Geoff Cowper, Q.C. – June 10, 2009

The Plaintiffs submit that they have proved:

- That they remain Anglicans, seeking to continue Anglican worship within any fair meaning of that term.
- That the properties are held on religious purpose trusts.
- That the principles the law of trusts applies to this dispute are those of honouring the intent of those who contributed to the church properties and assets and advancing the general charitable purpose of the free exercise of religious ministry and worship.
- That in fact, a division exists between two groups of Anglicans within the formerly united communion in New Westminster and that neither party has an unqualified legal right to the benefit of the various properties dedicated to Anglican ministry and worship.
- That in justice and equity the Court should grant a remedy which recognises both the reality of division and the benefit of the charitable purpose of religious ministry and worship and make an order:
 - o which permits or continues appropriate trustees to be in office to ensure the Plaintiffs' congregations may continue their ministry in the parish properties,
 - o that resolves the deadlock in the administration of the trusts
 - o if necessary, amends the purposes of the trusts to permit the Plaintiffs' congregations to be in communion with the worldwide Anglican Communion through a Bishop other than the Defendant Bishop and to

thereby be allowed to minister and worship as Anglicans in a spiritual community which adheres to the traditional doctrines and teaching of the Anglican church and practices the liturgies which express those beliefs. The Defendants' answer in the pleadings and their Opening is that the trust is for the religious purposes defined by the majority of the ACoC from time to time and none other, and that the Plaintiffs can leave the ACoC but cannot take the properties with them.

In answer, the Plaintiffs say that they remain as Anglican as the Defendants, and that the buildings are going nowhere: indeed they belong to no person, and the Plaintiffs are the appropriate trustees to serve the religious purpose for which the properties were exclusively dedicated.

One premise of the Defendants' case is that the division is unnecessary and that the Plaintiffs' congregations should simply stay in the buildings and accept the authority of the Bishop. It is respectfully submitted that the stated welcome to the Plaintiffs' 12

to continue under Bishop Ingham is impractical, ungenerous and denies the depth and sincerity of the underlying differences between the parties.

In some respects this is a challenging case. The division proven in the evidence is unprecedented. The application of trust principles to church divisions happens only rarely and is not the regular work of judges or litigators.

Now that the law's processes of proving the facts and ascertaining the law have been engaged however, we submit the way is clear: the principles of equity are applicable and well-established, the facts are clear and it remains only to apply them impartially to this dispute. To grant the counterclaim would be to accord the majority with possession because they form the majority here in this part of the Anglican world and would leave unfulfilled the Court's centuries old role and duty to protect faithful minorities.

All persons with religious convictions know that a time may come when those principles will carry a penalty. If the Plaintiffs' decisions carry such a penalty under the law so be it. But is this such a case? Does the conscientious choice to remain Anglican, adhering to what they consider the official teaching of the church and its liturgies, and in communion with those in the world who agree with that adherence, carry the penalty called for by the Defendants?

Equity's vision goes deeper than the legal surface of structures and things like buildings and titles. It penetrates to the heart of what is right and just to require of a trustee who holds an office that requires service to a purpose and not a person. Equity ought not to permit any penalty here and service of purpose is what the Plaintiffs earnestly seek to honour.

The facts demonstrate the Plaintiffs' and their congregations need is great. The law demonstrates that the remedies sought are just and equitable and represent the living out of the best features of our law.