

Day 8 – ANiC Parishes Closing Argument – June 8, 2009

The morning began with counsel for the parishes, Geoff Cowper, QC, explaining to Mr Justice Kelleher that he expected presentation of his argument to be two full days. Two volumes of a “Statement of Facts” and “Written Argument of the Plaintiffs”, together with a two volume “Book of Authorities” were handed to the judge, who last week, jokingly remarked he had enough material before him and he didn’t want anymore.

The issues to be addressed by the judge were outlined by Mr Cowper. I will highlight the issues briefly and mention some of the facts or evidence used to support the parishes’ case, although Cowper went into much more extensive discussion on each point.

1. What is the Religious Purpose of the Trust?

There is general agreement between the parties that there is a Trust over the properties and that trust law applies, but the dispute is really over what the “religious purpose” of that Trust is. The diocese’s claim is that the properties are held for the purpose of Anglicanism *as defined by* the Anglican Church of Canada. The parishes claim it is for Anglicanism as it has always been traditionally understood and described in the Solemn Declaration of 1893, and as it was meant to be practiced, believed and lived out. Mr Cowper said at one point, “That’s the *central inflection point* of this case.”

Anglicanism is “catholic” in nature and the Anglican Church of Canada (ACoC) was never meant to be an autonomous church. Breaking of communion with the worldwide Anglican Communion is not consistent with the ACoC’s self-image.

Monies given to build/establish the churches were given for a specific religious purpose and such purposes have been specifically protected by the courts to ensure that a majority cannot displace a minority that remains true to that original purpose.

From the parishes’ perspective, who provided contributions is irrelevant – the monies were given for “Anglicanism”. It is the purpose for which the money was given that is important.

2. The bishop acted *unilaterally*

There are different views with respect to whether the bishop had the ability to act in the way he did. The evidence shows that the bishop initially embraced a collegial and interdependent approach to same-sex blessings, which he saw as a “justice” issue. He was disappointed by the House of Bishops inability or unwillingness to address it and the resounding defeat at the 1998 Lambeth Conference was a critical turning point in how the bishop would act. He subsequently made a decision to act unilaterally thereby forcing the decision upon the national and international church.

Mr Cowper said that the evidence supports that conclusion.

The bishop conceded that unlike women's ordination, he was aware that there was no consensus in Canada or internationally, for his innovations. He determined he was "prophetic" at one point, and he knew his actions might or would lead to division, although he was surprised at the intensity and international opposition to his actions. The evidence shows the national and international communities were increasingly distressed by the impact on the Communion that his unilateral actions had and this was exacerbated by the diocese's unwillingness to retreat from their new practice or its related doctrinal position.

3. Cy Pres Jurisdiction – what does "*impracticable*" mean in this context?

The question to be asked is - Has something arisen that makes the trust as originally anticipated "*impracticable*"? Has it given rise to any "practical problems?" It is clear that the situation in Canada – where two parties have irreconcilable views and one party holds authority over the other – has created very practical problems. Very early on, Bishop Ingham acknowledged that those who disagree with him might have to leave the church. Where there is such a profound doctrinal difference between the parties, where it is impossible for parties to be in the same authority structure, then a *Cy Pres* occasion arises.

4. This is a case of *Division not Departure*

The Anglican Communion is clearly fractured and divided to an unprecedented degree on issues relating to doctrine, liturgy and scriptural authority. Even the bishop in his evidence admitted these are "irreconcilable" views. The profound doctrinal differences are obvious "when one party feels impelled to honour within the church as sanctified and deserving of blessing, something which is regarded by others as to be discouraged and wrong."

The bishop in his evidence said he did not think it was proper to have blessings as a private matter. His view was that liturgy should be shared with other Anglicans because a public rite is the way that Anglicans express what they believe. Both sides see the importance of liturgy in this way, and the necessity of having a common doctrine and liturgy that expresses their beliefs. This addresses another dimension of impracticability said Mr Cowper. The diocese's argument that "You weren't forced to do it" overlooks the importance that Bishop Ingham saw in doing it as a public rite.

5. Solemn Declaration 1893

The parties clearly disagree on the relevance of the Solemn Declaration. The bishop and Rev Dixon both said they regard it as merely a historical document, but clearly this remains both foundational and constitutional in terms of its role and character. Mr Cowper told Mr Justice Kelleher that he didn't have to resolve who was right or wrong in their definition. He said it is clear that there is tension between the faith

reflected in the Solemn Declaration and the cause for justice that Bishop Ingham saw as a gospel imperative. Both parties claim a doctrinal basis for this division. Both see it as a scriptural issue central to their definition of being a Christian.

6. Cy pres is a solution with *integrity*.

Cy pres is fundamentally to ensure the original charitable purpose is carried out with integrity. It is not about winners and losers, but allows both parties to be enabled to continue their ministry. To leave one party with all the assets, and to claim that the other party has “left the church” would lack integrity. Both sides are sincere in their beliefs and in their desire to be “Anglican”. “Granting the counter claim in this dispute (to give all the assets to the diocese) would imperil and injure the ministry of one of the parties to this dispute”, said Mr Cowper.

7. It is entirely appropriate for Trustees to turn to the courts for clarification of the terms of the trust.

The court is the only place a Trustee can or should turn to when there is a dispute about who their duty is owed to. In this case, the Trustees believe that their duty is to the vestry, the body that has elected or appointed them, and which has given them the resources to manage, whereas the diocese claims (in a letter from the Chancellor) that there is no dispute and the Trustees need to resign and leave.

Given such an impasse, it is appropriate for the Trustees to ask the court “Who is the proper Trustee? To whom is our duty owed? And, in these circumstances, am I a proper Trustee?” The court has always been the proper arbiter of such questions.

8. The parish corporations were established specifically to insulate the diocese from liability.

Under the Act (which incorporated the diocese of New Westminster), it was necessary to incorporate parishes to insulate the diocese from liability. If the diocese has a beneficial interest in the property, then that would defeat the purpose of the incorporation of the parishes. In the Cariboo case, they dissolved the diocese and this is consistent with the view that the diocese is not the beneficiary of those assets.

Trustees are officers and primarily responsible for the assets and property of the parish. Fundamentally, the parish is the basic unit – funds come from parishioners and money flows up to the diocese. Without parishioners giving money to fund the ministry of the parish, there is no parish and no money to support a diocese.

Officers are appointed/elected by the vestry and look to the vestry for instructions.

There is very little in the Canons regarding Trustees and no handbook was ever given by the diocese. It wasn't until this dispute arose that the diocese acted to take control of the parishes. Prior to this dispute, the diocese did not exercise any control over the parishes.

9. Structure is not defined by geographic limits.

Good Shepherd was established to serve “the Chinese community”, not a geographic region. People no longer walk to church in their neighborhood, but travel great distances in some cases to attend a church they are theologically aligned with (as shown in the evidence in this case).

10. These are vibrant congregations but not Congregationalist.

These congregations have struggled to remain “Anglican”. They made the painful decision to break with the bishop and the diocese out of their deeply held faith and understanding of Anglicanism. They have not tried to change the DNA of their churches – or tried to become Baptist – they have sought to remain in “full communion with the Church of England *throughout the world*”, with validly recognized “Anglican” episcopal oversight.

11. History of support and objection to unilateral action of this diocese.

At this point, Mr Cowper reviewed the history of events, Primates’ meetings, and other statements and reports leading up to and post 2002, including various statements of support for the parishes as fully “Anglican”.

There was a sincere effort to maintain the Communion, but ultimately, such efforts were unsuccessful.

12. The structure is secondary.

There are a number of examples to show that structure is secondary to the mission of the church. The New Westminster Diocesan Strategic Plan demonstrates that they plan to change the structure in response to declining attendance and giving. It talks about the structure being secondary to sustaining vital ministry in the diocese. Thus, they are planning mergers, consolidation, church closings and sales in order to accommodate the ministry.

There is a recognition that structural change will occur in the diocese irrespective of the outcome of this litigation. This case is not in the context of a church that has never made or would never contemplate structural changes.

The parishes’ counsel (Stanley Martin and Geoff Cowper) will continue their argument tomorrow. The diocese is scheduled to present argument on Wednesday and Thursday, although Mr Macintosh suggested he might be finished by Wednesday. On completion of the Diocese’s submissions, Mr Cowper will have an opportunity to reply. The case is scheduled to be completed by Friday.

Cheryl Chang