

Background Paper

Private Members Motion

“That this Synod express the desire that the Church of England be in communion with the Anglican Church in North America”

Lorna Ashworth

Summary

It is my desire to give Synod an opportunity to hear about the unfair treatment of people who have continued to maintain the Anglican faith in doctrine, practice and worship, and to express their continuing fellowship with them as loyal Anglicans.

An estimated \$30 million has been spent on property litigation, and 491 clergy inhibited or deposed across the spectrum of church traditions. This includes the deposition of Bishop Bob Duncan of Pittsburgh, Bishop Henry Scriven and Dr James Packer, and the personal difficulties caused by the bringing of legal proceedings against laypeople. (Details of the Anglican Church in North America can be found on www.anglicanchurch-na.org)

For the avoidance of doubt, I wish to emphasize that the genesis of this motion lies entirely with myself in discussion with a handful of friends who are members of this Synod. Neither I nor others have been asked to bring this motion by representatives of ACNA. They have simply supplied information on request.

The motion

This motion is not about interfering in the polity of other Anglican provinces. But a series of decisions by two Anglican provinces over an extended period of time that have resulted in the exclusion of many Anglicans from their churches, the deposition of scores of faithful Anglican priests and bishops who are priests and bishops of the Church of God, has had knock-on effects elsewhere in the Communion.

Does not our fellowship and communion in the Lord require us both to be aware of these happenings, to express concern, and where appropriate to provide the support we can? Our leaders and representatives in the instruments of the Anglican Communion have done what they can in the Windsor and Covenant Process. This debate is not about those processes nor is it a debate on their official position in the structures of the Anglican Communion.

This debate is about fairness. It is about fairness in making and implementing decisions in church life. My case is that loyal Anglicans in North America, the United States and my own native Canada, have been treated unfairly in the current debates in those churches. I will give some examples in this briefing paper, and will present more in the debate. We will also have an opportunity to quiz such Anglicans at a meeting hosted by the Bishops of Winchester, Exeter and Blackburn on Tuesday 9th at lunchtime.

In addition and for the sake of objectivity as far as that is possible, you can read two independent accounts of members from within The Episcopal Church with regards to how the North American churches have got to where they are. Please refer to:

<http://theenlightenmentproject.blogspot.com/2007/09/san-diego-bishop-sues-three-parishes.html> This makes reference to the following letter (<http://www.edsd.org/pages/09-COMMUNICATION/9-SERMONS/pastoralletter8.07.htm>) and

www.anglicancommunioninstitute.com/2009/12/the-new-season-the-emerging-shape-of-anglican-mission/

Important Differences from the Church of England

It would be a mistake to read what is happening in North America through the filter of the cultural assumptions formed by experience in English parish life. There are significant and important differences:

- TEC is not embedded in the life of the nation in anything like the way English parish churches and cathedrals have been
- the word parish in the Episcopal Church does not have the same meaning as it does here
- the Episcopal Church represents about 1% of the population and has shrunk by about 20% in the last ten years
- The concept of parish in Canada would lie somewhere between the understanding in England and that of the United States.

One of the distinguishing features of the constitutional arrangements in the Church of England is an interlocking network of “checks and balances”. The tidy minded can be frustrated by the degree of independence available, but they have enabled mission initiatives, social reforms and renewal movements to flourish. While it would of course be wrong to seek to impose English ways of doing things on other provinces, it is not unreasonable to expect the Church in a country like the United States with a highly developed jurisprudence rooted in its foundational Constitution, or in Canada, to act with due regard to “natural justice”. Interestingly the Canons of the Canadian Church make particular reference to natural justice. This paper does however question whether the use of the Canons in both jurisdictions has in every regard been proper or in accordance with natural justice.

The Uses of Ecclesiastical Law

We all know that as a general rule litigious behaviour brings the name of Christ, the Gospel and the reputation of the Church into disrepute and should generally be regarded as a last resort. Whilst doctrine is at the heart of the disagreements among Episcopalians/Anglicans in the United States and Canada, there is reason to be concerned also about the use of the law.

Concerns are particularly focused on

- 1) lawsuits concerning property,
- 2) the use of Canons in the depositions of bishops and clergy
- 3) related issues of “natural justice”.

The sheer numbers involved (12 bishops and 404 clergy in TEC and 6 bishops and 69 clergy in Canada) are prima facie evidence that all is far from well. The legal polities of the Episcopal Church in the United States and the Anglican Church of Canada are of course different and they exist within different legal systems. Moreover, in the United States, the relevant civil law varies considerably between state and state. Nonetheless, the nub of the concerns is similar across the two provinces.

1. Lawsuits Concerning Property

Members of Synod will remember the debates on the ownership of property leading to the passing of what is now the Ecclesiastical Offices (Terms of Service) Measure. The original proposal of the group reviewing clergy terms of service was to transfer the ownership of churches, churchyards and parsonage houses from the benefice, effectively held in trust for ministry and worship in the locality, to diocesan boards of finance; this was rejected, largely due to concerns about the centralisation of wealth and power. The situation in the United

States could not be more different. At the General Convention in 1979, the Committee on Canons of the House of Bishops proposed the following Canon, which was adopted: “All real and personal property held by or for the benefit of any Parish, Mission or congregation is held in trust for this Church [i.e. the Episcopal Church in the United States, my insert] and the Diocese thereof.”. It is often known as the Dennis Canon from the name of its drafter, though more strictly it is now Title I.7.4 of the Canons of the Protestant Episcopal Church of the United States of America.

At a stroke, all parish property was transferred to the ownership of the national church. (In legal terms however, this transfer of property may not be beyond challenge as, unlike Measures of General Synod, the “laws” of TEC are not laws of the land.) In English terms, the equivalent would be the transference of all parish, parish trust and benefice property to the Archbishops’ Council together with the assets of the Church Commissioners.

Although church property in Canada is owned in various forms, it has been historically and generally understood that these properties are held in trust for a specific religious purpose. However, the courts in Canada today appear to be favouring an American approach in resolving property disputes, despite the lack of a “Dennis Canon” or similar legislation.

In both jurisdictions, at the heart of litigation instigated by the Episcopal Church (usually in partnership with the Diocese) or the Diocese in the case of the Anglican Church of Canada, is one side claiming its institutional property “rights”. On the other side are the “rights” of a local church which believes it has held firm to historic Anglican belief and practice (effectively the Anglicanism of the Declaration of Assent). These cases generally involve property which the congregation has built and paid for with little or no help from the local dioceses. In addition, the congregations have improved and maintained the properties over the years while financially supporting the local dioceses through assessments or apportionment. They have faced eviction from their church buildings and forfeiture of their trust funds. Dr Ephraim Radner estimates that at least \$ 30 million has already been spent on property litigation.

The radical separation of church and state in the Constitution of the USA puts the local church at something of a disadvantage. The courts are experienced in dealing with property disputes, but constitutionally nervous about engaging with any matter which is theological or doctrinal. From the perspective of churches in ACNA, the courts find it difficult to address their issues which are principally about loyalty to the Anglican inheritance of faith when they seek justice as respondents in lawsuits instigated by TEC.

In Canada, the courts now appear to favour this American approach to property litigation despite a lack of any legislation similar to the First Amendment in the American Constitution, which mandates a separation of church and state.

2. The use of Canons in the Deposition of Bishops and Clergy

The contrasts in terms of process between what happens here and what has happened in the USA and Canada could hardly be greater. When Synod (and Parliament) gave its approval to the Clergy Discipline Measure, care was taken to ensure that the stages involved would follow a proper legal process, with appeal processes and the availability of legal aid. Unless there has been a conviction in the criminal courts leading to a custodial sentence, it takes at least a year for a defended case that goes to a tribunal to come to a final determination. It is cumbersome at times, but care is taken to ensure that there is due process and natural justice.

It is understandable that, when clergy have left TEC or the Anglican Church of Canada for another jurisdiction, they should lose their legal permission to exercise their office within the church they have left. What is not acceptable is that bishops and priests who have not left are

deposed without due canonical process because of what they might do, or that they should be formally advised that they have abandoned their ministry when they have done nothing of the kind.

Example 1. The case of Bishop Bob Duncan of Pittsburgh.

First of all, we examine the charge of “Abandonment of the Communion of This Church by a Bishop” under the provisions of Canon IV.9. The details of each case vary slightly, but the case of Bishop Bob Duncan, formerly Bishop of Pittsburgh and now the first elected Archbishop of ACNA illustrates concerns which are widespread. He attended the Lambeth Conference in July 2008 and returned home to be deposed for “abandonment of communion” on 19 September 2008. He was at the time Bishop of Pittsburgh and the declaration by the Presiding Bishop that he had abandoned communion, preceded the final vote subsequently taken by the Diocese to amend its constitution and withdraw from TEC.

The Constitution and Canons of TEC set out formal procedures for disciplinary cases. That is not in contention. What is in contention is whether they were actually followed by the Presiding Bishop in this and a number of other cases:

- A vote was taken at a meeting of the House of Bishops to depose Bishop Duncan for abandonment when he had not actually done so. A number of the bishops who voted against gave this a reason for their opposition. There is no provision in Canon IV.9 for taking action against a bishop for what it is alleged he is planning to do.
- The necessary prior consents from the three senior bishops having jurisdiction had not been obtained as required by Canon.
- Due notice, prior to the meeting, of the motion to depose Bishop Duncan under Canon IV.9 was not given.
- The judgment to depose Bishop Duncan was not given by “a majority of the whole number of Bishops entitled to vote” as required by Canon IV.9.2 and defined in Article I.2 of the Constitution of TEC.

There is no provision for appeal beyond the bar of public opinion and members of Synod can download and read the Constitution and Canons for themselves.

Example 2. The deposition of Bishop Henry Scriven.

Bishop Scriven was ordained deacon and priest in St Paul’s Cathedral and served as a curate in a north London parish. This was followed by a spell as a missionary in Argentina under the auspices of SAMS. He then spent a year in the United States before serving for six years as Chaplain to Madrid and Bilbao in the Diocese of Europe. In 1995 he was consecrated by the Archbishop of Canterbury to be Suffragan Bishop in Europe with Bishop John Hind. His wife is American and in 2002 he accepted an invitation by Bishop Duncan to join him as Assistant Bishop in Pittsburgh. Following the deposition of Bishop Duncan on 19 September 2008 and the subsequent decision of Pittsburgh diocese to realign with the Southern Cone, Bishop Scriven wrote to the Presiding Bishop of TEC on 16 October 2008 to advise that he was moving back to the UK. He is now working on the staff of CMS in Oxford with Synod member Canon Tim Dakin and has become an Assistant Bishop in Oxford Diocese.

In November 2008, Bishop Scriven received an acknowledgement from the Presiding Bishop that he would be resigning from the TEC House of Bishops to “become a Bishop of the Church of England, serving as assistant to the Bishop of Oxford”. This was followed, without further communication, by a copy of a public announcement in January 2009 advising that she had “accepted the renunciation of the Ordained Ministry of this Church, made in writing to me on October 16, 2008 by the Rt Rev Henry Scriven, assistant Bishop of Pittsburgh...”

How this and the many other depositions relate to catholic order is a mystery to many. Most clergy believe that they have been ordained as deacons, priests or bishops of the Church of God, not simply within a province.

Property cases and depositions in Canada

Although the canonical arrangements in Canada are different from those of TEC, the experience of those who cannot accept some of the new developments in doctrine and practice is not very different. The property issues are very similar, with congregations being forced out of churches they have financed and built.

As in the United States, most of the 69 priests and 6 bishops who relinquished their licences for ministry in the Anglican Church of Canada have been accused and convicted of “presumption of the abandonment of the ordained ministry” despite their clear statements that they were not abandoning the ministry to which they were ordained. There are cases of inhibition without due canonical process and a number of local church trustees have been summarily “dismissed” by bishops – including the Bishop of New Westminster, in ways which the courts have subsequently found to have been without any legal or canonical authority.

Example 1. Eastern Newfoundland and Labrador

In December 2007, following his third anniversary as a bishop, the Bishop of Eastern Newfoundland and Labrador (whose predecessor had been a conservative bishop), issued an ad clerum advising that all clergy in the diocese would require new licences, prior to which they would have to renew their ordination vows before him on a specified date in January 2008. For good measure he also dismissed the cathedral chapter and stripped all canons of their titles and duties, subsequently appointing a new chapter. Synod members are invited to make their own judgment about whether this conforms with canonical process, natural justice, employment rights and the exercise of constitutional monarchy. To be fair, this is an extreme case, though it would also be fair to state that there have been other instances of this kind of behaviour by bishops in both ACoC and TEC, usually directed at conservative clergy and churches.

Example 2. Diocese of New Westminster ie Vancouver & Dr JI Packer

Although he was only one of a number of priests in the Diocese of New Westminster who had been charged and convicted by Bishop Michael Ingham of “presumption of the abandonment of the ordained ministry”, the case of Dr Packer has brought the issues of deposition and abandonment of communion to the attention of many in the Church of England, and across the Communion, who would not normally think about these things.

Dr Packer is now aged 83. Educated at Oxford (MA and D Phil), ordained in Birmingham in 1949, he was Associate Principal of Trinity College, Bristol before emigrating to Canada in 1979 where he became Professor of Historical Theology at Regent College, Vancouver. In the sixties and seventies, he and the Revd John Stott were by far the most widely respected evangelicals in the Church of England and many members of Synod have benefited from his ministry in the past. It is ironic as well as hurtful that a man who, as a young priest, was a doughty defender of the inheritance and doctrine of the Church of England against its detractors should be presumed to have abandoned the ordained ministry at the end of a long life of distinguished service. That his most widely read and translated book is simply called “Knowing God” sums up the life and ministry of this humble and Godly scholar.

Dr Packer with his fellow clergy wrote the following to Bishop Ingham:

“We, the undersigned clergy, are writing in response to the Notice of Presumption of Abandonment of Ministry that you have sent to each of us. We would like to point out that the Notice is not in compliance with the Canons in that it does not set out the required facts but simply repeats the language of the Canon. The canonical process has therefore not been engaged.

“We have not abandoned the “ministry to which we were ordained”. Each of us was ordained into Anglican ministry; indeed, we were ordained into ministry in the “Church of God” as per our ordination vows. We have been privileged to serve in the Anglican ministry for many years and it is our intention and prayer that we may continue in the Anglican ministry.

“Further, it is our intention to remain members of the Anglican Church. We are not leaving the Anglican Church to become members of another church or to minister in another church, which is the concern of Canon XIX...”

Dr Packer and his associates are among those now in ACNA.

3. Related Issues of Natural Justice

The people issues connected with the unhappy developments in North America are not limited to bishops, priests and deacons. Lay church officers have been exposed to considerable financial risk.

In the United States, a particularly unpleasant aspect of litigation has been the willingness of TEC and some dioceses such as San Diego and Los Angeles to sue individual vestry (the American equivalent of PCC) members of departing congregations, in addition to the parish corporations of which they were trustee members. Litigation of this kind has the consequence of putting at risk of forfeiture the personal bank accounts, savings and homes of lay church officers. Some have had difficulty in refinancing their mortgages (as defendants in a personal financial lawsuit) and have had their credit ratings put in jeopardy.

In Canada, congregations have no legal standing apart from the trustees who represent them. The trustees are required to be the named party in any litigation. The Canadian courts normally award costs against the losing party and trustees (ie parish officers) are therefore very exposed personally when there is litigation, potentially to the extent of several hundred thousand dollars and putting their homes at risk.

All of this was a matter of concern to the Primates meeting in Dar es Salaam as long ago as February 2007.

A Personal Reflection.

Unfortunately, it has been necessary to write a paper covering this ground to bring to the attention of the Synod the scale and character of the problems in North America. For those who wish to have more detail referenced up to individual cases, a paper relating to the United States prepared by ACNA may be of interest – www.americananglican.org/assets/Resources/TEC-Canonical-Abuses.pdf . I do not have a comparable and easily accessible document for Canada, but I have taken trouble to research carefully what is in my paper with respect to both countries.

There remain many good and Godly people, clergy and lay in TEC and ACoC who love their church and love their Lord. They too need our support. Like most of us they do not like controversy or division in the Body of Christ and simply wish to find grace to live out the faith they profess.

In asking Synod to express a desire to be in communion with ACNA, there is therefore no suggestion that we should not remain in communion with TEC or ACoC, nor am I suggesting that everyone in ACNA is a paragon of perfection. Rather, it is a recognition that there is a considerable and growing body of faithful Anglicans representing a wide range of church traditions, many of whom have been hurt, who are now members of ACNA. They would be grateful to be in communion with the Church of England as the Windsor/Covenant process works through. In some cases it might also help parishes to retain the property they have built and paid for.

At present 742 congregations are affiliated with ACNA.

**Published by the General Synod of the Church of England
and on sale at the Church House Bookshop**

31 Great Smith Street, London SW1P 3BN

Copyright © The Archbishops' Council 2009

£2