

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**MICHAEL BENTLEY, ETHEL MARION CAMPBELL, PETER
CHAPMAN, ZENIA CHENG, SIMON CHIN, KRISTA FRIEBEL, R.
PATRICK GREENWOOD, MARIE KRISTINE KLUKAS, JOHNNY
LEUNG, DAVID LEY, RUTH LIN, LANNY JAMES REEDMAN,
LINDA SEALE, ANNE SHECK, DAVID KENNETH SHORT,
TREVOR HOWARD WALTERS, and SHIRLEY WIEBE**

PLAINTIFFS

AND:

**ANGLICAN SYNOD OF THE DIOCESE OF NEW
WESTMINSTER, and MICHAEL INGHAM in his capacity as the
Anglican Bishop of the Diocese of New Westminster**

DEFENDANTS

DEFENDANTS' INTRODUCTION TO THE CASE

COUNSEL FOR THE DEFENDANTS

**George K. Macintosh, Q.C.
Ludmila B. Herbst
Tim Dickson**

Farris, Vaughan, Wills & Murphy LLP
2500-700 West Georgia Street
Vancouver, BC V7Y 1B3
Telephone: 604-684-9151
Facsimile: 604-661-9349

COUNSEL FOR THE PLAINTIFFS

**Geoff Cowper, Q.C.
W. Stanley Martin
Keri Gammon**

Fasken Martineau DuMoulin LLP
2900 – 550 Burrard Street
Vancouver, BC V6C 0A3
Telephone: 604-631-3131
Facsimile: 604-631-3232

The Anglican Church of Canada, the Diocese of New Westminster and the Blessing of Same-Sex Unions

1. The church properties at issue in this case were built, dedicated and/or consecrated, and have always been contributed to and attended, as part of the Anglican Church of Canada (the “ACC”). The ACC is a self-governing, nation-wide church and is a member of the worldwide Anglican Communion, which is a voluntary association of Anglican churches. The ACC comprises four Ecclesiastical Provinces, the relevant one of which (British Columbia and Yukon) comprises several dioceses, of which the Diocese of New Westminster (“the Diocese”) is one. Dioceses, in turn, comprise a number of parishes, which in the Diocese of New Westminster are generally incorporated and hold title to the church buildings associated with them.

2. The Anglican Church is an extremely hierarchical institution. It has elaborate and well-developed institutions for decision-making, including a body of canon law. At the highest level – the Anglican Church of Canada – it has a representative legislative body (the General Synod) and an executive body (the Primate and the Council of General Synod). That structure is mirrored at the diocesan level. There is also a middle level – the Ecclesiastical Provinces – with that same structure. These entities are incorporated by special statutes, which spell out their powers and purposes, and those powers and purposes are further specified in very detailed Canons and Rules and Regulations. There are ecclesiastical courts to resolve disputes. There are also many other institutional structures, including an option (called Shared Episcopal Ministry) for parishioners who are in theological dispute with their bishop to receive episcopal oversight from another bishop within the Anglican Church of Canada.

3. The current dispute over homosexuality is the latest in a long series of debates within Anglicanism as it adapts to social change. Other recent debates include the remarriage of divorced persons and the ordination of women. As with the homosexuality debate, in those contexts there was vociferous disagreement over Scripture and religious belief. In those contexts, the Anglican Church of Canada (and other autonomous churches within the worldwide Anglican Communion) engaged in a

long process of dialogue and settled the issues according to its internal governance structures.

4. With homosexuality generally and the blessing of same-sex unions specifically, the Church has been engaged in vigorous debate in all of the various forums of its institutional structure – from the General Synod, to the diocesan synods, to the parish level. In this Diocese, the Synod voted three times to petition the Bishop to approve the blessings. Twice he denied that request, but on the third time consented. Between the votes, the Bishop established formal dialogue processes to ensure that all views were aired in the hope of reaching greater understanding and consensus. The Bishop's authorization of the blessings is subject to certain "conscience" provisions, which provide that such blessings may only occur in parishes where both the congregation and the priest support and request them, and a priest may always refuse to conduct the blessing if it is against his or her conscience.

5. The four parishes with which the Plaintiffs were associated participated in this long debate at every level. Neither the General Synod nor the Diocesan Synod has resolved the issues as the Plaintiffs would wish, however, and so the Plaintiffs have sued, alleging that the church properties are held on a trust that would freeze Anglicanism as they would define it. The Plaintiffs have not challenged the Bishop's jurisdiction to authorize the blessings, they have not challenged the validity of the blessings in the ecclesiastical court (the ACC's Supreme Court of Appeal) and they have not sought to charge the Bishop with an ecclesiastical offence. Nor have they accepted the offer of Shared Episcopal Ministry, which a body of the Anglican Communion commended as appropriate. Instead, they seek to split up the ACC by attempting to leave the Diocese and take with them church properties that were established as part of it.

6. The Defendants submit that the Plaintiffs' action is utterly groundless and ought to be dismissed on the basis of any of the following four points. First, the church properties are held in the name of the parish corporations, which are inherently part of the Diocese and have no lawful power to leave it. Second, the Anglican Church of Canada's sophisticated governance structure supersedes any trust. It allows for the

Diocese's authorization of the blessing of same-sex unions, but in any event, a breach of that structure would not lead to the break-up of the Church. Third, any trust that might apply the properties in this context is plainly not defined as the Plaintiffs allege. Last, even if the trust were defined as the Plaintiffs allege, it has not been breached.

The Parishes Are Inherently Part of the Diocese

7. The first point is that parishes have no existence independent of dioceses in the legal structure of the Anglican Church of Canada. In some dioceses the parishes are not even incorporated, and all the property is held by the diocese. In the Diocese of New Westminster, the parishes are incorporated and the parish corporations hold the property. Those parish corporations, however, are incorporated under the special Act that incorporates the Diocese: that special legislation – the purpose of which is to incorporate the Diocese – sets out an option for parishes to incorporate (only with the consent of the Bishop) and sets out their powers and structure and creates a special registry for the parish corporations. (The Diocese was incorporated in 1893 and each of the four parishes was incorporated under the Act at various times thereafter; St. John's Shaughnessy, for example, was incorporated in 1932.) The Act also states that property held by incorporated parishes may only be mortgaged, sold or otherwise disposed of with the consent of the Executive Committee of the Synod and the Bishop. Further, the Canons of the Diocese give the Bishop of the Executive Committee of the Synod very extensive powers to regulate and control the affairs of parishes, including the property held by them.

8. The point is that parish corporations are inherently part of the Diocese. As a matter of corporate law, it is *ultra vires* for them to purport to leave the Diocese. They can only exist as part of the Diocese.

The Church Properties Are Governed by the Church Structures, Which Allow for the Blessings

9. The dispute between the parties is properly determined by the statutes, canons and by-laws that govern the Church and its property. The law is clear that, where a

church has a hierarchical structure that governs how decisions are made and the property is used, then that structure prevails to determine ownership and control. This is contrast to the case of a congregational church with few rules as to how decisions are made, where the law of trusts may regulate the use of the property.

10. The trust declarations that the Plaintiffs seek are entirely inappropriate and inapplicable. The Church is set up as a hierarchical institution in which various bodies have certain and specific powers. If the Defendants or other bodies in the Anglican Church of Canada have stepped outside of their proper roles or misused their powers – which they have not – then it would be appropriate to ask an ecclesiastical, or even civil, court to declare that to be so and to correct the problem by quashing the impugned decision. It is completely unfounded, however, for the Plaintiffs to ask the court to break up the church by divvying up the property on the basis of some trust that is defined by reference to religious belief. That is utterly contrary to the idea of a Church set up as a perpetuating and national institution that has control over its own doctrines and properties.

11. In any event, the Bishop's authorization of the blessings is entirely consistent with the Church structures. The General Synod resolved in 2007 that "the blessing of same-sex unions is consistent with the core doctrine of The Anglican Church of Canada". The Diocesan Synod voted three times – the third time by over 60% – to request authorization of the blessings, and the Bishop has the jurisdiction to authorize them (under what is known as *jus liturgicum*). While many Anglicans around the world disagree with the blessings, the ACC continues to be the only ecclesial body in Canada that is a member of the Anglican Communion (as the Archbishop of Canterbury stated last year in connection with the dispute).

Any Trust Is Not Defined as the Plaintiffs Allege

12. To any extent that the properties are governed by trust law, the trust is not defined as the Plaintiffs allege. Rather, the trust is for the promulgation of the Christian faith as interpreted by the Anglican Church of Canada and the Synod. Such a trust would be consistent with the Act, the Constitution and Canons of the Synod of the Diocese, and

the consecration of churches (toward which the priest and churchwardens of a parish petition the Bishop to “set it apart for ever for the worship of God, according to the rites and discipline of the Anglican Church of Canada”), among many other things.

13. For their part, the Plaintiffs allege that the properties held by each of the parishes are held “for the congregation for the purpose of ministry consistent with historic, orthodox Anglican doctrine and practice”, which they say can only be fulfilled through the unprecedented step of aligning with the Anglican Church of the Southern Cone (which is in South America). This alleged trust is nonsensical for a number of reasons, including:

- 1) It is inconsistent with the Anglican Church of Canada’s power – explicitly set out in its Canons – to define the doctrine of the Church. That power is held by every Province (national church) in the Anglican Communion. It is not the Anglican Communion that defines doctrine (such as is done in the Catholic Church), but rather the 38 Provinces (that is, the national churches that compose the Anglican Communion) acting independently within their own territories. In Canada, the Church set up a representative, legislative body (the General Synod) to exercise the power to define doctrine; the Plaintiffs’ alleged trust would completely undermine that institution.
- 2) A trust that freezes doctrine at some (unspecified) historical point is entirely inconsistent with Anglicanism’s history of change and evolution and its wide diversity around the globe. Anglicanism has always accommodated change and diversity. That is part of how it has been a worldwide faith for over 400 years.
- 3) It is inconsistent with the structure of the Anglican Communion, in which the Provinces are defined according to exclusive territorial boundaries.
- 4) Internally, the trust alleged by the Plaintiffs is uncertain and nonsensical. “Historic, orthodox Anglican doctrine and practice” is not a phrase defined in Anglicanism. What time period does “historic” Anglicanism relate to? Whose beliefs are “orthodox”? Who is the “congregation” – only the current

parishioners, or all past, present and future parishioners? The trust as defined by the Plaintiffs is far too uncertain to be enforceable. Further, it would require the civil courts to stray too far into matters of religious belief.

The trust as alleged by the Plaintiffs has not been breached

14. Last, even if the properties are held on trust on the terms the Plaintiffs allege, that trust has not been breached. The Bishop only authorized the blessings after a long process of dialogue in which the Synod repeatedly, and by a clear majority, requested him to do so, and he only did so subject to conscience clauses. The General Synod – the highest body in the Anglican Church of Canada – has determined that the blessing of same-sex unions is consistent with the core doctrines of the Anglican Church of Canada. And whereas the Plaintiffs have alleged that the Anglican Church of Canada is no longer in “full communion” with the Anglican Communion, that is clearly not the case. The Archbishop of Canterbury (the leader of the Anglican Communion) has stated unequivocally that the ACC is part of the Anglican Communion – and indeed is the *only* Canadian member of the Anglican Communion. Both the ACC’s Primate and the Diocese’s Bishop were invited to the Anglican Communion’s decennial Lambeth Conference – another clear indication that the ACC (and through it, the Diocese) is in full communion with Canterbury. The ACC also participates as a full voting member of the only worldwide Anglican legislative body, the Anglican Consultative Council.

15. In contrast, it is the Anglican Network – which the Plaintiffs have joined – which is walking apart from Anglicanism. Seeking to leave an Anglican Province (the Anglican Church of Canada) and have another Province (the Anglican Church of the Southern Cone) unilaterally exercise jurisdiction over them is unprecedented and completely contrary to the Anglican Communion’s territorial structure. The Archbishop of Canterbury and a special international panel (convened specifically at the request of the Plaintiffs to consider this dispute) have both condemned the Network’s attempt to create a cross-territorial jurisdiction. Furthermore, Donald Harvey, a retired bishop who himself left the ACC and who acts as the Network’s “Moderator” in Canada, was not invited to

the Lambeth Conference. The Network is not a member of the Anglican Consultative Council.

16. Even if this court finds that this dispute should be adjudicated on trust law (which it ought not to be), and if the trust is defined as the Plaintiffs allege (which it ought not to be), the Defendants have not breached that trust. It is clearly the Plaintiffs and the Network who are acting outside of Anglicanism.