

New Westminster Appeal - September 14, 2010

The courtroom gallery was half to three-quarters full for most of the day. I believe the vast majority were ANiC members, although I did not recognize a number of people.

Mr. Cowper began by summarizing his main legal arguments in favour of a trust which he covered in detail yesterday.

1. The founding documents of the church contemplate a trust;
2. There was a general expectation that the affairs of the church would be governed by trust principles;
3. The existence of a trust is implied by the absence of stated objects and purposes in the underlying documents; and
4. It is necessary to imply a trust because the statute doesn't answer the question.

The trust being sought is a simple one – for Anglican ministry and worship, but not “as defined by the ACC” as the defendants (diocese and bishop) would prefer.

He delved into the case law and the statutes and canons governing the churches and left the judges with 2 questions to consider:

1. Which view is more true to how the property was acquired and maintained? Was the trial judge correct, or was the view of the appellants correct? In terms of who acquired and maintained the property, is the interest with the plaintiffs or the diocese?
2. Which approach is more true to the values of charity? The collision between the bishop's desires (to maintain his political jurisdiction) and the parishioner's needs to maintain their ministry, their charitable purpose.

He submitted that the bishop's position should not be privileged over the purpose of the charity.

Finally, he briefly mentioned the appeal of the costs award made in June this year and said we were seeking an award of no costs so that each party bears their own.

George Macintosh began his submissions in the latter part of the morning. He believes the court should not consider a trust, and should decide on the “church governance” model as the trial judge did. In the alternative, he said that if a trust is found, it should be as the trial judge found – for the ACC and the diocese.

Further details of both sides' submissions will be filed later. Please continue to pray fervently. There is a sense of peace among us and we are grateful for your support.

Cheryl Chang

Chancellor
Anglican Network in Canada