

**REPORT OF THE SECOND CONFERENCE OF THE CANON
LAW COUNCIL
ANGLICAN CHURCH OF SOUTHERN AFRICA
13 - 16 JANUARY 2014
THE COLLEGE OF THE TRANSFIGURATION
GRAHAMSTOWN**



SUMMARY

“The Anglican Communion is famously held together by ‘Bonds of Affection’, in the absence of any central juridical authority But there is a legal underpinning, highly dispersed and diverse, which constitutes a remarkably resilient web of relationships reinforcing the relationships between churches that are linked historically with the ministry of the Archbishop of Canterbury....”¹

Mark Hill QC² known for his prolific writing, very rich and deep knowledge of Canon Law in the Anglican Communion was the guest speaker at the Second Annual Canon Law Conference which again took place at the College of the Transfiguration, Grahamstown from 13 to 16 January 2014. Hill presented two papers, a formal presentation on *Anglican Canon Law: Instrument of Unity, Mission and Ecumenism* in which he addressed “*the juridical infrastructure of Anglicanism worldwide and the recent emergence of the **Principles of Canon Law Common to the Churches of the Anglican Communion***”³ and a second paper “*Faith Based Mediation*” – *an alternative dispute resolution process*. This was a more in -formal and interactive presentation which produced animated discussion from the delegates.⁴

Faith Based Mediation whilst not unfamiliar to our context does not enjoy the prominence it does in the Church of England. As Hill pointed out “(t)he need for skilled, effective neutral mediation conducted by persons with a professional knowledge and experience in the subject and a sensitivity to the stresses and dynamics of the Church of England is overwhelming.”⁵ This need for mediators for our context was echoed by delegates at the conference with a request to the governing body of the CLC to look into the matter.

We will do well if we were to consider some of the literature on mediation “in the religious environment” and seek to make these available to our constituencies, bishops, chapters, rectors, churchwardens and so on. In its theology and practice mediation brings about freedom “and freedom is a

¹ The Principals of Canon Law Common to the Churches of the Anglican Communion. Page 23

² A shortened CV is attached hereto.

³ The paper is attached to this report.

⁴ Mark Hill QC ‘Mediation: An Untapped Resource for the Church of England?’, published in 1 *Ecclesiastical Law Journal* (2011) 57; see also Stephen Fielding, Mediation in the Church of England: Theology and Practice in 1 *Ecclesiastical Law Journal* (2011) 65.

⁵ Mark Hill QC ‘Mediation: An Untapped Resource for the Church of England?’, published in 1 *Ecclesiastical Law Journal* (2011) 64

religious idea, with its origins in the divine freedom – the ‘I will be who I will be’ of the God of the burning bush in the book of Exodus – pure, unconstrained freedom.”⁶

The Conference was again surrounded by the Eucharist which took place every morning and Evening Prayer bringing to a close the formal proceedings of each day. After supper delegates engaged in what one described as ‘cultural evenings’ which in the end made for much fellowship and the building of relationships for lawyers who are often at the forefront of bringing about mediated settlements in disputes.

The business of the Conference was determined by Provincial Synod at their recent meeting 1 – 3 October 2013. Provincial Synod however also provided the conference with an anomaly. Having passed the Act which brought into being the Canon Law Council (CLC) Synod proceeded to elect twelve (12) persons to the governing body instead of “three (3) persons clerical or lay learned in the law...” The anomaly raised a long discussion by delegates who, decided to proceed with the election of “three persons, being Provincial or Diocesan Chancellors or Registrars, elected at the Annual Conference of the Council”. Those elected are Lloyd Fortuin, Registrar, Diocese of Saldanha Bay; Mancha Manaka, Chancellor, Diocese of Christ the King and Bongiwé Nkohlá, Deputy Registrar, Diocese of Grahamstown. Conference also requested the steering committee to continue functioning until the Provincial Standing Committee had corrected the anomaly of Provincial Synod. The steering committee are Henry Bennett, Matthew Esau, Andrew Hunter, Xolisa Ngwendu, Barney Pityana, Cynthia Botha (Secretary) Rob Rogerson, and Willie Mostert.

The Conference discussed a resolution submitted by the Diocese of George requesting a Canon Law Course and the creation of regional clusters within the CLC. This was positively received by the Conference and referred to the Governing Body for action.

Conference also considered emerging issues in the Province such as the registration of the Provincial Trusts Board and the matter of historic offenses of paedophile ministers and individual, legal and media stances thereto.

⁶ Stephen Fielding, *Mediation in the Church of England: Theology and Practice in 1 Ecclesiastical Law Journal* (2011) 66.

These matters and those referred to the conference for discussion and input is covered in the report and minutes which follows.



Matthew Esau

INTRODUCTION

The College of the Transfiguration (COTT) in Grahamstown, hosted to the Second Conference of the Canon Law Council of ACSA from 13 – 16 January 2014.

The Canon Law Council (CLC) of ACSA was established as an ACT by Provincial Synod (Synod) 2013. Synod accepted the thesis that while theology provides the Church with a vision and definition of its purposes and Christian values, Canon Law, provides the norms of action for the implementation of these values. Canon Law has a theological basis and theology works through Canon Law.⁷ The Church has also to exercise leadership to ensure that its legal apparatus and procedures match its vision and purposes and at the same time meet current needs and aspirations in relation to its members' rights, responsibilities and freedoms.⁸

The CLC was established as an integral part of the Church, functioning under and reporting to the Provincial Trusts Board but reporting also to Synod and Provincial Standing Committee. The CLC will also have a direct link to the Synod of Bishops (SOB) through a liaison bishop who will be appointed by the SOB.

The members of the CLC are:

- All Provincial and Diocesan Chancellors and Registrars who are ex officio;
On application:
 1. Any Bishop currently in office or retired
 2. Any Cleric, currently licensed or retired
 3. Any Confirmed Communicant.

The ACT of Synod provides for the following purpose and objectives of the CLC:

- The CLC is **Collegial** through the sharing of information, by providing a facility for those interested in Canon Law to meet, both physically and through various means of communication, discuss and confer interactively on issues and matters relating to Canon Law.

⁷ N. Doe, *Canon Law and Communion*, (2002) 6 Ecc LJ 241

⁸ J.L Bernadin, *New Commentary on the Code of Canon Law*, Beal, Coriden, Green. 2004:1819

- Assist Bishops and others in authority in the Church by giving **Opinions** on issues and matters referred to them.
- To record and make available **Publications** on Canon Law studies and discussions relevant to the governance, rights and responsibilities of the Church.
- **Mentoring** Bishops, Chapters, Provincial and Diocesan Trusts Boards and newly appointed Chancellors and Registrars.
- Retaining and storing in retrievable form, judgements of Church tribunals relevant judgements of Courts of Law and opinions of the CLC, Chancellors Registrars, diocesan attorneys and counsel through **Archiving**.
- **Conferences** provide opportunities to legal officers and those interested from across the Province to establish and renew contact, deliver papers and discuss issues and matters of common interest.

The Archbishop of Cape Town proposed the establishment of the Anglican Law Council with the Dean of the Province, the Bishop of Natal, Bishop Rubin Philip as the seconder. Addressing Synod, Bishop Rubin, said the *Church accepts the thesis that while theology provides it with a vision and definition of its purposes and Christian values, these are implemented in the form of canon law, which provides the norms of action for their implementation. Thus, canon law has a theological basis, and theology works through canon law.*ⁱ In so doing it also accepts the need for the Church to exercise its leadership to ensure that its legal apparatus and procedures match its vision and purposes, and at the same time meet current needs and aspirations in relation to its members' rights, responsibilities and freedoms. " TO THIS END THE Church establishes, as an Act, a faculty to be known as the Anglican Canon Law Council (the "Council")"

Discussion in Synod and in the Conference of Synod, where the subject **Canons at work** was discussed, was very rich which resulted in the Anglican Canon Law Council being established with no dissention.

Anglican Canon Law was an apt title for the keynote address by Mark Hill QC⁹ for the 2nd Conference of the newly established Anglican CLC. It provided for new insight to the workings of the Anglican Communion through its instruments of unity for the participants. The address is attached.

⁹ CV attached.

Mark Hill QC took a master class on the second morning of the conference by discussing “Faith Based Mediation” as an alternative to the dispute resolution process. The participation of the participants was encouraging both from the view of their involvement in solving civil disputes and from the view that ACSA has a base of learned, experienced and skilled mediators. Conference agreed that Mediation be an aspect of training for Canon Lawyers.¹⁰

¹⁰ Two comments which appeared in the Ecclesiastical Law Journal vol 13 no 1 are attached. Mark Hill’s comments on *Mediation: An Untapped Resource for the Church of England?* And Stephen Fielding’s comments *Mediation in the Church of England: Theology and Practice*.

CONFERENCE BUSINESS

TUESDAY 14 JANUARY 2014

CHAIR: MATTHEW ESAU
PRESENTER: HENRY BENNETT

AGM OF THE ANGLICAN CANON LAW COUNCIL

1 INTRODUCTION

The AGM of the Council took place only in part. The intension with an AGM is for the governing body to report to Conference as formally as possible on the matters dealt with in the previous year, and at the 2014 Conference, *the election of three (3) persons being Provincial or Diocesan Chancellors or Registrars elected for a period of three years, and the election of a Chair, Deputy Chair and Secretary.*

The anomaly that Conference found itself in was that Provincial Synod after enacting the Council proceeded to elect twelve (12) persons from their number to the Council. The ACT requires three (3) persons, clerical or lay, learned in the law, to be elected by Provincial Synod.

Conference considered with much care the ACT as passed by Provincial Synod and resolved to deal with the anomaly by proceeding to elect from their number three (3) persons namely; **Lloyd Fortuin, Mancha Manaka and Bongwiwe Nkohla**. It was further resolved to refer to PSC the need to choose on behalf of Provincial Synod **three (3) persons clerical or lay, learned in the law**. Conference pointed out that Provincial Synod in electing twelve (12) persons did not look at the qualification for the election of the three persons i.e. *“learned in the law”*. As is the case for the persons elected by the Annual Conference *“learned in the law”* was interpreted to mean persons who have a university qualification in Law like that of an attorney or advocate or a clergy person with a Canon Law qualification.

The Liaison Bishop for the Committee was not appointed by the Synod of Bishops by the time the Conference took place and it was resolved that the Dean of the Province be requested to considered such an appointed.

2 REGIONAL CLUSTERS OF THE CANON LAW COUNCIL AND CANON LAW EDUCATION AND TRAINING.

A motion from the Diocese of George was tabled which noted that some clergy were found guilty of misdemeanours at disciplinary hearings because of ignorance of Canon Law and the Constitution and Canons of ACSA. It further pointed out that prospective ordinands for the ordained ministry have no learning in Canon Law unlike other professions who are required to be competent in the field of study e.g. medicine for a medical doctor.

The request to the ACLC was to confer with the College of the Transfiguration about the introduction of a diploma level course in Canon Law course for its students. The other request from the Diocese of George is for the consideration by the ACLC to consider clustering Dioceses to keep clergy abreast of the Common Principles of Canon Law and Canon Law matters in ACSA.

Conference thanked the Diocese of George for their initiative and asked the Committee to continue discussions on these matters.

3 AMENDMENTS TO CANONS – PROVINCIAL SYNOD 2013

Provincial Synod passed four (4) MEASURES which were discussed and proposed in our last Conference 2013. Amendments to Canon 21(3), Canon 14(2) and Canon 38(1)(A) are referred to as DIOCESES IN TROUBLE.

The Measure to amend the above mentioned CANONS was to remedy a situation where in the past the inability of the Province to move effectively in relation to a Diocese in trouble resulted in the recurring of needless Provincial expense, damage to diocesan finances and loss of reputation and of parishioners to the Church. In terms of Canon 14(2) the provision in the Canon rendered the

exercise of the contemplated remedy unattainable. What was needed was a fair and reasonable way to facilitate early implementation of any rectification process. The amendments allow for the Synod of Bishops to agree without undue delay to solutions which has the best chance of being binding and effective.

3.1 Amendment to Canon 39(23) PASTORAL INTERVENTION DURING THE TRAIL OF A PRIEST OR DEACON

The effect of this amendment was to remove from the Canon inappropriate pastoral intervention outside an Informal or Diocesan Tribunal. The motivating concern of the last Conference (2013) was the need of the Bishop to be mindful of the duties imposed by the Canons when a charge or charges have to be presented in an Informal or Diocesan Tribunal. Bishops were asked to err on the side of pastoral intervention and to seriously weigh up the exercise of any right of visitation or other spiritual authority. The removal of the provision did not remove any rights of visitation or spiritual authority. The amendment removed the basis for a wrong or ill-disciplined decision which could previously have opened the door to inappropriate pastoral intervention.

3.2 Amendment to Canon 39(2) MEMBER OF THE BOARD OF PRELIMINARY INQUIRY

The amendment provides for a qualification of members to a Board of Preliminary Inquiry (BPI) by clarifying that members of a BPI cannot be members of the Diocesan Tribunal.

3.3 Amendment to Canon 36(5)(a) EXTENDING THE CATEGORY OF BISHOPS FOR TRIBUNAL PRESIDENT

Canon 36(5) now allow for Suffragan and retired Bishops to be selected to preside at Diocesan Tribunals when the Chapter of the Diocese or the equivalent body advise the Bishop that the Bishop may be compromised,

or in the case when the Bishop withdraws from the process on own volition.

3.4 Amendment to Canon 42(12)(A) TRANSFER OF DELEGATION UPON A TRANSFER OF DISTRICTS BETWEEN DIOCESES.

The increase of Dioceses and the movements within Dioceses have necessitated this change in the Canons. The delegation of the powers of the Provincial Trusts Board (PTB) shall automatically pass from the transferor Diocese to the transferee Diocese upon the transfer of any district from one to the other, or upon the creation of a new Diocese out of one or more existing Dioceses, or upon any alteration of Diocesan limits.

The effect of Canon 42(12)(A) as it now stands will require the *transferor Diocese* (Mother) to give a general power of attorney (GPA) to the *transferee Diocese* in respect of all the stated properties, involving the compilation of a terrier describing all the properties in the *transferee Diocese*. To coincide with ACSA's view of the role of PTB in land ownership, the delegation through a GPA by the *transferor Diocese* should be recorded as "***on the instruction of the PTB***". A mechanism will be put in place to assist with problems concerning delegated trustees. A research committee of volunteers will be established by the Committee of the CLC.

WEDNESDAY 15 JANUARY 2014

**CHAIR: MATTHEW ESAU
PRESENTER: HENRY BENNETT**

MATTERS REFERRED TO THE ACLC BY PROVINCIAL SYNOD 2013

1 THE STRUCTURE OF SYNOD

Synod mandated the steering committee of the ACLC to consider with Canon Lawyers and others to consider changes to the way Provincial Synod is presently governed. The committee was asked to consider four existing problem areas:

- The threat that a shortened form of Synod could turn into a rubber stamp. The Committee of Synod sitting concurrently with Synod resulting in a number of Synod participants not present for vital debates
- The cost of Synod with an expanding Province has escalated to the point of being prohibitive.
- Diocesan representatives are not adequately prepared resulting in wide spread non participation by some representatives
- The language of Synod is a difficulty for a number of representatives.

To assist the steering committee the Archbishop has requested the help of retired Bishop Paddy Glover. The Committee must report to Provincial Standing Committee (PSC) in 2014.

2 RETIREMENT AGE OF BISHOPS

The steering committee are to consider that retirement age constitutes a general view that a person's reasonable expectation of being able to fulfil responsibly the duties and functions of office particularly one that is onerous and fiduciary in nature; and that seniority is not a relevant factor in this; and that retirement ages of both clergy and bishops should be dealt with similarly.

Conference 2014 added its own set of issues to this matter and asked the committee to ensure that care is taken in deliberations and that due process is followed.

EMERGING ISSUES

1 THE REGISTRATION OF THE PROVINCIAL TRUSTS BOARD AS A TRUST

The implication for the registration of the PTB as a TRUST in the countries where ACSA is active will have serious consequences for the status of ACSA. Conference 2014 decided that a research committee of the ACLC would be well served by the consultation of Senior Counsel. The previous registration by some Dioceses of Trustees with the Master of the High Court in the Republic of South Africa will have to be looked at by the research committee.

2 HISTORIC OFFENCES OF PAEDOPHILIA RECORDS

Bishop Peter Lee made a presentation and quoted from the Tablet on cases involving Anglican clergy he cited the matter of Leslie Carter, 84, from Bathwick Street in Bath, who was accused of committing 18 counts of indecent assault on six schoolboys between 1956 and 1978. Scotland Yard said the "unrepentant paedophile" committed his attacks in the UK and South Africa, as well as on board a ship between the two countries. Police said one man contacted them in 2004 to report that he had been abused by Carter while he was a pupil at St George's Grammar School in Cape Town, South Africa.¹¹

Conference 2014 was told that the Church present a fertile ground for wrongdoers, hence care and awareness was needed. The Pastoral Standards of ACSA (Permanent Resolutions 5 and Act XV) was a start. The Church needs to be aware that in civil claims there has in some parts been a move from compensatory damages to punitive damages as in the case of Carter. By confronting the situation the Church would not be

¹¹ Article attached.

seeking to protect itself from criticism, but congregants from harm. Schools, which are generally keenly aware of the danger can help in how ACSA can best move forward. The ACLC highlighted the need for a pastoral process which will help in trust building of the Church by victims and their families. The matter will receive the continuing attention of the ACLC.

STEERING COMMITTEE MEETINGS

It was decided that the Committee will meet twice a year, after the Synod of Bishops, in March and October each year. The Committee will be comprised of the Annual Conference elected members namely; Lloyd Fortuin, Mancha Manaka and Bongwiwe Nkohlha who will join Henry Bennett, Matthew Esau, Andrew Hunter, Xolisa Ngwendu, Barney Pityana and Cynthia Botha (Secretary). The group will also be joined by Bishop Paddy Glover for the restructuring of Synod discussions as well as by the Liaison Bishop when appointed.

The next steering committee meeting will be in Port Elizabeth on March 20, 2014 from 10h00 to 15h00.

CONFERENCE 2015

The ACLC 2015 Conference will take place at the College of the Transfiguration, Grahamstown from Thursday 22 January 2015 at 17h00 to Sunday 25 January 2015.

