

CANON 5

Discipline and the Court of Appeal

1. Definitions

In this Canon, “Canon XVIII” means Canon XVIII of the General Synod of the church;

“church” means The Anglican Church of Canada;

“Court” means The Court of Appeal for the Ecclesiastical Province of Canada;

“member of the clergy” means a priest licensed in a diocese in the Province;

“member of the laity” means a communicant lay member of the church residing in the Province;

“Metropolitan” means the Metropolitan of the Province, or, if the office of Metropolitan is vacant or if

the Metropolitan is or has been involved or has an interest in a matter, the diocesan bishop senior by

consecration who is not and has not been involved and who has no interest in the matter.

2. Constitution of the Court

(1) There shall be a court called The Court of Appeal for the Ecclesiastical Province of Canada.

(2) The Court shall be composed of five members.

(3) On the trial of a bishop, or on the review of a decision of the Metropolitan or a diocesan bishop

convicting a bishop of an offence or imposing a penalty for an offence, three members shall be bishops

holding episcopal office in the church, one shall be a member of the clergy, and one shall be a member

of the laity.

(4) On an appeal from the trial of a priest or a deacon, or from the review by a diocesan court of the

decision of the diocesan bishop convicting a priest or a deacon of an offence or imposing a penalty for

an offence, one member shall be a bishop holding episcopal office in the church, three shall be members

of the clergy, and one shall be a member of the laity.

(5) On an appeal from the trial of a lay person, or from the review by a diocesan court of the decision of

the diocesan bishop convicting a lay person of an offence or imposing a penalty for an offence, one

member shall be a bishop holding episcopal office in the church, one shall be a member of the clergy,
and three shall be members of the laity.

(6) In any other case one member shall be a bishop holding episcopal office in the church, two shall be members of the clergy and two shall be members of the laity.

(7) The Provincial Council shall, subsequent to each triennial meeting of the Provincial Synod, determine the names of two members of the clergy and two members of the laity from each diocese who shall be eligible for appointment to the Court.

(8) The persons whose names are determined under subsection (7) shall continue to be eligible for appointment to the Court until the Provincial Council determines the names of persons to replace them.

(9) When a case is to be heard by the Court the Metropolitan shall appoint the members of the Court from among the bishops holding episcopal office in the church and the members of the clergy and laity determined under subsection (7).

(10) The Metropolitan may appoint himself or herself to the Court.

(11) No one who is or has been involved, or who has an interest, in the case to come before the Court shall be a member of the Court.

(12) The Metropolitan, if a member of the Court, and otherwise the bishop among the members of the Court who is senior by consecration, shall be the President of the Court.

(13) If, for any reason, a vacancy occurs among the members of the Court before the hearing commences the vacancy shall be filled in the same way. If a vacancy occurs after a hearing has commenced the remaining members of the Court may continue the hearing and give judgment or may direct that a new Court be appointed and the hearing be recommenced.

3. Jurisdiction

(1) The Court has the jurisdiction conferred on it by section 5 of Canon XVIII with respect to the discipline of bishops.

(2) The Court has the jurisdiction conferred on it by section 3 of Canon XVIII to review a decision of the Metropolitan or of a diocesan bishop convicting a bishop of an offence or imposing a penalty for an offence.

(3) The Court has jurisdiction to hear and determine an appeal from any judgment or order of a diocesan court or the president thereof.

(4) The Court has jurisdiction upon a case stated by the Provincial Synod, the Provincial Council, or the House of Bishops of the Province, to determine the validity or interpretation of any provision of the Constitution of the Provincial Synod or of a diocesan synod or of any Canon of the Provincial Synod or of a diocesan synod.

4. Charges Against Diocesan Bishops

(1) A charge alleging that a diocesan bishop has committed an offence as defined in section 7 of Canon

XVIII may be filed with the Metropolitan by three bishops of the Province, or three priests licensed in, and three lay delegates to the synod of, the bishop's diocese.

(2) A diocesan bishop who has been accused by any person of committing an offence, but against whom

no charge has been filed, may, together with two other bishops of the Province, file with the

Metropolitan a request that the accusation be investigated whereupon a charge alleging that the

diocesan bishop has committed an offence shall be deemed to have been filed.

(3) If the diocesan bishop against whom a charge is filed or is deemed to have been filed does not waive

the appointment of a Committee of Inquiry the Metropolitan shall appoint three persons as a

Committee of Inquiry to determine whether there is sufficient evidence to warrant a trial of the charge.

(4) If the Committee of Inquiry determines that a trial is not warranted, the Metropolitan shall dismiss

the charge.

(5) Subject to subsection (6), if the bishop waives the appointment of a Committee of Inquiry or if the

Committee of Inquiry determines that a trial is warranted the Metropolitan may exercise the initial jurisdiction conferred upon the Metropolitan by section 2 of Canon XVIII, or refer to the Court the determination of whether an ecclesiastical offence has been committed or the determination of a penalty.

(6) Where the diocesan bishop against whom a charge is filed or is deemed to have been filed is the

Metropolitan, if the Metropolitan waives the appointment of a Committee of Inquiry or if the

Committee of Inquiry determines that a trial is warranted the diocesan bishop with whom the charge or

request was filed shall refer to the Court the determination of whether an ecclesiastical offence has

been committed or the determination of a penalty.

(7) When exercising initial jurisdiction, the Metropolitan shall be advised by assessors, and follow the same rules and procedures as would be followed by the Court including the principles and general procedures prescribed by Part 5 of Canon XVIII.

5. Review of Exercise of Initial Jurisdiction

A bishop who has been convicted of an offence by the Metropolitan or a diocesan bishop in the exercise of initial jurisdiction, or the Executive Council of the diocese in which the convicted bishop holds office or resides, may invoke the jurisdiction of the Court to review the conviction or the penalty imposed by filing with the Metropolitan within 30 days of the conviction or imposition of penalty a written request for such review.

6. Appeals

- (1) Any party to a proceeding before a diocesan court may appeal.
- (2) An appellant shall give written notice of appeal from a judgment or order of a diocesan court or of the president thereof within 30 days from the date such judgment or order is pronounced. The notice shall be given to such persons and in such manner as are prescribed by the rules of the Court.
- (3) The Court may, on motion, dismiss an appeal that is frivolous or vexatious or otherwise an obvious abuse of the process of the Court.

7. Sittings

The Court may sit in any diocese in the Province at such time and place as the President of the Court directs.

8. Assessors

- (1) The Court, or the Metropolitan in the exercise of initial jurisdiction, shall be advised by at least two assessors.
- (2) The Chancellor of the Provincial Synod shall be one of the assessors unless he or she is or has been involved, or has an interest, in the case.
- (3) The other assessors shall be chancellors or vice-chancellors of dioceses in the Province.
- (4) The Metropolitan shall appoint the assessors.
- (5) If an assessor for any reason is unable to act or to attend a sitting of the Court or a

trial by the Metropolitan, the President of the Court or the Metropolitan may appoint a substitute assessor.

(6) No one who is or has been involved, or has an interest, in the case shall be appointed as an assessor.

(7) The assessors shall advise the Court or the Metropolitan on matters of law and procedure.

9. Judgment

(1) The Court shall hear and dispose of a matter within one year from the date on which the Metropolitan appoints the members of the Court.

(2) Before delivering judgment on an issue involving a question of doctrine the Court shall refer the question to the bishops mentioned in paragraph 1(1)(a) of the Constitution of the Provincial Synod and shall consider the opinions of the bishops who reply within two months after the question is referred to them.

(3) Subject to any right of appeal conferred by the Canons of the General Synod, the judgment of the Court is final and conclusive in respect of all matters in question in the proceeding.

10. Rules

(1) The Provincial Council may make rules with respect to the appointment and duties of officers of the Court, the practice and procedure of the Court including the procedure for the hearing of interlocutory

matters, and all other matters necessary to give effect to the provisions of this Canon.

(2) Until such rules have been made the Rules of The Supreme Court of Appeal for The Anglican Church of Canada shall be followed to the extent that they are applicable.