PROVINCIAL TRIBUNAL
ANGLICAN CHURCH IN NORTH AMERICA

Bishop Stewart Ruch, III,

Petitioner,

v.

Archbishop Foley Beach,
Bishop Todd Hunter,
Bishop Kenneth Ross, and
Bishop Charles Raymond Gillin,

Respondents.

DECISION & ORDER

PT-2023-1

INTRODUCTION AND SUMMARY

This Tribunal is here ruling on the Respondent Archbishop's Motion to Dismiss and Disqualify filed on March 25, 2023, which makes the following five separate motions:

1. whether four of the seven seated members of the Tribunal must recuse themselves;

2. the disclosure of alleged *ex parte* communications between certain members of the Tribunal and parties to this case;

3. whether the Tribunal has authority to issue a stay over a Board of Inquiry when an action is pending before this Tribunal;

4. whether this Tribunal has jurisdiction over Counts I and II (defined below) brought by Bishop Stewart Ruch III; and

5. whether Bishop Ruch's Amended Petition should be dismissed for failure to state a claim upon which relief can be granted.[1]

To avoid any misconceptions about the Tribunal's ruling, we want to make clear: This Tribunal is not addressing the merits of the accusations against Petitioner Bishop Ruch. This Tribunal is not addressing the investigation of those accusations for the reasons

[1] The Motion to Dismiss and Disqualify characterizes itself, in part, as the equivalent of a U.S. Federal Rule 12(b)(6) motion to dismiss but does not conclude with a request to dismiss for failure to state claim upon which relief may be granted. *See* Motion to Dismiss and Disqualify at 1. We nevertheless construe pleadings to give effect to their apparent intent.

stated below. In this Decision & Order, the Tribunal is only addressing the issues raised by the Motion to Dismiss and Disqualify, addressing a matter in dispute under our original jurisdiction,[2] a narrow matter in dispute under Canon IV.4.1: whether the presentment of Bishop Ruch, which triggered the empanelment of a Board of Inquiry, meets the requirements of Canon IV.4.1.[3]

The following is a summation of the unanimous holdings of the Tribunal.

1. The motion to disqualify is DENIED. The standard of recusal most appropriate for this body is that of the "fair-minded and informed observer" standard which exists in UK domestic law, followed in Canadian law and is used in ecclesiastical courts in the Church of England. The decision whether to recuse a member of the Tribunal, following this standard, is an individual decision. Each of the individuals concerned will make their own decision communicated in a brief concurring opinion, bearing in mind that each Tribunal member is ultimately responsible to God for their decision and the oath they have sworn.

2. The motion to disclose communications is DENIED. The Respondent has not alleged any factual basis and his motion is merely speculative. In addition, there is no basis in law for litigants to interrogate Tribunal members with respect to their interactions. Moreover, this motion assumes a basic mistrust in encounters in ACNA gatherings that is not in keeping with Christian brotherly fellowship. We leave it to individual Tribunal members and parties to this case to refrain from speaking with one another about these issues while the case is ongoing.

3. The motion to set aside the Stay Order is DENIED. All adjudicative bodies have the inherent authority to issue *ex parte* orders to uphold the principles of fairness, due process and natural justice in circumstances in which the delay in the notice would result in harm or there is a concern that the other party will act improperly or irrevocably. Given the gravity of continuing with a presentment and board of inquiry that were potentially canonically invalid and the potential of irreparable reputational harm to either Bishop Ruch, the Archbishop or the Province, the Tribunal decided that it was in the best interest of the principles of fundamental justice and procedural fairness to preserve the status quo by issuing a stay order.

4. The legislative history and context of the creation of the Provincial Tribunal indicate that the grant of original jurisdiction to hear matters of dispute arising from the Canons and Constitution had very clear beginnings and a clear goal.

---

[2] ACNA Constitution, Art. XI, § 1; Canon IV.5.4.1.

[3] The requirements for a presentment of a bishop require that, "[s]uch charges shall be in writing, signed and sworn to by all the accusers and shall be presented to the Archbishop, the Archbishop's delegate, or the College of Bishops. The grounds of accusation must be set forth with reasonable certainty of time, place and circumstance." Canon IV.4.1.

i. Count I: The motion to dismiss for lack of subject matter jurisdiction is DENIED. It ignores the plain and grammatical sense of Canon IV.5.4.1. To allow a potentially invalid presentment to go forward and only allow its validity to be challenged on appeal after all the steps of the process, including a conviction, have been completed does not reflect the values of due process and fundamental justice which are foundational concepts enshrined in the Canons. Determining whether a presentment meets the canonical requirements is squarely within the jurisdiction of the Tribunal.

ii. Count II: We do not directly address the motion to dismiss for lack of subject matter jurisdiction for Count II. On the facts, this Tribunal is not the appropriate venue to challenge evidence that is elicited by the investigation at this point in the process. Much like in a criminal trial, the proper place to challenge the evidence elicited by the investigation is a trial court or on appeal from the trial court's verdict. We do not address whether this issue could be heard on an interlocutory appeal as this question is not before us.

5. The motion to dismiss for failure to state a claim is DENIED. It does not appear on its face that the Presentment and Addendum meet the requirements under Canon IV.4.1, since the Presentment was not sworn to by any of the three Respondent Bishops. The addition of the Addendum raises further questions. This gives the Tribunal adequate reasons to deny the motion and to maintain the Stay Order until the merits have been brought before this Tribunal and both parties adequately heard, or until the parties have resolved this issue on their own.

The Constitution of the Anglican Church in North America established this Provincial Tribunal as the highest adjudicatory body of the Province. Its jurisdiction is set forth in the Constitution and Canons. In establishing this Tribunal, the framers of the Constitution established a court to, amongst other things, check the actions of other parts of the Province should they take actions that violate the Constitution or Canons. Archbishops, bishops, chancellors, and the other bodies and officers of the Province are not a law unto themselves. The law which governs the actions of the Province is the Constitution and Canons. This Tribunal is designed to be the final interpreter of the meaning of the Constitution and Canons.

We address first the sources of authority that bind this Tribunal. We are bound first and foremost by the Word of God in the Old and New Testaments, which requires we be above reproach, to pursue justice, and to be leavened by love. We are bound before God, before the members of this Tribunal, and before our brothers and sisters in Christ by the oath we each individually took the first time this Tribunal met in conference. The oath states as follows:

> I do believe the Holy Scriptures of the Old and New Testament to be the Word of God and to contain all things necessary for salvation through Our Lord Jesus Christ and I do solemnly swear that I will faithfully uphold the Constitution and Canons

> of the Province of the Anglican Church in North America consistent with the requirements, demands and directions of Holy Scripture and that I will faithfully and impartially carry out my duties as a member of the Provincial Tribunal of the Province to the best of my ability, so help me God.

While such oaths may mean little in a cynical world today, they hold tremendous weight to the members of the Tribunal. Our Lord said, "Let what you say be simply 'Yes' or 'No'; anything more than this comes from evil" (Matt 5:37). For a people for whom an oath is a solemn thing, the oath this Court has taken matters. We are bound before God to fulfill this oath. Here, we say "yes" to upholding the Holy Scriptures, the Constitution and Canons of the ACNA, and the Rules of Procedure of this Tribunal in a faithful and impartial way.

This matter being a case of first impression, and the first case filed with the Provincial Tribunal, it is incumbent upon this Tribunal to articulate the reasons clearly and fully for its findings and order.[4] We begin with a detailed recitation as to how this case arose, and the steps which led to the current controversy.

PROCEDURAL HISTORY OF THE PRESENTMENT AND MOTIONS

Three diocesan ordinary bishops of the Province, respondent bishops in this proceeding, Bishop Todd Hunter, Bishop Kenneth Ross, and Bishop Charles Raymond Gillin, have their names appearing at the end of a nine page, two count document which has the title PRESENTMENT brought against The Rt. Rev. Stewart Ruch III (the "Presentment"). This Presentment charges Bishop Ruch with Habitual Neglect of the Duties of the Bishop's Office in Violation of Canon IV.2.10 and Conduct Giving Just Cause for Scandal or Offense in Violation of Canon IV.2.4. The Presentment has the digital names of those three respondent bishops, dated December 22, 2022 for Respondent Bishops Raymond Gillin and Kenneth Ross, and dated December 23, 2022 for Respondent Bishop Todd Hunter (collectively, the "Respondent Bishops").

In addition to this Presentment, the same Respondent Bishops issued a one-page document, with their digital signatures from December 24, 2022 and December 26, 2022, and which is titled "Addendum: Signing Statement" (the "Addendum"). The complete text of the Addendum is as follows:

> Given the overall weight of the Husch Blackwell report and the nine-page Presentment based upon the PIT's recommendation that was presented to us, we believe the process of adjudication should continue, even though we think there are some potential problems in the Presentment. We trust that the Board of Inquiry will revise the presentment where needed to be consistent with the ACNA canons, as well as only move forward with sections of the Presentment that meet the standards of reasonable grounds or probable cause for a trial as outlined in Canon IV.4.4 and Canon IV.4.6.
>
> In signing this Presentment, we do not presume guilt upon Bishop Ruch. Such a

[4] Principle 24, Sec. 12, *Principles of Canon Law Common to the Church of the Anglican Communion* (2d ed. 2022).

> judgement was not asked of us. We simply assert that the canonical process should continue. We believe this is the only way to have trusted, godly outcomes for Bishop Ruch and the various publics [sic] and stakeholders to which we owe an answer on these matters.

On January 31, 2023, the Chancellor of the Diocese of the Upper Midwest, attorney Charles Philbrick, Esq. delivered to the Provincial Tribunal's presiding officer, Bishop Julian Dobbs, a memorandum entitled a "Request for Declarations" (the "Request for Declarations") of that date which was signed by Bishop Ruch with his actual signature and Chancellor Philbrick's digital signature. This Request for Declarations challenged the legal validity of the Presentment and Addendum and asked this Tribunal for

> a declaration from this Provincial Tribunal that the "investigative process," including but not limited to the PIT, was non-canonical, contravened basic principles of fairness, and denied Bishop Ruch the process that was due, rendering the presentment invalid.

Chancellor Philbrick delivered to the Provincial Tribunal a February 2, 2023 supplement (the "Supplemental Request") to the January 31, 2023 Request for Declarations. These two documents alleged objections to the December 2022 Presentment and Addendum, arguing its invalidity under Canon IV.2, and seeking to have this Tribunal enjoin any board of inquiry from taking any action on the Presentment. We accepted this February 2, 2023 Request for Declarations as a petition of Bishop Ruch sufficient to begin the proceeding.[5]

The Provincial Tribunal met on February 4, 2023. As a way of maintaining the status quo while this dispute was resolved, this Tribunal issued *ex parte* the *Order of the Provincial Tribunal to Stay Proceedings of Any Board of Inquiry in the Matter of the Rt. Rev. Stewart Ruch III and Request to Archbishop to Communicate Such Order* (the "Stay Order") under the signatures of all seven members of the Tribunal which directed that

> all proceedings of any such Board of Inquiry selected by the Archbishop are hereby ORDERED STAYED pending our disposition of the January 31, 2023 Request for Declarations and the February 2, 2023 Supplement submitted by respondent Bishop Stewart Ruch III and his Chancellor.

The Stay Order was meant only to delay the seating, investigation and review of the Board of Inquiry until the Tribunal could determine whether it has jurisdiction over the substantive issues raised by the Petitioner and, if Tribunal has jurisdiction, rule on the causes of action asserted by the Petitioner. Thereafter, on February 15, 2023, Chancellor Philbrick, representing Bishop Ruch, filed with the Tribunal an *Amended Petition for Declarations* ("Amended Petition") of that date and thereafter served it along with a summons on all of the respondents captioned in this proceeding. Per the Rules of Procedure, the Respondents had 30 days in which to serve responsive

[5] *See* Rule 5(c)(3), "Pleadings are to be plain and concise. No technical forms of pleadings or motions are required."

pleadings to Bishop Ruch's papers. The Amended Petition pleads the following causes of action:

- whether the presentment of Petitioner Bishop Ruch satisfies the canonical requirements of Canon IV.4.1, and dismissing the presentment if it does not and enjoining the Archbishop from submitting the presentment and addendum attached thereto to a Board of Inquiry ("Count I"); and

- whether the investigative process of the Provincial Investigative Team, which led at least in part to the presentment against Bishop Ruch, was conducted in a manner inconsistent with the Canons and the norms of natural justice, fairness, and due process under Canon IV.5.7 ("Count II").

The Tribunal issued a scheduling order which calendared the filing of papers in the case. Respondent Archbishop Beach by his counsel Chancellor Scott Ward did not file an answer to the Amended Petition of Bishop Ruch, but instead filed on or about March 25, 2023 the undated Motion to Dismiss and Disqualify.[6] Bishop Ruch filed a timely answer dated April 4, 2023 to respondent Archbishop Beach's Motion to Dismiss and Disqualify.[7] Bishop Ruch's filing opposes the Motion to Dismiss and Disqualify but made no cross-motions. The three Respondent Bishops, whose digital names are on the Presentment and Addendum as signers, have neither appeared nor answered, and they have not moved or filed any papers in this proceeding. They were, however, all served or waived service upon receiving copies of the summons and Amended Petition of Bishop Ruch.

The Tribunal previously urged the parties to consider settling their disputes in this matter (Matt 5:25).

---

[6] Chancellor Ward's filing references "Provincial Officers," and mentions "the Dean of the Province, the Dean of Provincial Affairs, and two of the Chancellors of the Anglican Church in North America." The two bishops who hold positions as "Dean of the Province: and "Dean of Provincial Affairs" are not attorneys, and they are not purporting to represent Archbishop Beach in this proceeding. Their names attached as signers appears to be a showing of their support for the Archbishop's motions. They are not proper parties nor proper signers to the Motion to Dismiss and Disqualify.

Both Chancellor Ward and Vice-Chancellor Garrety are attorneys, and are both representing the archbishop, and are thus proper signers to the Archbishop's Motion to Dismiss. The filing of Chancellor Ward on behalf of Archbishop Beach is stated to be a "Special Appearance by Archbishop Beach and Provincial Officers." Each and every one of the 38 pages of Chancellor Ward's motion has that printed at the bottom of each page, and mention is made in the text of the motion of this "special appearance," plus he raised this at oral argument. The motion seeks the status of a "special appearance," which is not recognized in US law under the Federal Rules of Civil Procedure. We as the Provincial Tribunal decline to recognize special appearances and deem the appearance of respondent Archbishop Beach to be a general appearance in this proceeding. This is especially so given that the Archbishop's motions are for many things other than for *in personam* jurisdiction.

[7] Chancellor Philbrick being an attorney is representing Bishop Ruch in this matter. However, the Presentment and Addendum being challenged by Bishop Ruch is against Bishop Ruch only, and not against Chancellor Philbrick. Chancellor Philbrick is not mentioned in the Presentment and Addendum. As such we have here amended the caption of this proceeding to strike Chancellor Philbrick from the caption. He is counsel for his bishop client and not a proper petitioner.

The Tribunal set the Motion to Dismiss and Disqualify for oral argument, and oral argument was held on May 12, 2023, with Chancellor Ward arguing on behalf of Archbishop Beach and Chancellor Philbrick arguing on behalf of Bishop Ruch. The three Respondent Bishops were notified of the oral argument and given the opportunity to appear either *pro se* or by counsel but appeared neither themselves nor by counsel. The Tribunal thereafter met and issued this decision and order.

RECUSAL OF MEMBERS OF THE TRIBUNAL

Respondent Archbishop Beach challenges the impartiality of four of the seven members of the Tribunal, arguing that all four should be recused from hearing this case. The Archbishop suggests that alternates fill the positions of the members he seeks to disqualify.[8] Recusal being the determination of individual judges and not a matter for a court panel to decide, we as a Tribunal will not address individual Tribunal members' recusals. We do, however, take note that the four challenged members of this Tribunal have written separately to address those challenges. Nevertheless, we set forth here the standards individual Tribunal members use to determine recusals.

First, there is no higher authority over a Tribunal member's recusal, except God alone, His Scriptures and the Constitution and Canons. Whether to recuse is an individual Tribunal member's decision, reviewable only by a higher court, and there is no higher court than the Tribunal. Leviticus 19:15–16 says, "You shall do no injustice in court. You shall not be partial to the poor or defer to the great, but in righteousness shall you judge your neighbor. You shall not go around as a slanderer among your people, and you shall not stand up against the life of your neighbor: I am the Lord." The Tribunal is to be neutral toward the parties before it and to decide their cases on the basis of the law, not personal bias or public pressure. The *Principles of Canon Law Common to the Church of the Anglican Communion* articulate the principle that, "Judicial and other members of church courts and tribunals … are to exercise their office impartially, without fear or favour."[9]

---

[8] There is no provision for alternates for the Provincial Tribunal, but there is for the Court for the Trial of a Bishop. *Compare* Canon IV.5.2(2) *with* Canon IV.5.4.2. Under the canon of interpretation of *expressum facit cessare tacitum* ("What is expressly done causes the invalidation of what is silent"), when something is stated explicitly in a legal instrument, any matter omitted is presumed to have been omitted intentionally. By implication, the absence of a mechanism to elect and seat alternates on the Tribunal is an intentional omission. Therefore, there is no authority for the Provincial Council or any other body to appoint alternates for the Provincial Tribunal, and no alternates could be seated in the event of recusal. This is a legislative gap, and we will not fill it. The task of legislating is left to the Provincial Council and Provincial Assembly, not to us. Any other interpretation would effectively grant the Province plenary powers to take any actions not *explicitly* prohibited by the Constitution and Canons. Such an outcome is foreclosed in the Constitution, Article VII, § 1:

> The member dioceses or networks … and those dioceses banded together as jurisdictions shall each retain all authority they do not yield to the Province by their own consent. The powers not delegated to the Province by the constitution nor prohibited by this Constitution to these diocese or jurisdictions, are reserved to these dioceses or jurisdictions respectively.

[9] Principle 24, Sec. 7, *Principles of Canon Law Common to the Church of the Anglican Communion* (2d ed. 2022).

ACNA Constitution provides,

> There shall be an ecclesiastical court of *final decision* to be known as the Provincial Tribunal consisting of seven members, both lay and clergy, who shall be appointed by the Provincial Council on such terms and conditions as determined by canon. The jurisdiction of the Provincial Tribunal shall be to determine *matters in dispute arising from the Constitution and Canons of the Province* and such other matters as may be authorized by canon.[10] (emphasis added)

There is no question, that this Tribunal, much like the Supreme Court of the United States or the Supreme Court of Canada, is the court of final decision in the ACNA. There are no explicit procedures in the Constitution, the Canons, or the Rules of Procedure with respect to recusals.[11]

The Respondent's advocacy for the adoption of United States federal statutory standards or federal codes of judicial conduct for recusal of federal judges is misplaced.[12] Such secular standards assume a basic mistrust that is not in keeping with the brotherly fellowship of members of the Church. On the other hand, the Scriptures make clear that we are all flawed and fallen human beings, "for all have sinned and fall short of the glory of God" (Rom 3:23). Some standards are necessary to guide each Tribunal member's individual assessment of his or her impartiality.

We believe that the standards under UK civil law are somewhat more compelling with respect to recusal than U.S. law, not least because the UK law discussed here has direct bearing on recusals in ecclesiastical trial courts in the Church of England. "To insist upon sitting when there is real ground for doubt does a disservice to the critic: to recuse oneself because one is too ready to admit real ground for doubt does a disservice to the critic's opponents."[13] When there is actual or apparent bias there are grounds for recusal. Actual bias is an attitude of the mind that prevents the judge from making an objective determination of the issues that they have to resolve.[14] Apparent bias may be found where "the fair-minded and informed observer, having considered the

---

[10] ACNA Constitution, Art. XI, § 1 (emphasis added).

[11] The principles of natural justice apply, which entails that, "disqualification of an adjudicator will not be permitted to destroy the only tribunal with power to act." Geoffrey A. Flick, *Natural Justice: Principles and Applications* (London: Butterworths, 1979): 138–39; *see also United States v. Will*, 449 U.S. 200, 217 (1980) (28 U.S.C. § 455 does not alter the rule of necessity); ABA, Model Code of Judicial Conduct § 2.11 cmt. ("The rule of necessity may override the rule of disqualification."). If a majority is not present, the Tribunal cannot act. *See* Canon IV.5.7 ("Unless a higher standard is required by diocesan Canon for a Diocesan Trial Court, the affirmative vote of not fewer than a majority of the members of a Court shall be required for any determination by that Court."); Rules of Procedure, Rule 12(a) ("The affirmative vote of not fewer than a majority of the members of the court shall be required for any Judgment rendered."). Recusal of all four Tribunal members the Archbishop seeks to disqualify would be an impossibility.

[12] *See* 28 U.S.C. § 455; Motion to Dismiss and Disqualify at 23.

[13] *Ghadami v Bloomfield and others [2016] EWHC 1448 (Ch), at paragraph 17*.

[14] *Director General of Fair Trading v Proprietary Association of Great Britain & ORS [2000] 1 WLR 700, at paragraph 37*.

facts, would conclude that there was a real possibility that the tribunal was biased."[15] The "fair-minded and informed observer" is "the sort of person who takes the trouble to read the text of an article as well as the headlines … neither complacent nor unduly sensitive or suspicious."[16] Under Canadian law, we note,

> The onus is on the person alleging bias and the threshold for finding real or perceived bias is high. A real likelihood or probability of bias must be shown, and mere suspicion is not enough. There is a presumption that judges will fulfil their oath of office, which requires a judge to render justice impartially. All judges owe a fundamental duty to the community to make impartial decisions and to appear impartial.[17]

The fair-minded observer is not to be confused with the person making allegations of bias.[18] Whether a judge has previously dealt with other aspects of the litigation is not itself sufficient to impute bias to a judge.[19]

Finally, each Tribunal member is responsible for determining whether he or she should recuse himself or herself under the standards of actual or apparent bias set forth above. As the U.S. Supreme Court recently wrote, "If the full court or any subset of the Court were to review the recusal decisions of individual Justices, it would create an undesirable situation in which the Court could affect the outcome of a case by selecting who among its Members may participate."[20] We believe the same holds true for this Tribunal.

We, therefore, hold that recusal of Tribunal members is a determination best left to the individual determination of each Tribunal member in accordance with the standards set forth herein. It is not for the whole Tribunal to decide questions of recusal. The Archbishop's Motion to Disqualify is therefore DENIED.

---

[15] Lord Hope of Craighead in *Porter v Magill [2002] 2 AC 357, at paragraph 103*.

[16] *Herlow v Secretary of State for the Home Department [2008] UKHL 62, at paragraphs 2 and 39* (quotations omitted).

[17] *R v Shingatok*, 2018 NWTSC 58 at para. 16 (citing *S R. v. S. (R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 SCR 484). This case involved a criminal defendant seeking to recuse the judge who was his distant relative. The Court found that a reasonable and right-minded person would not believe he was biased. The judge especially emphasized his oath to duly and faithfully, to the best of his skill and knowledge, to execute the powers and trusts reposed in him. We note that the Northwest Territories is a remote region in Canada with a small population, more akin to the population and context of the ACNA than the one for which the U.S. Code was written.

[18] *See Harb v HRH Prince Abdul Aziz bin Fahd bin Abdul Aziz [2016] EWCA Civ 556, at paragraph 69.*

[19] *See Shaw v Kovac [2017] EWCA Civ 1028* (holding that two judges on a panel of the appellant's appeal were not required to recuse themselves even though they were previously involved in decisions that were adverse to her).

[20] U.S. Supreme Court, *Statement on Ethics Principles and Practices*, ln. 30–33.

DISCLOSURE OF ALLEGED *EX PARTE* COMMUNICATIONS

We are unaware of any *ex parte* communications about this case between the Tribunal members and the parties to this case. Respondent Archbishop Beach has not alleged any specifics in this regard, and this branch of his motion is merely speculative with no factual basis.

For the same reasons set forth, *supra*, on the matter of recusal of individual members of the Tribunal, we leave it to the individual Tribunal members and the parties to this case to refrain from speaking with one another about the substance of this case while it is pending. Tribunal members, the parties, and their counsel attend worship services and other ACNA gatherings, and there is of course, no issue with them speaking with or greeting one another at such gatherings. Moreover, there is no basis in the law for the litigants of a case or their counsel to interrogate Tribunal members about what they said and to whom. For the forgoing reasons, the Archbishop's motion to disclose communications is DENIED.

AUTHORITY TO ISSUE *EX PARTE* STAY ORDER

All adjudicative bodies, including the Tribunal, have the inherent authority to issue *ex parte* orders to uphold the principles of fairness, due process and natural justice. *Ex parte* orders are issued in exceptional circumstances. They are limited to situations in which the delay in the notice would result in harm or where there is a concern that the other party will act improperly or irrevocably if notice were given. *Ex parte* orders are issued to preserve the status quo for a short time before both parties can be heard by the adjudicative body.[21] *Ex parte* proceedings need not be held *in camera*, but where circumstances require, absent any provision in the Canons, Constitution or Rules of Procedure, can be. In this case, the Tribunal held an *in camera* session on February 4, 2023, to determine whether there were significant reasons to issue an order as requested in the Supplemental Declaration.

In this instance, the causes of action asserted by the Petitioner in the Request for Declarations challenged the canonical validity of the Presentment. Given the gravity of continuing the actions of a board of inquiry that were potentially invalidly constituted under the Canons and the potential of irreparable reputational harm to either Bishop Ruch, the Archbishop or the Province, the Tribunal believed that the issuance of an *ex parte* stay order was necessary to prevent any further harm from actions that any board of inquiry would take with respect to the Presentment pending the outcome of the Request for Declarations from this Tribunal.

At a minimum, the requirements of fundamental justice embrace the requirements of procedural fairness.[22] The factual context in which the Request for Declarations and Supplemental Request were made created a cause for concern that the principles of fundamental justice would not be respected and that any continuing action by any board of inquiry in this context could cause irreparable reputational harm to either Bishop Ruch, the Archbishop or the Province. If the work of any board of inquiry was allowed to continue before this Tribunal had the full opportunity to hear from both parties and to make a determination, any continuance of the seating, investigation

[21] *Ruby v. Canada*, 2002 SCC 75 at para 25.

[22] *R. v. Lyons*, 1987 CanLII 25 (SCC), [1987] 2 S.C.R. 309, at p. 361.

or review of any board of inquiry could result in a continuing trespass to the principles of fundamental and procedural fairness, which are Biblical principles vital to Christianity and the Constitution and Canons. In addition, such trespass could cause irreparable reputational harm to either Bishop Ruch, the Archbishop or the Province. Thus, in this instance, certain protections were unanimously deemed required by the members of the Tribunal to protect the principles of fundamental justice and procedural fairness to preserve the status quo as the Tribunal took the time to hear both parties.

Thus, after prayerful consideration, the Tribunal decided that it was in the best interest of our common Christian life and the principles of fundamental justice and procedural fairness to issue the Stay Order to preserve the status quo. The Tribunal is still of the opinion that the order is required until a decision on the merits of the causes of action asserted by the Petitioner can be issued. Thus, the motion to set aside the stay order is DENIED.

JURISDICTION OF THE TRIBUNAL

The Motion to Dismiss and Disqualify challenges the original subject matter jurisdiction of the Tribunal to hear and decide the case set forth in the Amended Petition. We begin with a brief summation of the legislative history behind the Tribunal's creation and jurisdiction.[23]

In 2008, the provisional Constitution and Canons for what was to become the ACNA were adopted. From 2008 to 2009, these documents were further refined through prayerful thought and discussion by the Governance Task Force. In 2009, these documents were adopted as the first Constitution and Canons of the Province.

The provisional Constitution first established the Provincial Tribunal as a "court of final decision," a court of review in the case of a conviction after the trial of bishops or clergy. However, in the course of their deliberation, the Governance Task Force decided that the jurisdiction of the Tribunal needed to be enlarged and added a grant of original jurisdiction to the Provincial Tribunal—paragraphs (2)(a), (b) & (c) in Canon IV.5.4.1—including original jurisdiction to hear and decide matters in dispute arising from the Constitution and Canons. Paragraph (2)(b) was added later in 2018.

Legislation is not drafted in a vacuum but rather is informed by the context of the time. The drafting of the ACNA Constitution and Canons are no exception. At the time when the first Constitution and Canons were being drafted, biblically faithful Anglican clergy in the Anglican Church of Canada and the Episcopal Church were subject to deposition, released from ministry and had licenses withdrawn by Bishops who misused, and in some cases, manipulated, the plain language of the disciplinary canons. There is evidence that in some cases, these events occurred in violation of due process, without any recourse or appeal to a court of final review. Archbishop Duncan, as he then was, convened the Governance Task Force. He and the framers of the documents had themselves been victims of these events. There is little doubt that these events and

[23] The legislative history is attached hereto as Appendix**:** Legislative History and Intent of Canon IV.5.4.1 and incorporated fully herein.

experiences were in the forefront of their deliberations as they were drafting the documents to govern the new Province. The intentional addition of a grant of original jurisdiction to the Provincial Tribunal, subsequently enlarged in 2018, goes well beyond the limited jurisdiction it was originally granted in the provisional documents and was the product of the deliberations between 2008 and 2009. This intentional addition of original jurisdiction is no mere accident; it was a carefully crafted jurisdiction to ensure that, should disciplinary action be required in the ACNA, those affected would not be left without recourse or appeal in case of a dispute regarding the interpretation of the words in the Constitution and Canons.

A. Tribunal's Original Subject Matter Jurisdiction

The Provincial Tribunal is established by the Constitution, and its jurisdiction is "to determine matters in dispute arising from the Constitution and Canons of the Province, and such other matters as may be authorized by canon."[24] The Canons further specify the jurisdiction of the Tribunal at Canon IV.5.4.1 to be

> (1) as a court of review in the case of a conviction after trial of a Bishop, Presbyter, or Deacon; and (2) as *a court of original jurisdiction: (a) to hear and decide matters in dispute arising from the Constitution and Canons of the Province*, (b) to hear and decide disputes between Dioceses, (c) to hear and decide appeals by a bishop pursuant to Canons I.3.3(d) and III.8.7(d) and (d) to issue nonbinding advisory opinions on issues submitted by the College of Bishops, the Provincial Council, or the Provincial Assembly. (emphasis added)

It is clear from any reading of the Constitution and this Canon that the Provincial Tribunal has several separate and distinct grants of jurisdiction. The first grant of jurisdiction comes from Article XI, § 1 of the Constitution, giving the Tribunal the power "to determine matters in dispute arising from the Constitution and Canons of the Province." That grant of jurisdiction to the Tribunal is echoed by Canon IV.5.4.1(2) which gives the Tribunal "original jurisdiction: (a) to hear and decide matters in dispute arising from the Constitution and Canons of the Province."

The other grant of jurisdiction on which Archbishop Beach focuses in his Motion to Dismiss and Disqualify is the canonical power of the Tribunal under Canon IV.5.4.1(1), which constitutes the Tribunal "as a court of review in the case of a conviction after trial of a Bishop, Presbyter, or Deacon." That is not the source of this Tribunal's jurisdiction in this case. This case, as filed by Bishop Ruch, seeks under Count I to have this Tribunal declare whether the Presentment and Addendum satisfy the canonical requirements of Canon IV.4.1, dismiss the Presentment and Addendum if it does not and enjoin the Archbishop from submitting the Presentment and Addendum to a board of inquiry. In addition, Bishop Ruch seeks, under Count II, a declaration that the investigative process of the Provincial Investigative Team, which led at least in part to the Presentment against Bishop Ruch, was conducted in a manner inconsistent with the Canons and the norms of natural justice, fairness, and due process under Canon IV.5.7. The first requires the Tribunal to interpret the Constitution and Canons and the canonical requirements for presentments

[24] Constitution, Article XI, § 1.

and boards of inquiry. Count I presents a purely legal question arising under the Constitution and Canons. We are required to determine whether the Presentment and Addendum meets the requirements of the Constitution and Canons. This is squarely within the jurisdiction of this Tribunal. Count II, for reasons discussed herein, has not been raised in the proper forum.

Unlike the jurisdiction granted for appeals by the Court for the Trial of a Bishop, which has only the Canons as the source of the Provincial Tribunal's jurisdiction, the jurisdiction here is based in the Constitution itself. The Canons elaborate and flesh out the jurisdiction of the Tribunal as set forth in the Constitution "to determine matters in dispute arising from the Constitution and Canons of the Province." Had Canon IV.5.4 not been adopted, this Tribunal would lack jurisdiction to hear appeals from the Court for a Trial of a Bishop, but it still would have the constitutional jurisdiction under the Constitution, Article XI, § 1.

Archbishop Beach argues that "[t]he Tribunal has jurisdiction only after a conviction in a trial court of a member of the clergy and only to act as a court of review reviewing the full record that was developed through the operations of the other canonical entities."[25] The Archbishop apparently takes the position that the enactment of the Canon making the Tribunal a court of review for decisions by the Court for the Trial of a Bishop somehow strips the Tribunal of its jurisdiction under the Constitution to resolve a dispute arising from the Constitutions and Canons. Clearly this is not so. No Canon can override a provision of the Constitution. Here, the Canons actually elaborate on the authority of this Tribunal offered by the Constitution. Canon IV, 5.4.1(2)(b) repeats the language of the Constitution whereby the Tribunal has the authority to "to hear and decide matters in dispute arising from the Constitution and Canons." If this is a matter in dispute arising from the Constitution and Canons, this Tribunal clearly has jurisdiction both under the Constitution, as buttressed by the Canons.

Next, Archbishop Beach argues that the Tribunal's actions contravene the text of Canon IV.5.3 because there is allegedly no "matter in dispute" within the meaning of Title IV.[26] The use of the term "matter in dispute" in the U.S. statutes, case law, and other sources is instructive, though not binding on us, with respect to the phrase's meaning.[27] The U.S. Supreme Court has defined "matter in dispute" at one point as, "the subject of litigation – the matter upon which the action is brought and issue is joined, and in relation to which, if the issue be one of fact, testimony

---

[25] Motion to Dismiss and Disqualify at 11. Such an interpretation would render Canon IV.5.4.1(2) mere surplusage. *See Marx v. General Revenue Corp.*, 568 U.S. 371, 392 (2013) ("statutes should be read to avoid superfluity"); *TRW Inc. v. Andrews,* 534 U.S. 19, 31 (2001) ("It is 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'"); *In re McBryde*, 120 F.3d 519, 525 (5th Cir. 1997) ("It is axiomatic that we must construe statutes so as to give meaning to all terms," and "we cannot accept" a construction that renders statutory text "mere surplusage."). As the U.S. Supreme Court's decision in *Marx* makes clear: "[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." *Marx*, 568 U.S. at 386.

[26] Motion to Dismiss and Disqualify at 13–15.

[27] The Archbishop cites Article III of the U.S. Constitution, which is instructive because it highlights the debates in the framing Article III of the U.S. Constitution and the countless ways in which "arising under" was construed by the various framers.

is taken…."[28] The Archbishop is correct that in some cases "matter in dispute" is used as a term of art, but it is an expansive and flexible term used in far more contexts than the Archbishop has cited in his Motion to Dismiss and Disqualify. He argues, "The relevant definitions and the widespread use in specific cases of the term "matter in dispute" make clear that a "matter in dispute" only exists when the issue has been joined between parties in an existing lawsuit."[29] "Matter in dispute" does not always involve joinder of issues to a pre-existing lawsuit. Sec. 11 of the Judiciary Act of 1789, for example, says "And [the U.S. District Courts] shall also have cognizance, concurrent as last mentioned, of all suits at common law where the United States sue, and the *matter in dispute* amounts, exclusive of costs, to the sum or value of one hundred dollars." Joinder is not referenced at all. It is also used in the Judiciary Act of 1789 to describe federal diversity jurisdiction, and it does so in the context of federal courts' *original* jurisdiction.[30] Taken in its plain and grammatical sense, "matter in dispute" may also be used synonymously with "the thing argued about."[31] It is also used in the context of arbitration agreements in which joinder of issue is irrelevant.[32]

Whether or not a presentment is brought illegally against a bishop of the Church is a "matter in dispute." Bishop Ruch claims that the Presentment and Addendum against him is illegal. Archbishop Beach claims that the Presentment and Addendum is legal. To decide who is correct requires a review of the Canons and an examination of the Presentment and Addendum. This seems to be precisely the sort of matter in dispute for which the Provincial Tribunal exists under both its constitutional authority and its canonical authority.[33] If this is not a "matter in dispute," it

---

[28] *Smith v. Adams*, 130 U.S. 167, 175 (1889).

[29] Motion to Dismiss and Disqualify at 14 (emphasis added). Joinder of issue "is a point in a lawsuit when the defendant has challenged some or all of the plaintiff's allegations of fact or when it is known which legal questions are in dispute—in other words, when both parties are accepting that the particular issue is in dispute the "issue is joined." Usually, this point arrives when pretrial discovery is complete." "Joinder of issue," Legal Information Institute, last updated June 2020. https://www.law.cornell.edu/wex/joinder_of_issue#:~:text=Joinder%20of%20issue%2C%20is%20a,is%20joined.%22%20Usually%20this%20point

[30] "[T]he circuit courts shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and the United States are plaintiffs, or petitioners; or an alien is a party, or the suit is between a citizen of the State where the suit is brought, and a citizen of another State." Judiciary Act of 1789, § 11.

[31] "matter" means "a subject under consideration" or "a subject of disagreement or litigation" or "something to be proved in law" (https://www.merriam-webster.com/dictionary/matter), and "dispute" means "a verbal controversy" or "quarrel." https://www.merriam-webster.com/dictionary/dispute.

[32] *See, e.g.*, American Arbitration Association, *Drafting Dispute Resolution Clauses: A Practical Guide* (2013): 27 ("matter in dispute" is used synonymously with "the thing the parties are arguing about").

[33] The proper U.S. analog is both the U.S. Constitution, Article III, Section 2, Clause 2 and 28 U.S.C. § 1251. The U.S. Constitution provides,

> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

U.S. Const. Art. III, § 2, cl. 2. The Supreme Court, prior to the passage of the Eleventh Amendment, exercised

is hard to imagine what one would be. When asked about this during oral argument, Mr. Ward declined to give any other examples which would be matters in dispute. Yet, on its face this case appears clearly to be such an example.

B. Count I of the Petition

The matter in dispute before us, and arising under the Constitution and Canons, is whether the Presentment fulfills the canonical requirements for a presentment under Canon IV.4.1.

Whether the formal requirements of a presentment are met, in terms of writing, signing, and swearing, is a narrow procedural issue but an important one and can be determined as a matter of law. The requirements for a valid presentment are clearly set forth in Canon IV.4.1. Whether the conditions precedent (i.e., a valid presentment) for empaneling a Board of Inquiry are met is similarly set forth in Canon IV.4.3. Whether the Archbishop should be enjoined from submitting this Presentment to a Board of Inquiry is a question implicating both Canons IV.4.1 and 3.

There is clearly a "matter[] in dispute arising from the Constitution and Canons of the Province" under Canon IV.4.1 and IV.4.3. Bishop Ruch contends that the Presentment and Addendum are invalid because they fail to meet the procedural requirements under IV.4.1, and therefore the Archbishop cannot legally submit them to a board of inquiry. While the Archbishop has not formally filed an answer in this case, the Archbishop has in his Motion to Dismiss and Disqualify and at oral argument disputed almost everything that the Petitioner has alleged, including whether this Tribunal has the jurisdiction to rule.[34]

This Tribunal does not here take upon itself the authority to determine whether Bishop Ruch committed any presentable offenses, or whether the allegations in the Presentment are meritorious. With respect to a bishop, when a valid presentment has been prepared in accordance with Canon IV.4.1, the investigation into charges and the determination about whether reasonable grounds exist for trial are properly within the authority of the Board of Inquiry. The Tribunal is not an investigative body, and it would be inappropriate for the Tribunal to usurp such investigative authority. In addition, we are not usurping the original jurisdiction of the Court for the Trial of a Bishop. If this case proceeds to a trial on the merits of the accusations in the Court for the Trial of a Bishop, we might one day be in the position of an appellate court for that lower court finding.

---

original jurisdiction in *Chisholm v. Georgia* because the state of Georgia was a party to the case. *Chisholm v. Georgia*, 2 U.S. 419 (1793). Original jurisdiction of the Supreme Court has also been invoked in *Texas v. New Mexico*, 462 U.S. 554 (1983) ("In recent years, we have consistently interpreted 28 U. S. C. § 1251(a) as providing us with substantial discretion to make case-by-case judgments as to the practical necessity of an original forum in this Court for particular disputes within our constitutional original jurisdiction. … We exercise that discretion with an eye to promoting the most effective functioning of this Court within the overall federal system.") (citing M*aryland v. Louisiana*, 451 U. S. 725, 743 (1981); *Ohio v. Wyandotte Chemicals Corp*., 401 U. S. 493, 499 (1971)).

[34] It is also in the interests of justice and the expeditious handling of potential presentments—a requirement of due process and natural justice—to challenge their validity before a trial is underway. To proceed to trial and conviction only to have the conviction overturned by this Tribunal because the formal requirements of the presentment have not been met is a supreme waste of judicial resources and more importantly, it would be a serious burden on the accused.

We do not do that here. We will only determine whether the Presentment and Addendum constitutes a legal presentment as required under the Constitution and Canons, whether the conditions precedent for empaneling the Board of Inquiry have been met, and whether the Archbishop should be enjoined from submitting the Presentment and Addendum to the Board of Inquiry. The Tribunal, therefore, has original subject matter jurisdiction over Count I.

The Motion to Dismiss for lack of subject matter jurisdiction is DENIED with respect to Count I.

C. Count II of the Petition

We view the issue raised in Count II like any issue that elicits evidence that is later used in a criminal trial. The proper place to challenge the evidence elicited by the investigation is a trial court or on appeal from the trial court's verdict.[35] We do not address here, as the issue is not before us, whether such an issue could be heard on an interlocutory appeal. While the Petitioner facially challenges the investigation itself, it is the evidence produced by the investigation that the Petitioner really seeks to exclude. That is a matter for the trial court, and if necessary, an appeal to this Tribunal. We will not engage in a vague, fact-finding mission to challenge two years of investigations with multiple reports. At oral arguments, Petitioner conceded that this issue could be argued as a pretrial motion in Court for Trial for a Bishop.[36]

CANONICAL ISSUE

The remaining issues upon Respondent's Motion to Dismiss and Disqualify, which this Tribunal faces, are twofold: (1) whether the Presentment against Bishop Ruch complies with the requirements of a presentment under Canon IV.4.1 which states that "Such charges shall be in writing, signed and sworn to by all the accusers...." and (2) whether the various statements made by the three accusing Respondent Bishops, when combined with the lack of a sworn statement by them, renders this Presentment to be in violation of the Canons of the Province.

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM – COUNT I

Since the Presentment was not sworn by any of the three Respondent Bishops, we find it to be lacking an essential element required by Canon IV.4.1. That key element is that "Such charges shall be in writing, signed and sworn to by all the accusers...." In this case none of the Respondent Bishops accusers swore to the truth of the allegations in the Presentment or the Addendum. This is a fact which is undisputed by all of the parties to this proceeding.

Some specification about the requirement that a presentment be signed and sworn by accusers is in order. Within secular legal contexts in the United States, in general, a sworn document, such as an affidavit, is signed and sworn in front of a witness (i.e., a notary public) who is legally authorized to administer oaths. The signer must swear that the statements contained in

[35] We leave to another day whether an interlocutory appeal to challenge such evidence is permissible.

[36] At oral arguments, when posed with the potential treatment of Count II described herein, Petitioner's counsel admitted that Count II could be treated this way and presented no argument against such treatment.

the sworn document are true and correct. An affidavit, for example, is "a statement reduced to writing and the truth of which is sworn before someone who is authorized to administer an oath."[37]

Moreover, the three Respondent Bishops all signed the Addendum, which further undercuts the Presentment in several respects. The three Respondent Bishops stated in the Addendum that,

> we think *there are some potential problems in the Presentment*. We trust that the Board of Inquiry will revise the presentment where needed to be consistent with the ACNA canons, as well as only move forward with sections of the Presentment *that meet the standards of reasonable grounds or probable cause* for a trial.... (emphasis supplied).

It thus appears that the lack of swearing was not a mere clerical oversight. Rather this addendum language seems to say that all three Respondent Bishops see "potential problems" with the Presentment which has their digital names but to which they did not swear. Further, the three Respondent Bishops appear to acknowledge that the Presentment as written does not "meet the standards of reasonable grounds or probable cause."

The three Respondent Bishops also stated in the Addendum that "[i]n signing this Presentment, we do not presume guilt upon Bishop Ruch. Such a judgement was not asked of us. We simply assert that the canonical process should continue."

This statement by the three Respondent Bishops appears to indicate three things. Firstly, they do not believe that Bishop Ruch did anything wrong or at least they do not wish to make a statement or judgment on his guilt or innocence. If the Respondent Bishops believed that Bishop Ruch's actions gave rise to a presentable offense, then they would not have qualified the statement to such an extent. Secondly, that others prevailed upon the three Respondent Bishops to sign this with the apparently misleading implication that "the canonical process should continue" even in the absence of the three accusers believing that Bishop Ruch did anything wrong. Thirdly, it appears from the Addendum that there are others who presented this to the three Respondent Bishops but did not ask of the three for any "judgment" concerning the wrongfulness of the person who was being accused of wrongdoing.

The Presentment itself contains the following statement:

> In making these Charges, the undersigned have considered documentation and other information, some of which was provided by the team appointed by ACNA Archbishop Foley Beach to investigate this matter, specifically the Rev. Travis Boline, Ms. Elizabeth Conkle, the Rev. Chris Culpepper, Mr. Alan Runyan, Esq., and the Rev. Deacon Lisa Schwandt (the "Provincial Investigative Team – UMW") with the assistance of law firms Husch Blackwell and Telios Law and other provincial representatives.

This statement is found on the first page of the nine-page Presentment before the details of the

[37] *Pfeil v. Rogers*, 757 F.2d 850, 859 (7th Cir. 1985).

charges. It appears that this Provincial Investigative Team (PIT) may have given the three accusing Respondent Bishops only "some" of the documentation from the investigation.

Given the careful way the Respondent Bishops have stated the above, it is perhaps no surprise that they did not swear to the truth of the allegations in the Presentment. It would seem that they acted with integrity in failing to swear to the truth of allegations to which they could not in good conscience swear. It looks not to be a clerical error or oversight, but rather to be a genuine concern by Respondent Bishops that this Presentment simply did not contain enough to charge a bishop of the church with canonical violations.

Respondent Archbishop Beach argues that in filing this proceeding that "Bishop Ruch and Mr. Philbrick are seeking to turn the investigative, Presentment, and Board of Inquiry processes under Title IV into a 'trial before the trial.'"[38] Not so. We agree with Archbishop Beach that it is not the job of the Tribunal to interfere with the investigative part of the case, as we have stated above. But when a valid presentment is delivered to a Board of Inquiry, the investigative stage has moved into the accusation stage. Even then, we may not intervene if the presentment is valid on its face in compliance with canonical requirements. Whether the grounds for the Presentment are strong or weak are not before us, nor should they be at this point. However, whether the Presentment against the Petitioner is a valid presentment under the Canons is properly before us.

Respondent Archbishop Beach has in his motion papers challenged the sufficiency of Petitioner Bishop Ruch's filing in this case. He has argued that the Amended Petition of the Petitioner has failed to state any cause of action for this court to address. His Motion to Dismiss and Disqualify is similar to such a motion in federal court under United States Federal Rules of Civil Procedure §12(b)(6), which he mentions in his motion papers. We as an ecclesiastical court are of course not under the United States Federal Rules of Civil Procedure, but Respondent has basically made here the equivalent motion, which is an appropriate motion. However, we find the motion to be without merit.

It does not appear on its face that this Presentment and Addendum meet the requirements for a presentment against a bishop of the Church under Canon IV.4.1. A presentment must be sworn by three accusing bishops who believe the facts of the presentment to be true and grounds for bringing church discipline against a bishop under Title IV of the Canons. This gives this Tribunal adequate reasons to deny Respondent's motion to dismiss for failure to state a claim.

One might question why we do not dismiss the Presentment given this facial defect which we have noted. Absent any cross-motion by the Petitioner to dismiss this Presentment, we shall not here do so. We think it improvident for us to do *sua sponte* that which the Petitioner has not by motion requested, even given the apparent defects in the Presentment as discussed, *supra*. Absent a motion clearly and directly challenging the Presentment and giving the Respondent notice of such a motion and opportunity to be heard, we take no action with respect to the Presentment,

[38] Respondent's Motion at 21.

except to deny the Respondent's motion to dismiss the Petition, and to continue the Stay Order pending further proceedings.

The motion to dismiss the Petition for failure to state a claim is therefore DENIED.

DECISION AND ORDER OF THE TRIBUNAL

The case shall move forward for further proceedings as set forth in the scheduling order of this Tribunal, subject to any changes in that schedule as hereinafter may be made. The deadline for the Respondent Archbishop to file an answer to the Amended Petition is June 15, 2023. The stay of any action on the Presentment issued by this Tribunal by order of February 4, 2023 is continued. The foregoing constitutes the decision and order of the Tribunal.

SO ORDERED

Dated: June 6, 2023

The Right Rev. Julian Dobbs, Presiding Officer, The Provincial Tribunal of the ACNA

The Rev. Canon Philip Ashey

Mr. Raymond J. Dague

The Rev. Michael Dearman

The Rev. Charles Erlandson

The Rt. Rev. Clark W.P. Lowenfield

Ms. Victoria Netten Huyer

Appendix: Legislative History and Intent of Canon IV.5.4.1

The Constitution and Canons of the Province were drafted by a body called The Governance Task Force of the Common Cause Partnership, whose Chair was the first Chancellor of the Province, Mr. Hugo Blankingship, Jr., Esq. On December 3, 2008, the Common Cause Leadership Council (acting as the Provincial Council for the Anglican Church of North America) adopted a Provisional Constitution and Nine Canons for the proto-Province. The Provisional Constitution first established the Provincial Tribunal as a "court of final decision" in Article XI:

ARTICLE XI: PROVINCIAL TRIBUNAL

> There shall be an ecclesiastical court of final decision to be known as the Provincial Tribunal consisting of seven members, both lay and clergy, who shall be appointed by the Provincial Council on such terms and conditions as determined by canon. The jurisdiction of the Provincial Tribunal shall be to determine matters in dispute arising from the Constitution and Canons of the Province and such other matters as may be authorized by canon.

The Governance Task Force met in Atlanta January 19-20, 2009, to continue work on the Constitution and Canons, including what is now Canon IV.5.4.1. During that session a Draft for Title IV canons on Ecclesiastical discipline were submitted on January 18, 2009, for discussion and approval. The Draft of then Canon IV.3.4 *Court of Review*, contained the following language:

> **Section 4** - *Court of Review*
> The Provincial Tribunal shall serve as a court of review in the case of a conviction after trial of a bishop, priest, or deacon.

In the beginning, the Draft canon limited the Provincial Tribunal's jurisdiction to review of a conviction after trial of a bishop, priest or deacon. In other words, the Draft canon at this time only addressed the *appellate jurisdiction* of the Provincial Tribunal. It was approved in this form by the Governance Task Force for further comment and review on January 20, 2009.

On March 29, 2009, a member of the Governance Task Force questioned the adequacy of draft Canon IV.3.4 under the general principles of canon law in that the draft canon did not establish norms for review, nor specify the subject matter of the review (merits? procedures? both?), nor the options the Provincial Tribunal has if it finds defects in such a review. He also raised the question of who would sit on the Provincial Tribunal.

The Governance Task Force reconvened on March 30-April 1, 2009, in Herndon, Virginia to receive and respond to this comment and many others on the January 20, 2009 Governance Task Force Draft Constitution and Canons. On April 3, 2009, the edited draft of the Canon IV.3.4 was renumbered Canon IV.5.4 and renamed *The Provincial Tribunal*, with the following addition of and new section on the original jurisdiction of the Provincial Tribunal (in italics):

Section 4 - *The Provincial Tribunal*

1. There shall be a Provincial Tribunal as provided in the Constitution of the Church. The Provincial Tribunal shall serve: (1) as a court of review in the case of a conviction after trial of a bishop, presbyter, or deacon*, and (2) as a court of original jurisdiction: (a) to determine matters in dispute arising from the Constitution and Canons of the Province; (b) to hear and decide disputes between dioceses; and (c) to issue nonbinding advisory opinions on issues submitted by the College of Bishops, the Provincial Council, or the Provincial Assembly.*

This language appears in Canon IV.5.4.1 in the April 6 Final Draft of Proposed Canons for publication, comment and review, and was subsequently certified as the text of the Canons of the Anglican Church in North America and ratified by the Provincial Assembly at its meeting at St. Vincent's Cathedral, Bedford, Texas, June 22, 2009.

The grant of original jurisdiction to the Provincial Tribunal was expanded at Provincial Council 2018, and ratified at Provincial Assembly 2019, by amendment to include a new ground to hear interlocutory appeals by the Archbishop from a declaration of incapacity by the Executive Committee, and by any diocesan bishop from a declaration of incapacity by a Standing Committee.[1] Accordingly, the language of the original jurisdiction of the Provincial Tribunal now reads as follows (in italics):

Section 4 - *Concerning the Provincial Tribunal*

1. There shall be a Provincial Tribunal as provided in the Constitution of the Church. The Provincial Tribunal shall serve: (1) as a court of review in the case of a conviction after trial of a Bishop, Presbyter, or Deacon; *and (2) as a court of original jurisdiction: (a) to hear and decide matters in dispute arising from the Constitution and Canons of the Province, (b) to hear and decide disputes between Dioceses, (c) to hear and decide appeals by a bishop pursuant to Canons I.3.3(d) and III.8.7(d) and (d) to issue nonbinding advisory opinions on issues submitted by the College of Bishops, the Provincial Council, or the Provincial Assembly.*

The intentional addition of a grant of original jurisdiction to the Provincial Tribunal in 2009, subsequently amended in 2018 to include interlocutory appeals by the Archbishop and diocesan bishops, goes well beyond the limited jurisdiction it was granted as a "Court of Review" of a conviction after trial in the First Draft (Jan 2009).

We need only look at the unfolding experience of Anglicans in North America at that time to understand the reasons for this grant of original jurisdiction. Biblically faithful Anglican clergy in the Anglican Church of Canada and The Episcopal Church were subjected to deposition for "abandonment of communion," released from ministry for "renunciation of Holy Orders" and licenses withdrawn by bishops who were misusing and even torturing the plain language of the Church's disciplinary canons. These abuses in Canada were documented by the Anglican Network

[1] ACNA Constitution and Canons at 33, n. 21, https://anglicanchurch.net/wp-content/uploads/2021/10/ACNA-Constitution-and-Canons-June-2019.pdf,

in Canada[2] and by The American Anglican Council.[3] In the Episcopal Church alone, three bishops and 237 clergy were deposed for "abandonment of the Communion of this church" under (then) TEC Canons IV.9 and IV.10 for simply transferring to another church within the Anglican Communion. In the case of the three TEC Bishops deposed (+William Cox and +John-David Schofield in March 2008; +Robert Duncan in September 2008) multiple violations of the language of the canon itself and its procedural requirements were documented.[4] In all cases, there was no "court of final review" available for such misuse of the TEC Title IV canons.

Another seven TEC bishops were "released from the obligations of all Ministerial Offices and deprived of the right to exercise the gifts and spiritual authority as a Minister of God's Word and Sacraments conferred in ordination," under (then) TEC Canon III.12.7, and clergy as well under TEC Canons III.7.8 and III.9.8 despite the canonically required letter of renunciation of Holy Orders, and frequently despite written statements by those released that they were emphatically not renouncing their Holy Orders.[5] During the drafting and review of Canon IV.5.4.1, the bishops so wrongfully released included +David Bena (Jan 2008), +Andrew Fairfield (Jan 2008), +Terence Kelshaw (Mar 2008), +Jack Iker (Dec 2008), +William Wantland (Jan 2009), +David Bane (May 2009) and +Edward MacBurney (May 2009). Again, in all cases, there was no "court of review" available for misuse of the Title IV canons by The Presiding Bishop and Bishops of TEC.

From this contemporaneous experience it is no wonder the framers of our Constitution provided for a "court of final review" in the Province for such conflicts over the interpretation and applications of the canons.[6] These were all "matters in dispute arising from" the canons of the Episcopal Church. Our framers were utterly deprived of such review by the absence of a court of final review in The Episcopal Church. It is significant that Archbishop emeritus Robert Duncan convened the Governance Task Force, that Bishop +Jack Iker served on it, and that Bishop +William Wantland (a renowned canonist in his own right) contributed to the drafting of our Constitution and Canons, including Canon IV.5.4.1.

In addition, we have record evidence that the wrongful deposition of clergy, their removal and deprivation of the ministerial office by bishops, without any recourse or appeal to a court of final review, was on the mind of Chancellor Hugo Blankingship himself between the first and the final draft of what is now Canon IV.5.4.1.[7] If that were not enough, we also have record evidence

---

[2] Published January 26, 2009 and forwarded by Bishop John Guernsey to Canon Phil Ashey on Monday, February 9, 2009 at 2:47 PM ET, and through Canon Ashey to the Governance Task Force on Monday, February 9, 2009 at 3:45pm ET.

[3] *The Episcopal Church: Tearing the Fabric of the Communion to Shreds (2012)* https://americananglican.org/wp-content/uploads/2015/09/Final-Tearing-the-Fabric-2012.pdf and *The Episcopal Church: Overbearing and Unjust Episcopal Acts* (2014) https://americananglican.org/wp-content/uploads/2014/02/TEC-Overbearing-and-Unjust-Episcopal-Acts-Feb-2010.pdf

[4] *Id*. at. 3-7

[5] *Id.* at 9-21

[6] ACNA Constitution, Article XI.

[7] Tuesday Feb 3, 2009 at 1:32pm ET from Hugo Blankingship to Phil Ashey "Phil, in your research did the AAC determine the total number of clergy defrocked for their orthodoxy? H." and Wednesday Feb 11, 2009 at 12:36pm

suggesting that he questioned whether the original jurisdiction of the Provincial Tribunal to issue non-binding advisory opinions on matters of dispute arising from our Constitution and Canons (Canon IV.5.4.1(c)) was enough.[8]

The laws of the Church are neither written nor interpreted in a vacuum.

In the case before us, the matter in dispute arising from the Constitution and Canons of the Anglican Church in North America includes this question: is the grant of "original jurisdiction" to the Provincial Tribunal under Canon IV.5.4.1 exercised only upon review of a conviction from the trial of a bishop, presbyter or deacon? Or is the grant of original jurisdiction just that—the right to an immediate review of a matter in dispute arising from the constitution and canons of this Province upon any one or more of the four grounds enumerated in Canon IV.5.4.1 before either a trial or a conviction? For all of the reasons of legislative intent, history and purpose enumerated above, and upon a plain and grammatical reading of the text that leaves no surplusage of words, we agree with Petitioner that he has the right under Canon IV.5.4.1 to bring this dispute arising from the requirements for valid presentments under Canon IV.4.1 before this Court.[9] Until this matter is resolved by this Court, there is no condition precedent under our Canons for the Archbishop to even empanel a Board of Inquiry.[10]

ET from Hugo Blankingship to Phil Ashey: "Our bishops and clergy were all ordained in an Anglican church claiming to be and recognized as legit member of the Communion. They are now attached to a legit Province or diocese of a legit member of the Communion. Most all have been deposed as having "abandoned" the Communion. That status is not recognized by the receiving "lifeboats" …"

[8] April 2, 2009 Memorandum from Hugo Blankingship by email to the Governance Task Force (CCP) Clean-up group and Title Team captains: "Here are some comments for your consideration…**Title IV** Canon 5, Section 4(1)I Do we want the opinions to be "non-binding" in every case? *Big issue" (emphasis added).*

[9] *See Marx*, 568 U.S. 371, 386 ("the canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme."). "[T]he canon against surplusage 'assists only where a competing interpretation gives effect to every clause and word of a statute.'" *Id.* (quoting *Microsoft Corp. v. i4i Ltd. P'ship,* 564 U.S. 91, 106 (2011)).

[10] ACNA Canon IV.4.1, 3*: "*The Archbishop upon receipt of a presentment under Section 1 or of a demand under Section 2 shall select a Board of Inquiry…"

PROVINCIAL TRIBUNAL
ANGLICAN CHURCH IN NORTH AMERICA

Bishop Stewart Ruch, III,

Petitioner,

v.

Archbishop Foley Beach,
Bishop Todd Hunter,
Bishop Kenneth Ross, and
Bishop Charles Raymond Gillin,

Respondents.

CONCURRING OPINION

PT-2023-1

CONCURRING OPINION
BY BISHOP JULIAN M. DOBBS, BISHOP CLARK LOWENFIELD,
RAYMOND J. DAGUE AND CANON PHIL ASHEY

We concur and join in the unanimous decision issued by the tribunal. We especially take note of the portion of our decision and order under the heading RECUSAL OF MEMBERS OF THE TRIBUNAL. As those to whom respondent Archbishop's counsel has directed some comments by name, we write here separately to address the suggestions to the effect that we four members of the Tribunal ought to recuse ourselves from this case and the motion to remove us styled as the "Move to Disqualify Them." We do not recuse ourselves for the reasons set forth in the unanimous decision and order of this tribunal, supplemented by the following reasons.

None of the four challenged members of this Tribunal have ever represented Bishop Stuart Ruch in his dispute with this investigation nor in his opposition to this presentment.

Respondent notes that one of the challenged members of this Tribunal, Raymond J. Dague, a New York attorney, is the attorney for two clergy who are canonically resident in the Diocese of the Upper Mid-West. He is also counsel for the Greenhouse Movement, which is part of that Diocese. The presentment which is the subject of this proceeding is against Bishop Stuart Ruch, and not against any of the clergy in his diocese, not against the Greenhouse Movement, and not against the diocese. To say that he must recuse in such a situation is akin to saying that a lawyer must recuse himself as a judge in any case involving the New York governor because he has previously represented people who are residents and citizens of New York State. If that were so, no New York lawyer could ever be a judge in New York in any case involving the governor.

Respondent challenges another two of the members on this Tribunal, Bishops Julian M.

Dobbs and Clark W.P. Lowenfield. Both of these bishops have a cordial and a pastoral relationship with Bishop Ruch. They also know the respondent Archbishop well, and interact with him regularly, as do all of the bishops of the church. ACNA is a small group, and many of the bishops interact with one another in pastoral ways. All of the bishops of the province have taken oaths of obedience to the Archbishop. By the same logic, any bishop could be claimed to have a conflict of interest, and hence ineligible to serve on this Tribunal. The judicial resources of this Province are quite small compared to the judicial resources of the United States or Canada. If judges could be as freely removed as respondent suggests, it would paralyze the Provincial Tribunal. The Constitution of the Province requires two bishops be members thereof. To remove all of the bishops damages the constitutional framework set up for this Tribunal.

Another member of the Tribunal, attorney Canon Phil Ashey, did canon law work for the Diocese of the Upper Mid-West to improve their canons. His client was the diocese, and not Bishop Ruch. Moreover, the allegations in this presentment are unrelated to the diocese and have nothing to do with the legal work he did for the diocese. This presentment alleges things against Bishop Ruch, and not against his diocese.

Respondent Archbishop cites 28 U.S.C. § 455 on recusal. While we as an ecclesiastical court are not bound by this provision of the United States statutes, comments on the US federal statues are perhaps in order since counsel has raised it arguing that the reasoning of the statute should be accepted by this Tribunal. But this statute deals solely with the determination of a judge to disqualify himself and has does not have any provision for the removal of a judge by any other means. Hence the "Motion to Disqualify" is not supported by this statute.[49] We likewise have declined to accept any motion to disqualify any member of this panel. It is not the role of a judicial panel to decide recusal, but is rather the decision of each judge on the Tribunal.[50]

It is curious that counsel asserts that judges of this Tribunal should be disqualified for alleged bias, but then declares that this rule does "not apply to those who have been participating in, overseeing, or managing the investigative and evaluative process."[51]

---

[49] The same is true for 28 U.S.C. § 144, also cited by respondent's counsel. *Id*. at 24, fn. 18. That statute is not applicable to our ecclesiastical court. But even if it were applicable, that statute provides only for self removal by a judge. The statute by its own language does not authorize any motion for removal of a judge.

[50] Recently in the United States there has been pressure for justices of the US supreme court to recuse based on allegations of bias. The Democratic majority leader in the senate invited Chief Justice Roberts to address the senate judiciary committee on this subject. In declining the invitation, the chief justice wrote a letter dated April 25, 2023 to the committee and included with his letter a three page Statement on Ethics Principles and Practices. The document noted several points. These points are not legally binding on our ecclesiastical court, are perhaps persuasive on account of the reasoning used. Recusal in the supreme court, the Statement notes, is necessarily different than in lower courts where when one judge recuses himself, another can be substituted. This cannot happen in the US supreme court. Recusal decisions for a court without alternates is necessarily more limited than for other courts which have provisions for alternates. If recusal were used in such a way, it could result in deciding a case by selecting the panel members who sit on the case. Recusal is not a matter of the court deciding, but rather the decision to recuse or not is left to the individual justices of the court. See, Statement at 2, lines 19-33.

[51] *See* respondent Archbishop's Motion to Dismiss and Dismiss at 24, fn. 17.

It is troubling that respondent Archbishop Beach seeks to disqualify four out of seven judges of this Tribunal, especially when it takes a majority vote of the Tribunal for any decision. If four judges were removed, it would be impossible for the Tribunal to act. While the court for the trial of a bishop has a canonical provision for alternates, the canonical provisions for this Tribunal omits any provision for alternates. That omission would seem to be deliberate, and not by accident, as the appendix to our opinion shows in the review of the legislative history for the adoption of the provisions in the canons for the Provincial Tribunal.

As such none of the four challenged members of this Tribunal have recused themselves from consideration of this case.

Dated: June 6, 2023

The Right Rev. Julian Dobbs, Presiding Officer, The Provincial Tribunal of the ACNA

The Rev. Canon Philip Ashey

Mr. Raymond J. Dague

The Rt. Rev. Clark W.P. Lowenfield