

**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
DISMISSING AMENDED PETITION AS
MOOT, DENYING MOTION FOR
SUMMARY JUDGMENT, DENYING IN
PART AND GRANTING IN PART
MOTION TO VACATE, AND
VACATING STAY ORDER**

PT-2023-1

The primary issue before us is whether the Tribunal continues to have original, as opposed to appellate, jurisdiction over this matter. A corrected presentment has been presented to the Archbishop that facially meets the requirements of Canon IV.4.1, and, which the majority of this Tribunal determines for reasons articulated below, supersedes the prior presentment. The majority also holds that this corrected presentment moots the “matter in dispute” raised in Count I of Bishop Ruch’s Amended Petition. While this Tribunal continues to have original jurisdiction over “matters in dispute” pursuant to Article IX.1 of the Constitution of the Anglican Church in North America and Canon IV.5.4.1(2)(a), as there is no longer a concrete “matter in dispute”, this Tribunal no longer has original subject matter jurisdiction over Count I. Therefore, Bishop Ruch’s Motion for Summary Judgment must be denied. There is accordingly no longer a reason to maintain the Stay Order, so the stay must be vacated as well.

We will not reconsider or vacate our earlier June 6, 2023 Decision & Order. No legally relevant basis has been provided to overcome the high bar for reconsideration. Until our June 6, 2023 Decision & Order is potentially superseded by the legislative process, our June 6, 2023 Decision & Order still stands. As support for these holdings, the Tribunal provides the following decision and order with respect to the parties’ requested relief:

JURISDICTION

The Tribunal has jurisdiction to hear and decide the matters contained in this Decision & Order pursuant to Article XI.1 of the Constitution of the Anglican Church in North America and Canon IV.5.4.1(2)(a) (“to hear and decide matters in dispute arising from the Constitution and Canons of the Province”); *see also* Decision & Order dated June 6, 2023, PT-2023-1.

PROCEDURAL HISTORY OF THE PRESENTMENT AND MOTIONS

On June 6, 2023, the Tribunal issued its Decision & Order on the Respondent Archbishop's Motion to Dismiss and Disqualify, denying several motions to dismiss and disqualify on various grounds. We ruled that Count II of the Amended Petition was not brought in the proper forum and was a matter better treated in a Court for the Trial of a Bishop because it raised evidentiary challenges. With respect to Count I, we held, amongst other things, that the Tribunal had original subject matter jurisdiction under Canon IV.5.4.1(2)(a).

On June 9, 2023, the Petitioner filed his Motion for Summary Judgment on Count I of the Amended Petition before the Respondent Archbishop had an opportunity to file an answer to the Amended Petition.

On June 13, 2023, the Tribunal granted the Respondent Archbishop a requested extension until July 6, 2023, to file an answer to the Amended Petition.

During the intervening period, on June 20, 2023, there was an amendment to the signature page of the Presentment, which now includes the sworn signatures of the three presenting bishops—Hunter, Ross, and Gillin (the “Respondent Bishops”). The signature page is attached hereto as **Schedule 1**.

During the College of Bishops' meeting in Plano, Texas, June 19-21, 2023, the College of Bishops proposed an amendment to Canon IV.5.4.1 to the Provincial Council. The amendment would limit the Tribunal's original subject matter jurisdiction in the disciplinary process. The amendment was approved by the Provincial Council on June 22, 2023, subject to continued study and refinement by the Governance Task Force.¹ The full text of the proposed amendment to Canon IV.5.4.1 is in red below:

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, **except in Title IV prior to the role assigned to it in clause (1) above**, (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.

¹ For a general, public account of Provincial Council 2023, see <https://anglicanchurch.net/provincial-council-and-college-of-bishops-2023-recap/>.

Following a June 29, 2023 status conference at which counsel for Bishop Ruch, counsel for the Respondent Archbishop, and Bishop Todd Hunter were present, on July 6, 2023, the Respondent Archbishop filed *The Archbishop and Provincial Officers of the Anglican Church in North America Motion to Reconsider, Vacate, and Dismiss* (the “Motion to Reconsider and Vacate”), which is the subject of this decision and order. On July 28, 2023, Bishop Ruch filed his Response to the Motion to Reconsider and Vacate.

DENIAL OF MOTION TO RECONSIDER AND VACATE THE TRIBUNAL’S DECISION AND ORDER

Reconsideration of an earlier order is an extraordinary remedy rarely granted. Secular law in our Province provides three grounds for reconsideration: (1) an intervening change in law; (2) new evidence becomes available; or (3) there is a need to prevent manifest injustice or correct a clear error of law.² These elements are useful, non-binding standards in considering a motion to reconsider. None of these elements are present here.

First, there has been no change in the law, as an amendment approved by the Provincial Council is not binding until it has been ratified by the Provincial Assembly.³ Therefore, the Archbishop’s arguments on this point fall short.

Second, there is no evidence—either with respect to the Presentment or to the Constitution and Canons—that has become available that would change our determination of subject matter jurisdiction. The subsequent correction of the Presentment was not undiscovered evidence in existence at the time of our ruling. Recent statements of opinion on the meaning of the Constitution and Canons are also not evidence of legislative history.

Lastly, there is no manifest injustice resulting from our earlier ruling, and the Archbishop has not pointed to one. We have given careful consideration over the preceding months to the

² See, e.g., *Max’s Seafood Cafe by Lou Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir.1999); *Seyoboka v Canada (Minister of Citizenship and Immigration)*, 2010 FC 488; *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, 1992 CanLII 84 (SCC), [1992] 1 SCR 62; *St. John’s (City) v. St. John’s International Airport Authority*, 2017 NLCA 21 (CanLII). The principle of non-retroactively, the *Charter of Rights and Freedoms Canadian Charter of Rights and Freedoms*, (s. 7, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11*), section 43 of the *Interpretation Act (R.S.C., 1985, c. I-21)*, which codifies the common law presumption that legislation is not intended to be applied in circumstances where its application would interfere with vested rights, and section 44 of the same Act generally prevents decisions from being vacated due to intervening changes in the law in Canada. See *Tran v. Canada (Public Safety and Emergency Preparedness)*, 2017 SCC 50; [2017] 2 S.C.R. 289.

³ Canon I.1.1 and Canon I.2.2 (“Matters not ratified [by Assembly] shall be returned to the Council for further consideration.”). The goal of the proposed amendment is threefold: (1) preserve the authority of the Archbishop and diocesan bishops in their respective disciplinary processes; (2) maintain the constitutional mandate of the Provincial Tribunal as the court of final authority in constitutional and canonical disputes; and (3) sustain the responsibility of individual dioceses and the Province to undertake disciplinary proceedings without threat of appeal or other judicial action before those proceedings have run their course. Press Release: ACNA Provincial Council and College of Bishops 2023 Meeting Report (June 30, 2023), <https://anglicanchurch.net/provincial-council-and-college-of-bishops-2023-recap/>.

Archbishop’s arguments before this Tribunal regarding the alleged error of the Tribunal with respect to the proper interpretation of the Canons. There is no manifest injustice arising from our earlier Decision & Order, and the arguments from the Archbishop are only indicative of interpretive disagreement. Therefore, we will not reconsider or vacate our Decision & Order that we had original subject matter jurisdiction over Count I of Bishop Ruch’s Amended Petition based on the plain meaning of the Constitution and Canon IV.5.4.1(2)(a).

I. The Proposed Amendment

The College of Bishops’ proposed amendment to Canon IV.5.4.1 and the Provincial Council’s vote to approve it has no present legal effect. The final proposed form of the amendment will be presented to the Provincial Council in 2024 for final approval before being presented to the 2024 Provincial Assembly for ratification. Until then, the amendment has no legal effect. Our earlier decision stands on the plain text of the Constitution and Canons.

While it may be prudent for a lower court to hear challenges to investigations and complaints about other procedural defects, the Tribunal’s jurisdiction is not discretionary: “The Provincial Tribunal *shall* serve: ... (2) as a court of original jurisdiction: (a) to hear and decide matters in dispute arising from the Constitution and Canons of the Province...”.⁴ A canonical, and possibly constitutional, amendment would be necessary to change that.

Additionally, even if the proposed amendment is ultimately ratified, it would not eliminate the Tribunal’s original jurisdiction to hear matters in dispute arising from the Constitution and Canons. It only creates an exception with respect to disciplinary matters under Title IV. In other words, our interpretation of the meaning of Canon IV.5.4.1 is still valid, relevant, and need not be reconsidered regardless of the ultimate outcome of the proposed amendment. The proposed amendment, if ratified by the Provincial Assembly, will not remove our ability to hear, as a matter of our original subject matter jurisdiction, other matters in dispute arising under the Constitution and Canons outside of Title IV disciplinary matters.

We note, additionally, that our June 6, 2023 Decision & Order includes other substantial matters such as standards for recusal and the affirmation of this Tribunal’s ultimate authority as the ecclesiastical court of final decision in the interpretation and application of our Constitution and Canons—including the interpretation and application of canons by any parties, including bishops, in the disciplinary process. These constitute additional grounds for denying reconsideration of our June 6, 2023 Decision & Order.

⁴ Canon IV.5.4.1 (emphasis added); *see also* Motion to Reconsider and Vacate at 4–5. The Tribunal has not received the full letter from Messrs. Blakingship and Stephens cited in the Motion to Reconsider and Vacate to provide context and is therefore unable to adjudicate whether the portion of the letter filed is an accurate representation of the full text of the letter.

II. Interpretive Problems

The Respondent Archbishop’s Motion to Reconsider and Vacate also proposes that non-public, un-filed statements of the members of a sub-committee of the Governance Task Force control the interpretation of Canon IV.5.4.1. However, even those statements that the Respondent Archbishop offers as evidence of the meaning of Canon IV.5.4.1 are not contemporaneous with its drafting. Rather, they were all offered in recent months—over a decade after Canon IV.5.4.1’s drafting. This is not legislative history. The Respondent Archbishop favors interpreting the Canons on the basis of the purported intent of a select few drafters to the exclusion of the plain meaning of the text.

There is no need for legislative history where there is no ambiguity in the canonical text. Among the Churches of the Anglican Communion the laws or canons of the Church should be interpreted by reference to their text and context. Church laws or canons are to be understood according to the proper meaning of their words, and the proper meaning of the words defining the jurisdiction of this court in Canon IV.5.4.1—“original jurisdiction”—is self-evident.⁵

To clarify any misconception and allay any alarm about the alleged lack of limits on the Court’s original jurisdiction under Title IV, the phrase “arising under the Constitution and Canons” is essential.⁶ It is not just any dispute that can come before the Tribunal but a dispute that actually has a basis in the text of the Constitution and Canons. In other words, there must be a textual “hook” for the “matter in dispute.” While the number of possible disputes under the Constitution and Canons may be numerous, they are not limitless. Here, the textual hook was whether a presentment needed to be signed and sworn to be valid and whether, absent that, there was a condition precedent for seating a board of inquiry.⁷ We denied the Respondent Archbishop’s motion to dismiss for failure to state a claim and for lack of subject matter jurisdiction precisely

⁵ Even if the language in Canon IV.5.4.1 were ambiguous with regards to our “original jurisdiction,” as Anglicans we do have recourse to analogous texts, the purposes and circumstances of the law, the mind of the legislator, the jurisprudence of church courts and tribunals, the opinion of jurists, the principles of canon law and theology, the common good and the practice and tradition of that church and of the church universal. *See The Principles of Canon Law Common to the Churches of the Anglican Communion*, 2d ed. (London: Anglican Consultative Council, 2022) at 24. As Petitioner Bishop Ruch observed “To the extent that legislative history may be considered, it is the official committee reports that provide the authoritative expression of legislative intent, not the stray comments by individual legislators’ on the floors of the House and Senate.” This is the substance of the legislative history this Tribunal offered in support of the clear and unambiguous language of Canon IV.5.4.1, and precisely what Respondent Archbishop has failed to offer. Therefore, we stand by our jurisdictional ruling in the June 6, 2023 Order & Decision. Our Decision & Order also includes the establishment of standards for recusals and *ex parte* communications, which would be vacated if we were to grant the Archbishop’s Motion to Reconsider and Vacate.

⁶ Canon IV.5.4.1(2)(a).

⁷ While this may prove inconvenient for bishops seeking to push forward disciplinary matters, the current construction of the canons at least serves as a means of ensuring that bishops follow the canons governing their respective jurisdictions. It is quite easy for the Tribunal to dismiss cases that do not present a matter in dispute arising under the Constitution and Canons.

because there were facts at least facially giving rise to a claim that was directly tied to the explicit text of the Canons.

Lastly, it is undisputed that the Tribunal was intended to serve as the final authority in constitutional and canonical disputes. It is also undisputed that the Tribunal serves as a check on the power of bishops who would seek to usurp authority under the canons, based on the historical context surrounding the deposition of numerous clergy exiting the Episcopal Church. If there is a disagreement about the Tribunal's final decision on a constitutional or canonical dispute, it is for the Provincial Council and the Provincial Assembly to change the Constitution or the Canons. None of the Respondent Archbishop's arguments would lead us to reconsider or overturn our June 6, 2023 Decision & Order.

BISHOP RUCH'S REMAINING CLAIM IS MOOT

The Tribunal's jurisdiction under Canon IV.5.4.1(2)(a) ("to hear and decide matters in dispute arising from the Constitution and Canons of the Province") may cease with the passage of time and change of circumstance, rendering the "matter in dispute" moot. Mootness is a corollary to the "matter in dispute" requirement under the Constitution and Canons because a claim is moot when there is no longer is a matter in dispute.

Count I sought the following relief:

[1] whether the presentment of Petitioner Bishop Ruch satisfies the canonical requirements of Canon IV.4.1, and [2] dismissing the presentment if it does not and [3] enjoining the Archbishop from submitting the presentment and addendum attached thereto to a Board of Inquiry.⁸

A presentment of a bishop under Canon IV.4.1 requires that the presentment must be (1) in writing, (2) signed and (3) sworn to by all of the accusers. It must (4) be presented to the Archbishop, his delegate, or the College of Bishops, and (5) the grounds of the accusation must be set forth with reasonable certainty of time, place and circumstance. Once all of these conditions precedent are met, the Archbishop then seats a board of inquiry to proceed with their inquiry under Canon IV.4.4.

The requirement to swear to a presentment is not a mere clerical nicety. It is a guarantee that those presenting a Deacon, Presbyter or Bishop believe that the facts contained in the presentment are true. The reason for the requirement is straightforward: serious accusations giving rise to discipline should have a basis in what accusers believe to be fact.

In this case we had a Presentment that raised serious questions. The Addendum, which the Respondent Bishops signed after their original signatures, cast doubt on the Respondent Bishops'

⁸ Amended Petition at 7.

compliance with the requirement to swear to the truth of the accusations in the Presentment. The Addendum states clearly,

In 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. We believe this is the only way to have trusted, godly outcomes for Bishop Ruch and the various publics and stakeholders to which we owe an answer on these matters.⁹

To say that one does not “presume the guilt” of someone after one has allegedly sworn to the facts in that Presentment raised a reasonable question—a matter in dispute—whether the Presentment had in fact been sworn to by Bishops Hunter, Gillin and Ross. Was it sworn or not? It cannot be both ways.

We treat the Addendum as part of the original Presentment; it is not, properly speaking, a separate document. It is a statement clarifying, and in addition to, the signatures already appended to the Presentment. An addendum is an addition to a finished document.¹⁰ In general, we interpret documents for the plain meaning on the basis of the “four corners” of the document to the extent there is no ambiguity, giving meaning to all of the provisions of the document. Documents incorporated by reference are still within the “four corners.” The Addendum clearly refers to “this presentment”, and therefore has its meaning in relation to the pre-existing Presentment and is not a separate document entirely.

This Tribunal was unable to address the merits of this issue since our Decision & Order on June 6 addressed various procedural motions raised by the Respondent Archbishop. After our decision, we directed both parties to address the merits of the matter in dispute raised by Petitioner, whether the Addendum nullified the requirements under Canon IV.4.1 for a presentment to be signed and sworn by the Respondent Bishops.

On June 20, 2023, between our Decision & Order on June 6 and the end of the meeting of the College of Bishops in Plano, Texas on June 21, there was an amendment to the signature page of the Presentment, which now includes the sworn signatures of the three Respondent Bishops—Hunter, Ross, and Gillin. The signature page is attached hereto as **Schedule 1**.¹¹

⁹ Addendum at ¶ 2, attached hereto as **Schedule 2**.

¹⁰ See, e.g., *Black’s Law Dictionary* 37 (6th ed. 1990) (“A thing that is added or to be added; a list or section consisting of added material”).

¹¹ We note that there is no statement on the signature page, no affidavit or sworn statement from the Respondent Bishops, nor any other facts before us that demonstrate the Addendum to the Presentment was withdrawn. Moreover, Respondent Bishops have not been represented in this matter. Bishop Hunter has appeared at only one status conference. The Respondent Bishops have been served with the Amended Petition and all motion papers, responses, and court orders. At no point have the Respondent Bishops provided a statement to the Tribunal about any of the matters in this case. The Respondent Bishops have provided no affidavit, sworn statement, or

As a result, the Respondent Bishops have now superseded their Addendum by including their sworn signatures to the Presentment. The June 20 amendment to the signature page is incompatible with the previous Addendum to the Presentment. It is not possible to swear to the facts in that Presentment, as is done with the amended signature page, and to maintain an addendum which states that the presenting bishops “do not presume guilt”. As the Addendum, or addition to the Presentment, is now incompatible with the amended Presentment, the Tribunal is of the opinion that the Respondent Bishops have now superseded their Addendum. By including their sworn signatures to the Presentment, which includes a presumption of guilt, the facts contained in the Presentment are now sworn to be true. In other words, the addition to the document (the Addendum) cannot stand with the amended document (the Presentment with amended, sworn signature page) and is thus superseded. With the Addendum superseded, all of the requests for relief in Count I have been mooted.

We respectfully disagree with the dissenting opinion’s position that because the Respondent Bishops have not explicitly withdrawn their Addendum by affidavit or otherwise there are persisting factual issues relevant to Bishop Ruch’s claim. By its own admission, the dissenting opinion agrees that the swearing defect has been corrected. As a result, it is impossible that the Addendum can still be in effect, which is the very reason for our ruling herein.

VACATING TEMPORARY STAY OF BOARD OF INQUIRY

There is no longer a basis to maintain the temporary stay of the Board of Inquiry that we issued on February 5, 2023. We no longer have original subject matter jurisdiction over this case because of the mootness of the remaining claims in the Amended Petition,

Bishop Ruch accuses the Archbishop of interfering with the previously-empaneled Board of Inquiry and requests that we maintain the stay pending an evidentiary hearing on such alleged interference. Bishop Ruch does not present more than speculations, and the Tribunal will not entertain them at this time after our jurisdiction to maintain the stay is gone. Bishop Ruch’s right to raise allegations and claims related to the Archbishop’s alleged interference with a Board of Inquiry are fully reserved and may be raised in the Court for the Trial of a Bishop in the event the Presentment reaches that court.

CONCLUSION

We note finally that, first and foremost, the survivors of abuse in the Diocese of the Upper Midwest have had justice delayed and uncertainty cast upon them by this dispute. They deserve an efficient and transparent process and closure insofar as that is possible. We pray that they receive justice in all respects. We have endeavored to be transparent in issuing our opinions and

representation to the Tribunal regarding their apparent change of heart with respect to the Presentment and Addendum. The Respondent Bishops, whose presentment has been at the center of this controversy, have been almost entirely silent about this whole affair. Nevertheless, the incompatibility between the amended and sworn signature page and the Addendum necessitates our ruling in this case.

as efficient as possible in resolving this matter while respecting the interests of the parties to this case. The Diocese of the Upper Midwest itself has an interest in the resolution of the presentment against their bishop and similarly finds itself in uncharted territory. Bishop Ruch also has an interest in a speedy resolution of the Presentment against him, but he is also—like all involved—entitled to due process protections afforded by the Canons. Finally, we note with respect to the Archbishop that he also deserves the clarifications needed to shoulder the heavy responsibility he bears to empanel a board of inquiry to evaluate whether the evidence in a presentment against a bishop meets the canonical threshold for going to trial. We hope this case is a cautionary tale about the importance of following procedure and of respect for the protections afforded to all parties by the Constitution and Canons.

ORDER

The Tribunal hereby orders that:

1. The Motion to Reconsider and Vacate is accordingly DENIED IN PART and GRANTED IN PART. The Tribunal will not reconsider or vacate its June 6, 2023 Decision & Order and such request for relief is DENIED. The Motion to Reconsider and Vacate is GRANTED in the following ways:
 - a. The remaining Count I of the Amended Petition is DISMISSED AS MOOT because the Presentment, with the amended signature page superseding the Addendum, meets the formal requirements of a Presentment under Canon IV.4.1;
 - b. The Motion for Summary Judgment is DENIED; and
 - c. The Stay Order is hereby VACATED, and the Archbishop shall empanel a board of inquiry and deliver the Presentment, with the amended signature page, to such board of inquiry.
2. Notwithstanding the foregoing, the Tribunal shall retain appellate jurisdiction with respect to any other issues or claims Bishop Ruch might raise in the Court for the Trial of a Bishop, including any issues or claims that the Presentment does not meet the requirements of Canon IV.4.1, if the underlying matter goes to trial.

IT IS SO ORDERED.

September 5, 2023.

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Joining in the Decision & Order of the Tribunal:



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



The Rev. Canon Philip Ashley




The Rev. Michael Dearman



The Rev. Charles Erlandson



The Rt. Rev. Clark W.P. Lowenfield



Ms. Victoria Netten Huyer

Concurring in part with respect to denial of the Respondent Archbishop's motion to reconsider and vacate the Tribunal's June 6 Decision & Order and dissenting in part with respect to the section entitled, "Bishop Ruch's Remaining Claim is Moot" and the Order dismissing Count I of the Amended Petition, denying the Motion for Summary Judgment, and vacating the Stay Order, which opinion is attached hereto.



Mr. Raymond J. Dague

Raymond J. Dague, hereby concurs in part and dissents in part from the majority opinion.

The majority gets it right in denying the motion of the archbishop to reconsider our June 6, 2023 decision. We articulated our reasons for that decision in the decision itself, and no grounds have been brought forth by the archbishop for changing that decision. This tribunal has original jurisdiction over this case, as declared in the constitution of the province, and that original jurisdiction continues.

The proposed amendment to Canon IV.5.4.1 which was adopted by the council of the province at its June 2023 meeting is just that: a proposed amendment. Until it is passed by the assembly, which will not meet until 2024, it has no effect at all. It is akin to the United States house of representatives passing a bill which has yet to be acted upon by the senate and signed by the president. It has no effect until it becomes law. Hence the action of the council in passing a proposed amendment which would change the jurisdiction of this court has no impact on this case.¹

The other argument advanced by the archbishop is what the archbishop's papers call "legislative history," which is claimed would change our June 6, 2022 decision. But the argument which counsel for the archbishop is not really legislative history, but rather a ten-year later argument of some saying that the plain text of the constitution and canons as to the jurisdiction of the provincial tribunal should be somehow ignored in favor of the view that the text does not say what it clearly says. The majority opinion rightly dismisses this so-called legislative history. It is nothing more than the current opinions of those who were involved in drafting the constitution and canons which created the provincial tribunal and give it the authority it has.

The majority opinion also correctly notes that the addendum to the presentment must be read together so as to be a single document. It should be read together with its addendum. The June 20, 2023 statement of the three bishops rectifies the lack of a swearing to the presentment when it and the addendum were signed by them in December of 2022. The majority correctly declares that the June 20, 2023 statement² of the three signing bishops to the presentment corrected this one defect in the presentment. I concur in this view. But the June 20, 2023 statement does not revoke the language of the addendum, hence that addendum is still part of the presentment. All the June 20th statement does is correct the issue of whether the presentment is sworn.

Yet, apart from the swearing of the document, there is another serious procedural defect in the

¹ It is also clear that an amendment to the canons, even if adopted by the assembly, cannot negate a provision in the constitution which gives this tribunal original jurisdiction over any matter involving a proceeding filed by a litigant which requires an interpretation of the canons of the province. But that question is likewise not before us, and will hence not be addressed here.

² That new statement dated June 20, 2023 declares in its entirety that "When I docu-signed" the Presentment, my intention was to swear to the charges of the Presentment. I, hereby, confirm my swearing to this Presentment." It bears the names and actual signatures of the three bishops who signed the original presentment, to wit, Bp. Chuck Gillin, Bp. Todd Hunter, and Bp. Ken Ross. It also has the signature of Archbishop Robert W. Duncan. See, Exhibit 1 to the motion filed by attorney Scott Ward, Esq.

presentment which contains the addendum.

As noted in our previous decision

[T]he 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.”³

The June 20, 2023 corrects the defect of the lack of swearing by saying that when they signed the presentment that they were swearing it. But it does not revoke the content of what they said in the addendum when they signed it.⁴ If anything, this addendum which is part of the presentment, now has greater force than it did before the June 20, 2023 statement, since it is now clear from that statement that it was a *sworn* statement, and not merely a casual statement.

³ Quoted from the June 6, 2023 decision of this tribunal in this case, p. 17.

⁴ The entire text of the Addendum to the presentment is here set forth, less only the signatures of the three bishops:

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 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 and stakeholders to which we owe an answer on these matters.

The reservations which the three bishops articulated in the addendum about the presentment are not revoked by the June 20, 2023 statement. Those reservations which they expressed are still part of the presentment and must be read with it. The issue of swearing may have been corrected by the June 20th statement, but this issue was not. Hence this case should not be dismissed upon these motions; and thus, the stay of proceedings before the board of inquiry should likewise not be vacated.

This issue, like the lack of swearing, goes to the form of the presentment to whether it complies with the canons, not to the merits of whether Bishop Ruch did anything for which he is liable to discipline. If the three bishops say they do not believe that they “presume guilt” of Bishop Ruch, but merely are going along with someone who asked them to sign to “assert that the canonical process should continue,” that is a serious defect. You don’t charge someone with a crime or an offense just to see the process continue, but rather because you believe that the offender did wrong. If that is not the case, this presentment is defective. The majority completely overlooked this point when they wrote in their decision that

The requirement to swear to a presentment is not a mere clerical nicety. It is a guarantee that those presenting a Deacon, Presbyter or Bishop believe that the facts contained in the presentment are true. The reason for the requirement is straightforward: serious accusations giving rise to discipline should have a basis in what accusers believe to be fact.⁵

The majority of this tribunal is correct when they say, “serious accusations giving rise to discipline should have a basis in what accusers believe to be fact.” But the majority has not followed their own statement. The three bishops signing the addendum did not revoke their reservations about what they believe. Their statement is rather the exact opposite of this when they say “[i]n signing this Presentment, we do not presume guilt upon Bishop Ruch.” The three bishops apparently still do not believe that Bishop Ruch did anything wrong, because this statement of theirs is not revoked. Rather they are simply asking that “the canonical process should continue.” Hence this presentment is still defective. It is not defective for the lack of swearing, but because the signers swore that they did not “presume guilt.” This point the majority of this tribunal completely overlooks, hence I dissent.

Moreover motions on papers should not decide these sorts of questions. If the addendum had been withdrawn by the three bishops, it would be another matter. But it was not. If it had been withdrawn, this procedural matter would be resolved, and the petition brought by Bishop Ruch before the tribunal would be dismissed on account of the facially valid presentment. But that did not happen. There remains questions of fact which cannot be decided between the parties on the filing of papers. Hence the motions of all parties here should be denied.

Where the majority also gets it wrong is where it says that “the primary issue before us is whether

⁵ Page 6 from the majority opinion.

the Tribunal continues to have original jurisdiction” in this case after the filing of a new statement by the three bishops whose digital signatures appeared on the presentment. It concludes that this court lost jurisdiction on account of this new statement rectifying the problem that the original presentment was not sworn. Not so. Once any court takes a case and accepts jurisdiction, that continues to the end of the case, irrespective of whether the court makes a different ruling on a second motion than the court did on a first motion. If a case is moot based on the filing of a new document, the court still has jurisdiction. That court, having jurisdiction over the matter should rule that the petitioner’s case should be dismissed because the intervening events now make it moot. But that is far different from depriving the court of jurisdiction over the entire matter. Mootness is a completely different legal doctrine than the doctrine that a court lacks jurisdiction. A court which lacks jurisdiction cannot declare a case moot; it lacks authority to say anything other than it lacks jurisdiction with the resulting dismissal for that sole reason. Sadly, this court does not understand that distinction, and this is likely to lead to confusion as other cases are filed in this tribunal.

The reasoning of the majority is correct when it declares that “[w]e will not reconsider or vacate our earlier June 6, 2023 Decision & Order” on the question of whether the provincial tribunal has jurisdiction. That decision and order declares, and rightly so, that the provincial tribunal has jurisdiction over the case where a bishop is subject to a defective presentment because such a presentment raises a serious canonical problem which Bishop Ruch has raised in his petition and in this motion. The majority is right to deny Bishop Ruch’s motion for summary judgment, because there is yet a question of fact as to what the three signing bishops meant when they signed the addendum. On its face, it looks that the three signing bishops were not convinced that Bishop Ruch did anything wrong. Hence, because of this procedural defect, the majority is wrong in granting the archbishop’s motion dismissing Bishop Ruch’s petition.

As such I CONCUR with the decision of the majority on all matters in denying the petitioner’s and respondent’s motions directed to vacating or reconsidering the June 6, 2023 decision of this court, even if I do not agree with all of the reasoning of the majority. I also CONCUR with the majority in denying Bishop Ruch’s motion for summary judgment. I respectfully DISSENT from the majority’s decision to grant respondent’s motion to dismiss the petition as moot, because the three signing bishops in their June 20, 2023 document have only corrected one of the two procedural defects in this presentment. It may be that upon further proceedings, the other procedural defect might be corrected, but that is not properly here before us because of the other defect in the presentment. Thus because I would not dismiss the presentment I also DISSENT from the decision of the majority to the stay directed to the board of inquiry for the reasons hereinabove set forth.

Dated: September 5, 2023

SCHEDULE 1

Signature Page

When I "docu-signed" the Presentment, my intention was to swear to the charges of the Presentment. I, hereby, confirm my swearing to this Presentment.

Bishop Chuck Gillin + Rt. Rev. R. Charles Dini

Bishop Todd Hunter Rt. Rev. Todd Hunter

Bishop Ken Ross + Rt. Rev. Ken Ross

Witness: + The Most Rev. Robert Duncan

Archbishop Robert Duncan

Date: 20 June, A.D. 2023

SCHEDULE 2

Addendum to Presentment

Addendum: Signing Statement

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 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 and stakeholders to which we owe an answer on these matters.

Raymond Gillin
Raymond Gillin (Dec 24, 2022 08:30 EST)

The Rt. Rev. Chuck Gillin
Bishop, Diocese of the Northeast and Mid-Atlantic (REC)

Dec 24, 2022

Date

Todd Hunter
Todd Hunter (Dec 26, 2022 07:35 CST)

The Rt. Rev. Todd Hunter
Bishop, Diocese of Churches for the Sake of Others

Dec 26, 2022

Date

Kenneth Ross
Kenneth Ross (Dec 24, 2022 15:49 MST)

The Rt. Rev. Ken Ross
Bishop, Diocese of the Rocky Mountains

Dec 24, 2022

Date