

Residential Schools Update #11—October 16, 2001

Archdeacon Jim Boyles, General Secretary

Indigenous Healing and Reconciliation Fund

Since the [last update \(June 2001\)](#), two new projects have been approved:

1. Kashechewan, a small community on the west coast of James Bay in the Diocese of Moosonee, requested financial assistance for Elders to attend the Moose Factory Residential School Conference in Moose Factory during the summer. This was the first conference for those who had attended Moose Fort School and Hordern Hall Residential Schools. Amount granted: **\$9,500**
2. Camp Knowles Society at Fort Qu'Appelle, Saskatchewan, operates an Anglican camp providing outdoor Christian camping for children. In recent years, the camp has evolved to the point where the majority of the participants are First Nations young people, with partners from the Pasqua First Nation and Touchwood Child and Family Services. The program activities have been geared to include the culture of the people in the context of a Christian camp. Amount granted: **\$2,600**

Donations to the [Indigenous Healing Fund](#) have flowed in steadily throughout the summer months. Many individuals, parishes and dioceses have contributed generously, for which we give thanks.

The Healing Response Committee of the Anglican Council of Indigenous Peoples (ACIP) will consider 15 new applications to the Fund at its meeting later this month. The total budget for the Fund is over **\$300,000** for 2001. ([See the summary of projects funded in 2001.](#))

Negotiations with Government

The Honourable Herb Gray, Deputy Prime Minister, announced to church representatives on June 1 that he had received a mandate from Cabinet to move the 'discussions' which had begun in September 2000 to 'negotiations', and that a new Office of Indian Residential Schools Resolution was being created. Mr. Jack Stagg was appointed Director of the Office (Deputy Minister). During the summer a series of four two-day meetings were held, and intensive work done by sub-groups between the meetings, mainly by conference call. Topics included: numbers of cases, estimated total liability, apportionment, alternative dispute resolution, role of survivors' groups and aboriginal organizations, access to archives and nature of church organizations in Canada.

At the end of the third meeting on August 17 the church representatives issued a statement that in their opinion no significant progress had been made and that they doubted whether Mr. Gray's mandate was broad enough to enable an agreement to be reached.

A further two meetings were held in September and the positions of both government and church were clarified. There remains a wide gap in understanding and in approach to an agreement, but the work continues. The ecumenical group (four representatives from each of the Anglican,

Roman Catholic and United churches and two from the Presbyterian church) will be meeting in late October, and further meetings with Mr. Gray and Mr. Stagg are contemplated.

On September 7, the eve of the fourth meeting, the government shocked negotiators by releasing surprise polling information to the press. Unknown to the churches, the polling, done in March and carried out by the polling firm of the Liberal Party, Pollara and Earncliffe of Ottawa, had been in the hands of the government since mid-June. Highlights of the polling, as taken from the pollster's report are:

"This is a high profile issue for most Canadians who are following the issue. They are genuinely interested in its progress and conclusion.

"Above all, they most care that responsibility is clearly delineated between the government and the church and that **both parties live up to their obligations** regardless, particularly for the churches, of the financial ramifications. This potential outcome is a source of anxiety for frequent churchgoers who understand the principle, but are nervous about the potential financial ramifications on the churches' viability.

"The issue poses some strategic problems for the federal government.

"Most people see the government as having responsibility; believe it should accept that responsibility and want it to deal fairly and generously with victims of a very serious crime.

"At the same time, **most Canadians also think that the government is not primarily responsible**, that many of the claims are not true and that financial compensation is not the most appropriate response.

"Most Canadians want the churches to pay **their full share of compensation** and believe **their viability would not be threatened fundamentally if they do so**. However, they find bankruptcy an unacceptable outcome.

"Financial concerns are much more pronounced among frequent churchgoers who want the government to be sensitive to the needs of the church".

In summary, the tack taken by the polling company, including the wording of the questions, together with the evident lack of understanding of the issues among those polled, has produced an outcome convenient to the government which is highly favourable in support of a "hard-line approach" in its negotiations with the churches. Since the polling was done in March, a significant court decision in the Blackwater case (see below) has set apportionment at 75% government, 25% church, a much more realistic sharing of responsibility, given the historic facts.

The Anglican negotiators - Robert Falby, Bud Smith, Larry Beardy and Jim Boyles - have consistently urged immediate action to reach a settlement in the light of the financial situations facing the Diocese of Cariboo, several other dioceses and the General Synod.

We have also emphasized the need for a comprehensive agreement so that Anglicans across the country can be assured that their donations are not used for litigation costs, but will support healing and reconciliation work in aboriginal communities, helping the people who have been damaged through years of government policy of assimilation. We continue to tell government that such an approach will yield much more funding than pushing the church organizations to the wall.

Alternative Dispute Resolution Processes

We are involved in three ADR projects, all in Saskatchewan as follows:

- **Kawakatoose Project.** This project was started over a year ago, but has stalled because the Oblates have withdrawn.
- **Quewezance Project.** This is a small project involving the 11 members of an extended family. Only one member of the family attended an Anglican-related school. The project has slowed because the lawyer for the survivors is very busy. The government is pressing us to contribute a percentage of the process costs, but we are resisting this, pending the outcome of the larger negotiations with Mr. Stagg's office.
- **Elmer Crane Project.** This is a new project with a group of urban survivors located in Regina. The group has met only once. There appear to be only five individuals who attended Anglican-related schools. It is too soon to say whether this project will proceed or not.

In all of these three ADR projects, Archdeacon Helena Rose Houldcroft is representing the General Synod and the Diocese of Qu'Appelle, with occasional participation from Bill Bradley and Ken McMillan representing Qu'Appelle. From our perspective, the ADR pilot projects have not yet proven to be an effective way to address the specific claims or the broader issues of the legacy of assimilation policies. These projects appear to be tightly controlled by federal officials who have a narrow view of the possible alternatives to litigation. The original vision of the Exploratory Dialogues of 1998-99 appears to have been lost.

Actions of General Synod

General Synod, meeting in Waterloo, July 4-11 was aware of the residential schools issues, and spent over five hours early in the Synod in open discussion in which over 50 people spoke, including approximately 20 aboriginal members and partners.

A resolution directing the Synod to withdraw from discussions with government by September 15 if no significant progress had been made was not passed, but referred to the Council of General Synod for consideration. The Officers of General Synod have met several times, often by teleconference, to monitor the progress of the talks, and have not yet decided to withdraw.

The Synod spent one day on aboriginal concerns, and it was one of the highlights of the Synod, particularly the moving healing service late in the afternoon. Bishop Gordon Beardy's unexpected and heartfelt acceptance of Archbishop Michael Peir's apology was a very significant step in the ongoing evolution in partnership with the indigenous peoples in Canada.

The Synod also gave a ringing endorsement to the *Plan of Anglican Work in Support of a New Partnership Between Indigenous and Non-Indigenous Anglicans: A New Agape*. General Synod and the Dioceses will be challenged to work on this new partnership in the coming years.

Financial Update

General Synod and several dioceses are facing increasing anxiety about their finances. Although early projections have been altered, both General Synod and the Diocese of Cariboo are facing serious financial problems.

A. General Synod Financial Position

In May 2000 we told the government that we would be running out of liquid assets by the end of 2001 if the rate of litigation expenses and settlements continued. In fact, a series of developments, notably aggressive steps taken by General Synod to manage its assets and cash flow, has brought about a change in this outlook, enabling General Synod to continue into 2002. The Officers, however are involved in contingency planning, and are considering the sale of the remaining fixed assets of General Synod. These include the building at 80 Hayden Street, Anglican Book Centre, Archives and Anglican Journal. If required, the General Synod will take steps to divest itself of these assets, keeping in mind, at least with regard to ABC, Archives and Anglican Journal, their ongoing significance and value to the whole body of the Canadian church. These steps have not yet been taken. We continue to assure dioceses and donors that current income is used for the ongoing regular programs of the national church, and none of it is used for litigation expenses. Dioceses have indicated on the whole that they will be able to contribute approximately the same amount in 2002 as in 2001. The 2002 budget will be 'hold the line'. We can likewise assure donors to Anglican Appeal that their money supports our ongoing work overseas and in the North, as well as other aspects of our program and is not used for litigation.

B. Diocese of Cariboo

In September 2001, The Executive Council of the Diocese of Cariboo decided that the diocese will cease operations as of December 31st. Bishop Jim Cruickshank has resigned effective that date, the lease on the Synod office will be terminated, and the two other Synod staff will lose their jobs. Pastoral oversight of the clergy and parishes will pass to the Metropolitan of British Columbia, Archbishop David Crawley. Parish properties held in the name of the diocese, but held in trust for the congregations, will be placed in a new Society. The diocese itself will remain in existence, but will not be operational. This legal continuity is being maintained for technical and legal reasons.

Litigation Update

Since the Mowatt decision two years ago, a series of judgments has helped to clarify the legal issues surrounding the residential schools litigation. On the whole, the decisions have been more favourable for the churches, but not as favourable for the aboriginal claimants. The real regret is that in the legal adversarial system, there are winners and losers. We continue to urge the

government to pursue other avenues to resolve these cases, such as effective, culturally sensitive alternative dispute resolution programs.

A. British Columbia

- a. We are still waiting for a date to be set for the hearing of our appeal in the Mowatt case.
- b. In mid-July a decision was rendered in the Blackwater case, which involved the United Church and its school in Port Alberni. Although this decision does not impact directly on the position of the Anglican Church, we believe the Blackwater judgment represents a watershed in presenting a cogent, balanced view by the courts and should thus serve as a model for all future litigation. In a lengthy and well-reasoned decision, the Chief Justice of the Supreme Court of British Columbia set the apportionment of the judgments at 75% government and 25% church. He found that the government had non-delegable responsibilities under the Indian Act for the children in its care. He took very seriously the need to validate each claim and indeed found that one claim was not valid. He set judgments between \$15,000 and \$145,000 for the six other claimants. He found that there was no direct liability or negligence, or breach of fiduciary duty. He further found that claims other than those involving misconduct of a sexual nature were statute barred by the provincial Limitations Act.
- c. In early August a decision was delivered in the Aleck case where the only question before the court was the amounts to be settled. Judgments in the range of \$200,000 to \$252,000 were set for the four plaintiffs who had remained in the trail. The Crown has appealed, and the General Synod (but not the Diocese of Cariboo) has joined in the appeal in the case of the one plaintiff where the General Synod was named directly. We were involved with the other three plaintiffs because of government action in naming us as a third party.
- d. A trial set for mid-November involving former students of the St. Michael's School in Alert Bay, diocese of British Columbia, has been postponed with no future date set.

B. Alberta

- a. In September the Alberta Court of Appeal, in a case brought by the Roman Catholic Archdiocese of Grouard-MacLennan declared that the "Roman Catholic Church" is not a suable entity. The Archdiocese, and the Oblate Province of Grandin remain in the lawsuits as defendants.
- b. The Anglican Dioceses of Athabasca and Calgary, together with the General Synod, are making applications to have themselves removed from all pending lawsuits, based on the claim that the agency which entered into contracts with the government regarding the operation of the schools was the MSCC (Missionary Society of the Church in Canada), a separate entity incorporated in 1903. General Synod was not incorporated until 1921. It was the MSCC through the Indian Schools Administration, that worked with the government in operating most of the Anglican schools until 1969. The exceptions were the Lytton and Mohawk

schools, where the government itself operated the schools.

These applications to dismiss will be heard in early March 2002.

- c. We continue with archival research in the General Synod Archives to carry out our obligation to respond to hundreds of interrogatories from the plaintiffs.

C. Saskatchewan

There has been no action on the government-launched appeal in the I.B. case.

D. Manitoba

In September, the Manitoba Court of Appeal held that the province's statute regarding an absolute 30-year limitation period applied to the residential schools litigation. If this is not appealed, it means that most of the approximately 100 claims in Manitoba will not stand. The Manitoba law in this regard is unique, and this ruling is likely to have little effect in other provinces.

E. Ontario

- a. On October 9 a decision was released dismissing the request for certification of a 'class' with regard to former students of the Mohawk Institute. The General Synod had been removed from this case earlier, but the Diocese of Huron and the New England Company remain. Plaintiffs may pursue their cases on an individual basis.
- b. The Dioceses of Algoma and Moosonee have become involved for the first time as claims were filed in the summer involving the Shingwauk and Hordern schools.

Distributed to:

- Archbishops and Bishops;
- Members of Council of General Synod;
- Members of Anglican Council of Indigenous Peoples;
- Chairs of committees;
- General Synod staff;