

Residential Schools Update #14 -- July 18, 2002

Archdeacon Jim Boyles, General Secretary

Our Primary Goal is Justice, Healing and Reconciliation

In 1991, the National Executive Council met in Winnipeg and heard presentations from former residential schools students who spoke movingly of their unhappy and difficult experiences in the schools. Since then, General Synod has been on a course toward seeking justice and healing of those whose lives were damaged. That same meeting authorized the establishment of the national Healing Fund. In 1993, Archbishop Peers delivered a heartfelt apology to those attending the National Native Convocation in Minaki, Ontario.

Last year, General Synod adopted as a priority an extensive plan committing the Church to a new and active partnership with Indigenous Peoples. Known as **A New Agape**, this **Plan of Anglican Work in Support of a New Partnership Between Indigenous and Non-Indigenous Anglicans** is based on a relationship that stresses the cultural, spiritual, social and economic independence of indigenous communities. It focuses on five goals: self-determination, justice, healing, historical reparation, and walking in partnership. This fall, information kits will be distributed to parishes with resources to help them implement **A New Agape** locally.

Our primary goal continues to be healing and reconciliation:

Survival and Beyond: Hope, Help and Healing

In early July, approximately two hundred residential school 'survivors' attended this conference on the campus of the University of British Columbia. Sponsored by the Indian Residential School Survivors Society, this 4-day event featured over 100 workshops and sessions. One of the sessions featured a panel that included Phil Fontaine, former Grand Chief of the Assembly of First Nations, Jack Stagg, Deputy Minister of the Office of Indian Residential Schools Resolution and Donna Bomberry, Coordinator for Indigenous Ministries at the Anglican National Office. Expressing regret for the slow pace in resolving claims, Stagg said, "Elders we know who were abused as children deserve to have their stories heard and to share their experiences before it's too late for them to do so." Fontaine observed, "There is not as much anger now. People have come to grips with the situation and realize they must now move beyond anger and rage." He also criticized the churches: "As for the churches, as soon as they get off this play that this thing is going to bankrupt them, the better off we will be. They have to get on with the job of working with government and the survivors."

Bomberry, speaking only as a member of the Anglican Church, stated that an agreement with government is necessary for our work in communities in Canada to continue as partners in the healing that we all seek, and continue to be advocates of justice for Indigenous Peoples as outlined in our strategic plan called **A New Agape**.

The Anglican Healing Fund provided a grant for this event.

First Sacred Circle, Diocese of Rupert's Land

The Indigenous Council of the Diocese of Rupert's Land sponsored a diocesan Sacred Circle in late June. Approximately 200 people of all ages, both indigenous and non-indigenous, gathered in Dynevor, MB. There were presentations of the history of the Peguis people. Bishop Don Phillips offered a sincere apology. Then followed a feast, small sharing circles and a concluding Eucharist. The Reverend Murray Still, an indigenous priest in the diocese and one of the organizers of the Sacred Circle, commented, "Indigenous Anglicans in Rupert's Land look forward to taking a leadership role. We are grateful for the voice we are discovering, and pray that true healing and reconciliation will come".

The Sacred Circle is a gathering of people into the circle of community that is a sacred space. Some basic values of the circle are: sharing, gift, respect, equality and sacredness. It is a place of affirmation, nurture, acceptance, safety and wholeness.

Traveling National Archives Exhibition: *Where are the children? Healing the legacy of the residential schools*

The National Archives, in cooperation with the Aboriginal Healing Foundation, the General Synod Archives and the archives of other churches, has mounted a photographic exhibit on the history of the residential schools. Her Excellency the Right Honourable Adrienne Clarkson, Governor General of Canada, officially opened the exhibit in Ottawa in June. Speakers included: the Primate, Archbishop Peers, Matthew Coon Come, Grand Chief of the Assembly of First Nations, and Jack Stagg, Deputy Minister of the Office of Indian Residential Schools Resolution. Archbishop Peers stated, "Learning from our involvement in the schools has been costly. Given that cost, for Aboriginal Canadians and for churches, it is crucial to learn this lesson only once, to learn it well and to move forward in a way that brings us to healing and trust."

The exhibit is at the National Archives Building in Ottawa until February 2003. A parallel exhibit will be traveling to several Canadian cities in the coming months.

A Just and Effective Alternative Dispute Resolution Process

The federal government is now facing more than 11,000 claims from former residential schools students, and to date only about 530 cases have been settled, mostly through pre-trial settlements or alternative dispute resolution (ADR) processes. Given this large number of claims and the typically slow pace at which litigation unfolds, the government and the churches who are listed as co-defendants in many of these claims have said they are committed to working with Indigenous Peoples and leaders in designing a just, safe, compassionate, effective and efficient ADR process that could be made available to claimants. The process would enable claims to be resolved justly and expeditiously while maintaining high standards for validation of the claims. Representatives of the churches and government have been meeting with an aboriginal working caucus over the last several months to work on such design. In related developments, legal representatives of church and government are also involved in discussions with counsel for the claimants in Saskatchewan, Manitoba and Ontario with the aim of developing a workable ADR process that would be made available to claimants should they chose this route.

Insistence on a serious validation process

All participants in the working caucus are committed to a serious review of each claim to ensure that it is valid, and that allegations of abuse by former staff are explored in a just and honest manner.

General Synod believes that an ADR approach can provide opportunities for addressing claims in a way that is less traumatic for claimants and provides some hope for restorative justice. While ADR settlements are not likely to be less expensive than litigation, the ADR process typically provides for speedier resolution of claims and avoids the harsh, adversarial setting of the courtroom. General Synod is committed to pursuing alternatives to litigation where possible, acting justly in litigation, and continuing to work for reconciliation among First Nations and non-aboriginal Canadians.

While General Synod is supportive of an ADR process as a substitute for litigation, it continues to have some concerns related to this approach. In particular, it is concerned that its resources be used to benefit survivors rather than have these used up in paying for ADR process costs, which can be considerable. The government has insisted that the churches contribute 30% of the costs of ADR processes. The church is concerned that it cannot meet these costs within its existing financial resources.

Negotiations with Government

Significant progress has been made since January, when government and Anglican representatives began bi-lateral negotiations over residential schools liability. In the 11 sessions that have taken place, there has been resolution on many aspects of an eventual draft agreement. (Any draft agreement reached by the negotiators would be forwarded for approval to the Officers of General Synod and the 11 dioceses named in the litigation; also, all dioceses would be approached for their support.) However, there are still a limited number of difficult issues that remain unresolved. At this stage, legal counsel for both sides are working on possible solutions. It is clear from the progress that has been made that both parties want an agreement, as it would facilitate resolution of claims.

From an Anglican perspective, an agreement would mean that funds would be directed to survivors of abuse rather than being used up for legal costs. In addition, it would facilitate the work of healing and reconciliation which continues to be our primary goal. As well, it would move us closer to more positive relations between the church and First Nations.

Without an agreement, General Synod may face extinction and there will be a need for a new national expression for Canadians of the Anglican faith. For dioceses across the country, both for those named as defendants and those that aren't, the impact would likely be several years of chaos until such a new national expression was stabilized. Failure to reach an agreement also means that the church will have lost an important opportunity to address past harms and injustices.

While there is definitely a sense of urgency for the church and government to reach agreement, the Anglican negotiating team remains steadfast in its resolve that any draft

agreement reached must be just and humane for residential school survivors and allow for the long-term viability of General Synod and the dioceses in fulfilling their mission.

Implications of Possible Agreement with the Government

If we are able to reach agreement, here are some of the implications for us:

Settlement funds will reach victims of abuse, and will not be used for our legal costs

One of the major concerns is that the present litigation process means that the legal process consumes most of our resources, with little if any actually available for those who suffered abuse. One survey a year ago indicated that less than 2% of amounts expended by dioceses and General Synod on the residential schools issue had reached victims.

A draft agreement reached by the negotiators will be subject to the approval of the General Synod Officers, the Officers of the Missionary Society and those dioceses facing litigation. Other dioceses will need to indicate their support.

Some consultations have been held with dioceses and members of the negotiating team in the past month or so, and others are planned. Once an agreement is reached, there will be intensive consultation with all dioceses in an attempt to secure their support. Members of the negotiating team include: Archbishop David Crawley, Archdeacon Jim Boyles, Archdeacon Larry Beardy, Jim Cullen, General Synod Treasurer, and lawyers Bob Falby, Jerome Slavik, John Page and Peter Whitmore.

All dioceses involved, those facing litigation and those not, will be asked to participate with financial contributions

General Synod, the Missionary Society and dioceses will be requested, and expected, to contribute and assist in resolving the issue and stemming the drain on finances caused by litigation costs in eleven dioceses as well as in General Synod. As yet, the amount has not been determined.

Administration of a Settlement Fund will be in the hands of an Anglican body

Anglicans will make payments directly to Indigenous Peoples whose claims have been validated. This is not 'paying the government'.

There will be an acknowledgement of our participation in, and responsibility for, operation of the residential schools

Although there are many complexities, Anglican bodies were involved in the operation of approximately 26 schools up until 1969. The courts have reached different decisions as to the church's proportion of responsibility, and the government has unilaterally decided that the church's proportion is 30%. There may be further debate on this decision, but it is unlikely that our responsibility will be found to be zero.

Claims of sexual and physical abuse will be processed first

The government hopes to resolve the vast majority of these claims by alternative dispute mechanisms or in pre-trial settlements. Only a few may actually reach court. Sexual and physical abuse are provable 'causes of action' and can be determined on the facts.

Claims solely for loss of culture and language will be subject to court decision

These claims are not at present recognized 'causes of action' and both church and government do not think they should be for a variety of legal reasons. The church's position is that the loss of culture and language is to be deplored, and needs to be remedied through a programmatic response.

Government and church are committed to programmatic responses to claims relating to loss of culture and language

The government, through several existing programs, provides funds for recovery of language and culture. The Anglican Healing Fund has also made grants for these purposes. The government has indicated that it is reviewing its programs in these areas and is considering expanding them.

If No Agreement is reached with the Government

If we are not able to reach an agreement, General Synod and several dioceses may not be able to survive. Here are some of the implications for us:

Ongoing litigation

Eleven dioceses and General Synod will remain in litigation with ongoing legal and research costs, spreading over many years. There are several trials now scheduled for 2003, and at least one for the fall of 2002.

Minimal or no participation in ADRs

It will continue to be difficult for General Synod and the dioceses to participate in these processes since the government expects us to contribute 30% of quite large process costs, as well as 30% of any awards. Our policy at the moment is to make no commitment to such contributions and therefore we do not participate. We are, however, willing to have an observer present if requested by the claimants, and we have offered to meet with those whose claims have been validated to consider whether a contribution is possible.

Increasing tension between church, government and Aboriginal Peoples

No agreement means that resolution will be much more difficult and slow. Some claimants may settle for 70% paid by government and not pursue the churches further. Others may refuse to settle unless the church's 30% is available. There will be continued hard feelings and the church will be perceived as shirking its responsibility.

Current Number of Claims

There has been some confusion as to the numbers of claims facing the Anglican bodies. In Update #10 of June, 2001 we reported 1195 claims, of which one-third resulted from government action in naming General Synod as a third party. As of March 2002, the number of claimants has risen to 1350. Approximately one-third are the result of government third party action. The government has also indicated that it has on hand another few hundred claims received since last July. In most of these cases it has deferred naming the Anglican bodies as third parties, pending the outcome of the negotiations.

In only one case has a diocese been named in claims but not General Synod, and those claims involve the Mohawk Institute in Brantford, Ontario, in the Diocese of Huron. The New England Company, a missionary society in England, originally owned this school, but the Company entered into an agreement with the government in about 1927 under which the government operated the school and agreed that it would continue to have an Anglican identity. The Missionary Society of General Synod had no involvement, and it seems that the Diocese also had no involvement, although it continues to be named as a defendant.

Financial Update on General Synod

For the first six months of 2002, General Synod's legal and research costs related to residential schools were \$596,000. We continue to draw these funds from our assets while ongoing contributions from dioceses are used for ongoing programs. By the end of the year, the available assets will have diminished significantly, and the Council of General Synod in November will have to assess the situation as they face a decision about the 2003 budget.

The dioceses facing litigation are in the same position, spending on litigation while attempting to maintain ongoing work. For some of them, it will be a challenge to maintain their General Synod contribution at previous levels. To date, however, the dioceses are meeting their commitments for 2002, and indeed remittances are running ahead of previous years.

Litigation Update

The residential schools claims are very slowly making their way through the legal system. There is one trial scheduled for Saskatchewan in November, and a few scheduled for 2003. Of particular interest are two actions in which we are involved:

Calgary Motion

In May, the Dioceses of Calgary and Athabasca and General Synod asked the court to remove them from litigation in Alberta, claiming that the only legal corporation involved in residential school work was the Missionary Society (MSCC). A decision has not been issued yet.

Mowatt Appeal

The BC Court of Appeal has set January 20, 2003 to hear five appeals all related to residential schools, including the Mowatt case involving St. Georges school, Lytton BC.

Contingency Planning

While the expectation is that General Synod and the dioceses will be able to reach an equitable and workable agreement with the government, General Synod has also been developing contingency plans in case one is not achieved. These plans focus on how important programs and services may be provided to the whole church, should General Synod itself cease to exist.

Ecumenical Work

Though the ecumenical group that had represented the four churches in residential school negotiations with the government disbanded in January, representatives from the churches have stayed in touch and consulted from time to time. The Roman Catholic coordinating committee

that had been negotiating on behalf of 33 Roman Catholic organizations named in litigation, has since disbanded and advised the government to be in touch directly with each of their organizations.

National Day of Healing and Reconciliation, August 5, 2002

An initiative of some aboriginal people, this day has been selected to highlight the needs and opportunities for healing and reconciliation both in aboriginal communities and beyond. Their website, <http://ndhrcanada.visions.ab.ca/index.htm> concludes with this call: "Join us to heal the past and create a stronger future for all of Canada."

First Nations Governance Act

On June 14, 2002, Indian Affairs Minister Robert Nault tabled **Bill C-61**, commonly referred to as **The First Nations Governance Act**. It has met with strong opposition from Indigenous Peoples who see the legislation as threatening their struggle for self-governance, autonomy and self-determination. The Anglican Council of Indigenous Peoples, with the support of General Synod, plans to continue its advocacy efforts in opposition to this legislation.

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Distributed to:

- Archbishops and Bishops
- Members of Council of General Synod
- Members of Anglican Council of Indigenous Peoples
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