

Residential Schools Update #15 -- November 20, 2002

Archdeacon Jim Boyles, General Secretary

Overview:

After ten months of intensive bi-lateral negotiations between the Federal Government and the Anglican Church of Canada, an agreement in principle relating to the participation of Anglican entities in the residential school system has now been officially tabled and awaits ratification by the Anglican dioceses.

The agreement-in-principle was announced at a news conference in Ottawa this morning by the Honourable Ralph Goodale, Minister of Public Works and Government Services, and Archbishop Michael Peers, Primate.

Four key features of the draft agreement include:

- Establishment of a \$25 million settlement fund under Anglican auspices to pay for the Anglican share of compensation for victims of validated physical and sexual abuse claims.
- These funds will go directly to settlements. Once the fund is exhausted, General Synod and dioceses will be relieved of further liability with respect to physical and sexual abuse claims;
- Generally, an end to Anglican involvement and outlay for litigation;
- Support for alternative dispute resolution processes;
- Encouragement for a programmatic approach by both the Government and the Church to respond to loss of language and culture.

This agreement-in-principle with the government is of critical importance. It signals willingness and commitment by the Government and the Church to respond to the legacy of residential school abuse in a way that is responsible, just, and humane for survivors. It will pave the way for a constructive working relationship between the Government, Anglican entities and Indigenous peoples. It will also demonstrate that principled resolution can be achieved in an environment of mutual co-operation and respect. What's more, it will enable the Church to address its legal and moral responsibilities arising from its involvement in the residential school system in a way that ensures it remains viable and thus able to continue its work in healing and reconciliation, as well as its other ministries across the country and internationally.

Currently, the government faces approximately 12,000 claimants alleging abuse as a result of a school system that was part of Canadian Government policy aimed at assimilating native peoples. Four Christian denominations (Anglican, Catholic, Presbyterian, United) participated in the operation of these schools, which dated back to the 19th century. Anglican entities have been named as defendants in about 18% of the claims involving twenty Anglican residential schools. Eleven dioceses have been named as defendants as well as General Synod, the Missionary Society of the Anglican Church of Canada and the New England Company.

The draft offer is built on the understanding that the Church's primary goal continues to be justice, healing and reconciliation. It is also based on the assumption that all 30 dioceses that are part of the national Church (not just General Synod and the 11 dioceses sued) are prepared - and have a collective moral responsibility and resolve - to participate in a resolution as members of the Canadian Anglican Family. The bulk of this issue of Update will highlight some of the details of the draft agreement and provide an overview of next steps.

Next Steps for government and the Church:

On October 24, an offer, endorsed by the Anglican negotiating team, the Officers of General Synod and the representatives of the federal government, was presented to the Honorable Ralph Goodale, Minister responsible for the Office of Indian Residential Schools Resolution, by Archbishop Michael Peers, Primate of the Anglican Church of Canada. Also present were members of the Church's negotiating team, including: Archdeacon Jim Boyles, General Secretary of General Synod, Archdeacon Larry Beardy from the Diocese of Keewatin, Chancellor Robert Falby, Diocese of Toronto and Chancellor Peter Whitmore, Diocese of Qu'Appelle and General Synod's legal counsel in Saskatchewan.

Before the news conference in Ottawa today, the agreement was initialed by Jack Stagg, the government's chief negotiator and Jim Boyles, the General Secretary. Once it has been ratified by the dioceses, the Primate and the Minister will sign the final document.

"This agreement is part of our commitment to healing and reconciliation within the Anglican Church of Canada and within Canadian society," said Archbishop Peers. "I have sat in healing circles and heard the painful stories of abuse. By entering into this agreement, we are saying that we have heard those stories, that we acknowledge our tragic part in them, and that we will take up our new role not only in addressing the abuses of the past, but in seeking a new and life-giving way of living together as native and non-native Canadians, in the church and in society."

"This agreement, when accepted by the Anglican dioceses across Canada, preserves the financial integrity of the Anglican Church while opening new pathways to closure, healing and reconciliation for all the parties," said Minister Goodale.

While the agreement will need to be ratified by the dioceses, it represents what the Officers of General Synod believe is the best efforts of the Anglican organizations in addressing their responsibilities stemming from involvement in residential schools. Building on the consultations that have taken place with dioceses at various points in the negotiation process, a new round of meetings has been planned to help diocesan decision-makers understand the details of the draft agreement and to work through how they can support it financially. Given the feedback from bishops and other diocesan decision makers that has been received in response to information that has been shared so far, General Synod is confident that this proposal represents an agreement that the 30 dioceses can support, despite the hardships it will entail for them. A significant portion of the next round of diocesan consultations will address various options dioceses will want to consider in financing the deal, and the support that General Synod will make available to help them do this.

The consultations will take place over the next few months, and will involve bishops, chancellors, financial officers and other diocesan decision makers, depending on each diocese's process. Consultations will take the form of group presentations, diocesan meetings and through briefings about the legal, financial, and various technical dimensions of the draft agreement. The Primate will participate in this process as will each member of the Church's negotiating team, the Plan B Task Force members and the Officers.

At the moment the General Synod is spending about \$100,000 a month on litigation costs, and the affected dioceses are also facing high costs. The sooner the agreement can be ratified, the sooner this drain of resources will be stopped. In the interim, the government will co-operate in reducing litigation costs as much as possible, however, court-ordered proceedings will need to be honoured unless there is agreement, including that of the plaintiffs, to postpone actions until the agreement is in place.

Principles guiding the Church during negotiations:

In 1993, on behalf of the Church and on the advice of its national council, Archbishop Michael Peers, the Primate, extended a formal apology for the unintended harm to Indigenous Peoples that took place due to residential schools. We have acknowledged the legacy of abuse that stemmed from our participation in the residential school system. In many ways, and on many fronts, we have also been working to effect justice, healing and reconciliation. We are committed to continue to work towards this goal.

Taking responsibility for the actions of the past is not an easy matter - and yet we know it is consistent with our belief in the unity of the Church in which all Canadian Anglicans share. Our participation in the Church is a collective experience that links us, connects us, makes us part of a community, a body of believers that exist in the present as well as in the future and the past. Those past members of this community have given us a great many gifts that we benefit from - it would be inconsistent for us to continue to benefit from those gifts without acknowledging that we also bear a responsibility for the actions of our community that need to be redressed.

Some might say that harsh conditions in place at many Indian Residential Schools were not all that different from the harsh conditions in place at other types of residential schools prevalent across the British Commonwealth in the 19th and early 20th century. Some might say that some indigenous leaders were supportive of the Indian Residential School system. Some might also say that the majority of those who worked at the schools were sincere, genuinely caring individuals and that for many students their time in school was generally positive. All these points, however, do not erase the harm and abuse that many Indigenous Peoples experienced as a result of the schools.

Working with the federal government to reach an agreement to handle residential school abuse claims represents an important way in which we are addressing this legacy. Below, are the principles that guided the Church during the negotiation process with the government:

- The primary goal is justice, healing and reconciliation;

- The Anglican Church organizations are prepared to share in paying compensation for validated claims of sexual and physical abuse;
- The Anglican Church organizations will continue to fund programs which support healing and reconciliation efforts relating to residential schools;
- Anglican Church organizations seek full closure with regard to the claims filed against it relating to the residential schools issue;
- Anglican Church organizations need to remain viable in order to continue and enhance their healing work, as well as the other socially beneficial work and ministries across the country.

Some details about the agreement:

While the proposal, if ratified, entails hardships for General Synod and the dioceses, the Officers of General Synod believe it would allow Anglican entities to participate in compensation for validated abuse claims without threatening the future viability of the national Church and its dioceses. Below are some key details about the proposal:

- Anglican entities would establish a \$25 million fund to provide for the Anglican share of compensation for validated physical and sexual abuse claims;
- Once the fund is exhausted, General Synod and the dioceses will be relieved of further liability with respect to physical and sexual abuse claims;
- The fund will be under the administration of an Anglican body - monies will reach victims of abuse, and will not be used for the church's legal costs;
- The \$25 million amount would be funded over five years. Each diocese will be asked to make a contribution to the fund. It is acknowledged that some dioceses may be able to finance their share in less than five years, while some dioceses will require more time;
- Dioceses will be requested to contribute roughly in proportion to their current level of giving to the General Synod;
- The agreement would also encourage alternative dispute resolution processes to be used in considering claims. We believe such processes will bring justice more expeditiously and in a more humane manner;
- The government will end the practice of naming the Church as a party in court cases - known as third partying.

Concerning language and culture claims:

With respect to claims relating to loss of culture and language, both Government and Church are committed to programmatic responses to claims relating to loss of culture and language. This commitment is specifically written into the agreement, and the church will continue to press the government to enhance significantly its programs for the recovery of culture and language

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. In fact, through our long history of involvement with Indigenous Peoples, the church has been in the forefront of encouraging aboriginal languages, translating scripture, prayer and hymnbooks, teaching and worshipping in the language of the people. 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.

The claims for loss of culture and language 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. Based on advice from our legal counsel, we believe it is unlikely that loss of culture and language will ever become recognized 'causes of action'.

That said, under the agreement, dioceses would be freed from any future liability should loss of culture and language become recognized 'causes of action'. General Synod would remain the one Anglican entity to face this risk. The agreement provides for the dioceses to indicate their ongoing commitment to maintaining General Synod and to negotiating the payment of any liability in these cases, should it arise. The agreement also sets out principles for such negotiation, including the collective viability and sustainability of the Anglican entities, and the importance of sustaining the General Synod.

Financing the Settlement:

General Synod acknowledges that the agreement, once ratified, will represent a real challenge for itself as well as the 30 dioceses across the country. At the same time, the agreement will enable the Church to respond to the legacy of abuse in a way that is just and humane for survivors, and also will ensure the future viability of General Synod and its dioceses.

The \$25 million for the settlement fund would be collected over five years. Each diocese will be asked to make a contribution to the fund based roughly on the present level of proportional gifts to General Synod.

Through its Financial Management and Development Committee, General Synod has been exploring various approaches (fundraising, sale of assets, drawing on reserves) that it and the dioceses may want to consider to meet the financial implications of the agreement. Whatever approach is used, it is acknowledged that dioceses need to have flexibility relative to their particular circumstances in how they finance their share of the settlement fund. One consideration put forth is for General Synod to secure a line of credit that would enable it to accommodate fluctuations in diocesan contributions to the fund, thereby enabling some dioceses to provide their contributions over a period longer than five years. This approach would entail some additional interest costs. The Treasurer of General Synod will be seeking diocesan support for guaranteeing such a line of credit.

Earlier this month, the Council of General Synod approved a balanced budget for 2003 of \$10.5 million, based on indications from dioceses that their proportional gifts would remain roughly at 2002 levels. Some dioceses may consider cutting their grants to General Synod to finance their contribution to the Settlement Fund. However, it is hoped that dioceses will find other ways to make their contribution, since any cuts to General Synod will critically affect its work in the North (24% of the budget), work overseas (27% of the budget) or the work of national staff in areas such as communications, aboriginal ministries and faith, worship and ministry.

Why an Agreement is needed from an Anglican Perspective:

We believe an agreement is absolutely critical to ensure the future stability of the national Church and the dioceses facing litigation, as well as the credibility and integrity of all Anglican members. Reaching final agreement will facilitate the justice, healing and reconciliation that continue to be our primary goal. It means funds will be directed to survivors of abuse rather than being used up in litigation, and for legal costs. It would move us closer to more positive relations between the Church and Canada's Indigenous Peoples, in keeping with our commitment to "A New Agape". With an agreement, we will be an important step closer to meeting our moral obligation, thereby providing new opportunities for renewal and energy in our efforts to make a difference as a Church.

Reaching an agreement will also enable us to respond to the legacy of abuse that is the result of the residential school system in a way that is both responsible, just and humane for survivors, and ensures the future viability of General Synod and its dioceses so that the Church can continue its work. Through General Synod, Anglicans across Canada participate in a ministry of socially beneficial work across the country and internationally. We believe Canadian Anglicans want to continue to participate in that ministry and will therefore support an agreement that ensures General Synod's viability.

Without an Agreement:

General Synod may face extinction given the legal burden, and there would then be a need for a new national expression for Canadians of the Anglican faith. At present, we are facing many claims relating to abuse stemming from the Church's participation in the operation of residential schools. For dioceses across the country, particularly those named as defendants, the impact would likely be several years of chaos until such a new national expression was stabilized. The Anglican Church across Canada would experience significant disruption, even with the contingency planning now underway to help ensure that the important programs and services can be provided should General Synod cease to exist. As well, it is not entirely clear whether any new structure put in place to serve as the national expression for Anglicanism would be free of the claims that now face General Synod.

The 11 dioceses named as defendants would be on their own with respect to residential schools litigation - they will run the risk of having their assets depleted by the legal burden, and several would follow Cariboo into financial collapse.

Failure to reach an agreement also means that the church will have lost an important opportunity to address past harms and injustices stemming from our participation in the operation of residential schools. This will be a significant setback to our work of reconciliation and healing. It impacts the credibility and integrity of all Anglican members across Canada. As well, without an agreement, there is likely to be increased tension and ongoing public and acrimonious relationships between Anglican entities, their members, the government and Indigenous Peoples.

Alberta Court Decision:

Soon after representatives of General Synod presented a draft offer to Minister Goodale on October 24th, the Alberta Court handed down a decision in which it dismissed lawsuits against General Synod and the dioceses of Athabasca and Calgary relating to residential school abuse claims in Alberta. While the judgment has led some to question whether the Church should still be pursuing an agreement with the government, General Synod believes it is important to reach a settlement based on financial and moral reasons.

The Honourable Mr. Justice T.F. McMahon of the Court of Queen's Bench of Alberta dismissed all claims against General Synod based on the finding that it, at no time, had any responsibility or involvement in the management, operation, supervision or staffing of the Residential Schools in Alberta. While the decision did not dismiss claims against the Missionary Society of the Anglican Church of Canada, it did acknowledge that General Synod and the Missionary Society are distinct corporate entities, with neither body bearing liability for the other.

While General Synod welcomed the Alberta Court decision, its legal counsel cautioned that the decision will likely be appealed by the federal government, and that a higher court could overturn the decision. Should higher courts continue to rule in favour of General Synod and the dioceses, both bodies would continue to face considerable legal costs as the matter works its way through the court system. As well, legal counsel has cautioned that the decision may not be considered relevant in other provincial jurisdictions where abuse claims have been filed.

Thus, notwithstanding the Alberta Court decision, in the absence of an agreement with the government, General Synod and the dioceses still face the prospect of spending a considerable amount on legal costs relating to residential school abuse claims. In contrast, a settlement with the government would mean that funds would be directed to survivors of abuse whose claims have been validated, rather than being used up in litigation costs.

In addition to financial concerns relating to ongoing legal costs, there are moral considerations for continuing to work with the government in reaching an agreement. As a Church, we have acknowledged our moral obligation regarding our involvement in the residential school system, and we believe it is important to act accordingly. We've said our primary goal in reaching a settlement with the government regarding liability stemming from abuse claims is to enable our work of healing and reconciliation with Aboriginal communities. This goal remains. Reaching a settlement with the government will move us closer to more positive relations between the Church and Indigenous Peoples, in keeping with General Synod's plan (known as A New Agape) to further a new partnership between Indigenous and Non-Indigenous Anglicans. As such, General Synod believes that it is important to find a way in which Anglican entities can make a legitimate contribution to settlements and continue to work towards healing and reconciliation with Aboriginal communities.

Handling enquiries from the media and public during the ratification process:

General Synod has taken the position that it is important to make details of the agreement public at this stage as a way of ensuring that rumors, fears and untruths about its contents do not damage and disrupt the current process. The agreement itself will be available on the General Synod website at www.anglican.ca/agreement. Dioceses are encouraged to have a process in

place to address how public and media enquiries about the proposal are handled. They are also encouraged to make a copy of this issue of Update available to any member of the public or the media who enquires about the proposal. As well, those requesting more information can contact Archdeacon Jim Boyles, General Secretary of General Synod, tel: 416-924-9199 ext 280, or by email at: jboyles@national.anglican.ca.

Ongoing Healing and Reconciliation Initiatives:

The Healing Response Committee will meet again at the end of this month to make their final grant allocations for 2002. They have received many more project applications than they will be able to fund, so some tough choices will have to be made. That may mean delaying some of the proposals until the new budget year.

Implementing A New Agape Locally:

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. In order to help parishes implement A New Agape locally, an information binder has been developed, which draws on practices from dioceses, parishes and community groups across Canada. The New Agape binder is now in the final stages of proof-reading, and is expected to go to printing later this week. It is expected to be distributed by mail at the end of this month, and posted to the national [Church's website](#).

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For further information, kindly contact Archdeacon Jim Boyles at jboyles@national.anglican.ca or 416-924-9199 ext 280.

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