

Canon B-2: THE DIOCESAN COURT

Definition:

Ecclesiastical offence: an offence as set out in Part 3 of Canon XVIII — DISCIPLINE of the General Synod of the Anglican Church of Canada.

Initial Jurisdiction:

1. Where it has been alleged that an ecclesiastical offence has been committed by:
 - a) a bishop, priest or deacon subject to the jurisdiction of a bishop, or a bishop subject to the jurisdiction of a metropolitan, or
 - b) a lay person who has been appointed, elected or commissioned to an office, appointment or responsibility in a congregation, deanery, diocese, provincial synod, or the General Synod, the Bishop or the Metropolitan, as the case may be, shall have initial jurisdiction with respect to whether an ecclesiastical offence has been committed and the penalty for it.

Diocesan Court:

2. There shall be a court for the trial of causes in the Diocese which shall be called the Diocesan Court for the Diocese of Algoma, hereinafter referred to as the Diocesan Court.

Jurisdiction:

3.
 - a) The Diocesan Court shall hear and determine all causes referred to it by the Bishop or Executive Committee for offenses against the provisions of the Constitution or Canons of the Diocese, the Provincial Synod of Ontario, or of the General Synod of the Anglican Church of Canada.
 - b) The Bishop may refer the determination of whether an ecclesiastical offence has been committed or the determination of the penalty for it to the Diocesan Court without exercising the initial jurisdiction described in section 1.
 - c) The Diocesan Court shall hear and determine all other causes or questions which may be referred to it by the Bishop or Executive Committee.
 - d) In the event of an offence being alleged against a bishop, priest or deacon who is not on the register of the Diocese, but who is on the register of another diocese, the provisions of section 26 of Canon XVIII —

DISCIPLINE of the General Synod of the Anglican Church of Canada shall be followed.

Composition:

4. The Diocesan Court shall be composed of seven members selected as follows:
 - a) a president, other than the Bishop, to be appointed by the Bishop at the beginning of each regular biennial session of Synod. The function of the president is to preside over the Court and to ensure procedural fairness. The president is a non-voting member of the Court.
 - b) one clerical member, to be elected from amongst the clergy of the diocese who hold the Bishop's licence as deacon or priest and who has held a bishop's licence for a minimum of five years; this member has a vote. (1995).
 - c) two lay members to be elected at the regular biennial Synod; these members have a vote.
 - d) two members appointed by consensus of the other four members of the Court in order to achieve a composition for the Court which is balanced in terms of gender, age, lay and clerical; these members have a vote. If consensus cannot be reached, the Bishop shall make the appointments on the same basis.
 - e) a Clerk of the Diocesan Court, appointed by the voting members and the President; the Clerk shall be non-voting and shall remain in office until resignation, death or the appointment of a new Clerk.

Elections and Appointments:

5.
 - a) The elected members of the Diocesan Court shall be chosen at each regular Synod in the same manner as delegates are elected to General Synod, except that the candidates need not be members of Diocesan Synod.
 - b) As soon as is possible after the announcement of the election results, the president shall call together the elected members of the Court in order to begin the selection of those members who are to be appointed. Appointments shall be made no later than sixty days after the close of Synod. If it is necessary for the Bishop to exercise the right of appointment, this shall be done no later than ninety days after the close of Synod.

Alternates:

6.
 - a) The persons placing second on the clerical ballot and third on the lay ballot for members of the Diocesan Court shall serve as alternate elected members of the Court in the event of the inability or incapacity to serve of an elected member.
 - b) In the event of the inability or incapacity of an appointed member to serve on the Court, the appointment of alternate members shall be according to the principles and procedures of sections 4. d) and 5. b).
 - c) No person who is or has been involved with, has an interest or conflict in, is related to, or is a supervisor or supervisee of a person involved or interested in the cause as a party or witness shall sit as a member of the Court for that cause. In this event an alternate shall sit for the hearing of that cause.
 - d) If a vacancy in the membership of the Diocesan Court occurs after the hearing has commenced, the remaining members of the Court may continue the hearing and give judgment, or in their discretion direct that a new Court be convened and the hearing recommenced.
 - e) Notwithstanding the foregoing, the members of a Court which began the hearing of a cause shall continue on the Court to the conclusion of that cause.

Appeals:

7.
 - a) If, within six months of the decision of the court, new evidence becomes known which was not available at the time of the hearing and which might reasonably have had an important bearing on the outcome of the cause, any person whose cause has been disposed of adversely may petition the Bishop for a rehearing of the cause.
 - b) The Bishop may refer such a petition to the Diocesan Court for reconsideration.
 - c) Appeals from the decision of either the Bishop or the Metropolitan exercising initial jurisdiction shall be pursuant to section 4 of Canon XVIII - DISCIPLINE of the General Synod of the Anglican Church of Canada.
 - d) Appeals from any judgement or order to the Diocesan Court may be taken to the Provincial Court of Appeal of the Ecclesiastical Province of Ontario or to the Supreme Court of the Anglican Church of Canada pursuant to the provisions of the canons of the synods creating those courts.

- e) In the event of an appeal from its decision the Court may stay the imposition of any penalty imposed by the Court pending the outcome of the appeal or further order of the Court upon the appellant undertaking to prosecute the appeal in good faith and with due diligence.

Procedure:

- 8.
 - a) The Court may appoint officers as it finds necessary.
 - b) The Court may sit at any place in the Diocese and at such time as the president of the Court may order and direct. The members of the Court may be convened by teleconference calls to deal with organizational and procedural matters.
 - c) All decrees, citations, orders and other instruments under seal shall be issued by the Registrar of the Court and shall bear the date of the day on which they are respectively issued.
 - d) The seal of the Court shall bear the device of the seal of the Synod of Algoma.
 - e) All trials of persons charged with offenses under this canon shall be conducted according to the principles of natural justice.
 - f) Without limiting the generality of the foregoing, the principles and procedures of Part 5 of Canon XVIII — DISCIPLINE of the General Synod of the Anglican Church of Canada shall be followed.
 - g) No member of the Court shall divulge the sentence pronounced by it until such time as it has been transmitted to the Bishop and delivered to the parties concerned.
 - h) No member of the Court shall disclose the vote of any particular member of the Court.
 - i) Hearings shall be held in public except when, in the opinion of the Court, the need to safeguard the privacy of individuals in matters involving intimate or personal details would dictate a hearing in the absence of the public.
 - j) Any resignation or withdrawal from church membership, office, or holy orders of an individual with a cause under investigation or before the Diocesan Court will be deemed to take effect only at the conclusion of the cause before the Court.
 - i) The Diocesan Court shall give its final decision or order, if any, in writing with reasons.

- j) No action or other proceeding may be commenced in any court against the Bishop, or any member of the Diocesan Court or any of its officers for any act in good faith in the execution or intended execution of their duties under this canon.

Rules:

- 9.
 - a) The Diocesan Court may from time to time make such rules and regulations as are necessary for the effectual carrying out of this canon.
 - b) In so doing, the Court may be guided by the Chancellor and Registrar of the diocese, and by the Rules of the Supreme Court of Appeal of the Anglican Church of Canada.
 - c) The rules of the Court shall be published as an appendix to this canon.

Costs:

- 10.
 - a) Expenses incurred by the Diocesan Court or anyone acting under its direction pursuant to this canon shall be paid in the first instance by the Synod of the Diocese of Algoma.
 - b) The costs and fees of counsel shall be in the discretion of the Court, and if awarded shall be assessed by the Registrar in accordance with the tariff or scale of costs as provided by the Ontario Court of Justice (General Division).
 - c) The Court has full power to determine by whom, or to what extent, costs shall be paid. In any proceeding the Court may fix the amount of costs awarded, or may in its discretion deal with the question of costs separately.
 - d) As a condition of hearing an appeal the Court may require a party to sign an agreement under seal binding them to pay to the Diocese of Algoma such costs as the Court may direct up to the amount stipulated by the Court when imposing this condition.