

CANON XX

The Supreme Court of Appeal

1. Court of Appeal

There shall be a final Court of Appeal for The Anglican Church of Canada, hereinafter referred to as “the Supreme Court”, which shall be called The Supreme Court of Appeal for The Anglican Church of Canada.

2. Jurisdiction

- a) Subject to the limitations hereinafter prescribed, the Supreme Court shall have jurisdiction to hear and determine any appeal:
 - i) from the judgment or decision of the bishop of any diocese or the judgment or decision of any diocesan court, or
 - ii) from the judgment or decision of the court of any ecclesiastical province.
- b) An appeal can be taken to the Supreme Court only:
 - i) when the decision appealed from relates to doctrine or worship, or
 - ii) where a bishop has been tried, or
 - iii) when the validity or interpretation of any provision of the Declaration of Principles or the Constitution or any Canon of the General Synod or the Constitution or any Canon of a provincial synod or of a diocesan synod is in question.
- c) Except on an appeal where a bishop has been tried, an appeal shall be taken to the Supreme Court only with leave obtained in accordance with the rules of the Supreme Court.
- d) The Supreme Court shall have jurisdiction upon a case being stated by, or at the request of:
 - i) the General Synod, or
 - ii) any provincial or diocesan synod, or
 - iii) the House of Bishops of The Anglican Church of Canada, or
 - iv) the House of Bishops of any ecclesiastical province, or
 - v) a court of any ecclesiastical province or diocese,

to determine the validity or interpretation of any provision of the Declaration of Principles or the Constitution or any Canon of the General Synod or the Constitution or any Canon of a provincial synod or of a diocesan synod.

- e) There shall be no appeal to the Supreme Court on questions of fact, except on an appeal from a decision given on the trial of a bishop.
- f) No appeal shall be permitted for error or defect in form in any proceedings or judgment.

3. The Court

- a) The Supreme Court shall be composed of nine members.
- b) On an appeal or a case stated from the trial of a bishop, five members shall be bishops holding episcopal office in The Anglican Church of Canada, two shall be members of the clergy of The Anglican Church of Canada and two shall be members of the laity of The Anglican Church of Canada.
- c) On an appeal or a case stated from the trial of a priest or deacon, two members shall be bishops holding episcopal office as aforesaid, five shall be members of the clergy as aforesaid, and two shall be members of the laity as aforesaid.
- d) On an appeal or a case stated from the trial of a lay person, two members shall be bishops holding episcopal office as aforesaid, two shall be members of the clergy as aforesaid, and five shall be members of the laity as aforesaid.
- e) In any other proceeding, three members shall be bishops holding episcopal office as aforesaid, three shall be members of the clergy as aforesaid, and three shall be members of the laity as aforesaid.
- f) No person who is or has been involved, or has an interest in, the case, as a party or witness shall be a member of the court.
- g) The Primate and the provincial metropolitans, or such of them as are not or have not been involved, or do not have an interest in the case, shall appoint in writing, the members of the court.
- h) The Primate and metropolitans making the appointments may appoint themselves as members of the court.
- i) If any of the court dies, or declines to act or become incapable of doing so, or develops an interest in the case, or if a bishop ceases to hold episcopal office as aforesaid, before the hearing is commenced, the vacancy shall be filled in the same way. If the vacancy 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 appointed and the hearing recommenced.
- j) The Primate, if a member of the court, and otherwise the metropolitan senior by election, or, if no metropolitan is a member of the court the bishop senior by consecration, shall be the president of the court.

4. Assessors

- a) The Supreme Court shall be advised by at least four assessors chosen for each proceeding as below provided.
 - i) One assessor shall be the Chancellor of the General Synod, unless he or she is or has been involved in the case, and if so involved, the Vice Chancellor of the General Synod, if one is in office.
 - ii) In a proceeding involving a question of doctrine, at least two assessors shall be theologians who are members of The Anglican Church of Canada appointed in the same manner as members of the court.
 - iii) The other assessors shall be provincial or diocesan chancellors appointed in the same manner as members of the court.
- b) No assessor shall be chosen who has been involved in the case.
- c) If an assessor dies, or declines to act or becomes incapable of doing so, or becomes involved in the case, or is unable to attend a sitting of the court, a substitute similarly qualified shall be appointed to act at the sitting or during the remainder of the proceedings as may be required.

5. Appellant

Any party to a cause or matter which is appealable to the Supreme Court may appeal.

6. Notice of Appeal

Written notice of appeal from any judgment or decision proposed to be appealed from must be given by the appellant within sixty days from the time of pronouncing such judgment or decision. Such notice shall be given to such persons and in such manner as shall be prescribed by the rules of the Supreme Court.

7. Sittings

The Supreme Court may sit in any diocese at such time and place as the president of the court may order and direct.

8. Rules

- a) The Supreme Court, or the Council of the General Synod, when no members of the Supreme Court have been appointed, or, having been appointed are *functus officio*, may make rules or orders with respect to the appointment and duties of the officers of the Court, including the procedure for the hearing of interlocutory matters and applications for leave to appeal, and all other matters necessary to give effect to the provisions of this Canon.
- b) The time for taking any proceedings under the provisions of this Canon or the Rules of Procedure may be extended in such manner as the rules may provide.

9. Frivolous or Vexatious Appeals

The Supreme Court may on summary application dismiss any appeal that is frivolous or vexatious or otherwise an obvious abuse of the process of the court.

10. Judgment

- a) Before delivering judgment on a question of doctrine, the Supreme Court shall refer the question to the other bishops listed in subsections 3b) i) to iv) of the Declaration of Principles and ask for the individual written opinion of each such bishop on the question and shall consider the opinions of the bishops who reply to the request within two months after the making of the reference in reaching its decision.
- b) Every appeal shall be heard and disposed of by the Supreme Court within two years from the time the judgment or decision appealed from was pronounced.
- c) The judgment of the Supreme Court shall be final and conclusive in any proceeding in respect of all matters in question in the proceeding.

[Note: The reference above to subsection 3 b) i) to iv) of the Declaration of Principles was to that document as it read prior to its amendment by General Synod 2013. Given the 2013 amendment, the reference should now be to subsection 8 b) i) to iv) of the Constitution.]

APPENDIX A

Rules of the Supreme Court of Appeal

1. Registrar

- a) The Primate shall appoint a registrar, and, if necessary, an assistant or deputy registrar, to serve as such during the pleasure of the court with the duties defined in the Canon and these rules or amendments or additions thereto, and such other duties as may be prescribed from time to time by the court.
- b) Any such appointee shall be a barrister of the Supreme or Superior Court of one of the civil provinces of Canada, of not less than 10 years standing, and a communicant of this Church.
- c) It shall be the duty of the registrar:
 - i) to keep a correct record of the proceedings on appeal;
 - ii) to attend on the hearing of any appeal;
 - iii) to have the custody of the seal of the court;
 - iv) to hear and determine interlocutory proceedings provided for under these rules;
 - v) to make all orders as to costs, security for costs, payment into and out of court, the taxation of costs and the enforcement of decrees in respect of costs;
 - vi) to perform such other duties as the Primate or court may direct.

2. Notice of Appeal

- a) A notice of appeal shall be in accordance with Form A, or to the like effect.
- b) The notice shall be served personally or sent by registered post prepaid addressed to the last known place of abode, within the time limited by section 6 of Canon XX, to all the parties (other than the appellant or appellants) or to their solicitor or solicitors or counsel, to the registrar of the Supreme Court of Appeal, and to the bishop of the diocese or the registrar of the diocesan or provincial court from whose judgment, decree, conviction or sentence an appeal is asserted.

3. Stay of Proceedings

- a) On notice of appeal by an accused person being given and served as provided in the previous rule, from any conviction or sentence, the bishop from whose conviction or sentence the appeal is asserted, shall not proceed to enforce such sentence against the accused until further order of the Supreme Court, which order shall not be made until after the expiration of 60 days from the date of the notice of appeal.

4. Transmission of Record

Upon receipt of the notice of appeal, the bishop, or the registrar of the court appealed from, shall transmit to the registrar of the Supreme Court, within 30 days from the receipt of said notice of appeal, a full and correct transcript in duplicate of the record, proceedings, pleadings, evidence, decision, and sentence, if any, duly certified by the said bishop or registrar of the court appealed from, and the registrar of the Supreme Court shall forthwith transmit one original of such record or special case to the president of the Supreme Court.

5. Special Case

- a) A diocesan or provincial court may, before making any decree, citation or order, with or without the consent of the parties to the suit, submit to the Supreme Court any question or questions of law arising in the suit in the form of a special case for the opinion of the Supreme Court.
- b) Every such special case shall be divided into paragraphs numbered consecutively and shall state concisely such facts and documents as may be necessary to enable the Supreme Court to decide the question or questions raised thereby.

6. Time and Place of Hearing

- a) The president of the Supreme Court within 60 days of the receipt of the record, shall designate the members who shall compose the court and appoint a time and place within the ecclesiastical province within which the appellant resides for the hearing of this said appeal, and shall advise the Chancellor of the General Synod of such time and place and the composition of the court.
- b) At least 30 days prior to the time appointed for hearing of an appeal, written notice of such time and place shall be given by the Chancellor of the General Synod to the other members of the Supreme Court, and to the appellant and respondent, and to the bishop and registrar of the court appealed from.
- c) The Supreme Court may fix a time and place for the argument of a special case or of questions submitted to the court or may refer such questions to a committee of the court for consideration and report to the president.

7. Record on Appeal or Reference

- a) It shall be the duty of the registrar of the Supreme Court to cause to be printed or copied, a sufficient number of copies of the record or special case, together with the notice of appeal, if any, for every member of the court, the assessors, and counsel representing the parties before the court.
- b) The printing of the record of any portion thereof may be dispensed with for reasons deemed sufficient by the president.

8. Hearing

- a) At the time and place appointed, the court shall be organized and proceed to hear and deliberate upon the appeal, and may hear counsel on behalf of the appellant and respondent, and may adjourn from time to time, and from place to place.
- b) If at any time the full number of the court be not present, those present may adjourn from time to time and from place to place, until the attendance of a full quorum of the court shall be obtained.

9. Evidence, Witnesses and Counsel

- a) The Supreme Court may permit either party to an appeal to be heard in person or by counsel, provided that every such counsel shall be a member of the bar of a civil province of Canada.
- b) The court may, at any stage of the proceedings on appeal, allow either party to alter or amend his or her pleadings, as may be necessary for the purpose of determining the real questions in controversy.
- c) The court may summon and examine witnesses viva voce and in open court, and may for sufficient reason order any particular fact or facts to be proved by statutory declaration or allow the affidavit or statutory declaration of any witness to be read on the hearing of said appeal or may direct any witness to be examined before an examiner or commissioner or the registrar of the court or other person authorized by the civil law of the province to examine witnesses or take statutory declarations.
- d) The court shall be entitled to draw inferences whether of fact or law which might have been drawn therefrom if proved at a trial.
- e) The court may require either party of an appeal to pay such costs as may be determined by the majority of the court.

10. Decrees

- a) All decrees, citations, orders and other instruments under seal, shall be issued by the registrar of the court and shall bear date on the day on which they are respectively issued.
- b) The seal of the court shall bear the device of the seal of the General Synod.

11. Costs

- a) At any time before the hearing of any appeal, the president or registrar may by order direct the payment into court of such sum as is deemed necessary to secure the payment of the necessary expenses of the appeal, including the expense of printing or copying the record of such trial or appeal, the travelling expense of members of the court, the assessors of the court and the counsel.

- b) If any such order is not complied with within 30 days after the mailing of a copy of said order to the appellant, the appeal shall at the end of said 30 days stand dismissed, and the president may by order confirm the decision or judgment appealed from, and the sentence, if any, imposed.
- c) All monies or securities for money deposited with the registrar, shall be forthwith paid over to the Treasurer of the General Synod and deposited in a special account, and out of said monies and securities for money so received, the Treasurer and Chancellor of the General Synod shall pay all expenses and disbursements necessary and incidental to such appeal, and at the conclusion of the appeal shall pay any balance remaining after such payments, to the party who paid such money into court.
- d) The costs and fees of counsel shall be in the discretion of the court, and if awarded shall be taxed by the registrar in accordance with the tariff or scale of costs as provided in the Supreme Court of the civil province in which the cause of action arose, and if payable by the appellant shall be paid out of the monies paid into court after the payment of the disbursements made under these rules.

Form A

Notice of Appeal

Supreme Court of Appeal for The Anglican Church of Canada

In the Matter of certain proceedings in the Court of wherein was Complainant and was Respondent (sufficiently describing cause as in Court appealed from);

I,, hereby appeal from the conviction (sentence or decree) made in the above entitled proceedings and dated theday ofA.D. 20..... to the Supreme Court of Appeal for The Anglican Church of Canada.

The grounds of my appeal are: (here set out, numbering or lettering the paragraphs, the several grounds of appeal).

On the hearing of this appeal I shall be represented by of as Counsel (or, I intend to present my argument in person).

Dated at in the Diocese of this..... day of A.D. 20....

To Address
Appellant

Form B

Declaration

I,, do solemnly and sincerely declare that the evidence which I am about to give shall be the truth, the whole truth and nothing but the truth and, further, that I am willing at any time hereafter to make a statutory declaration under the *Canada Evidence Act* as to the truth of such evidence.