

General Synod – Special Tribunal Canon 2007 Amendment (No 2) Canon 2010 Adopting Ordinance 2011

Explanatory Statement

1. The *Special Tribunal Canon 2007*, among other things, establishes the Episcopal Standards Commission (the “ESC”), purports to confer certain powers on the ESC, and authorizes the ESC to prosecute diocesan bishops in the Special Tribunal.
2. The Special Tribunal Canon 2007 also allows the Synod of a diocese to exclude the power of the ESC to prosecute the bishop of the diocese. However, this leaves open the question as to whether it is possible for the ESC to exercise the powers in the Canon when it cannot use the information resulting from the exercise of those powers to prosecute a diocesan bishop.
3. The ESC has additional powers under the Episcopal Standards Canon 2007 but these are only available in relation to a diocese where the synod of the diocese has adopted that canon.
4. The purpose of this canon is to make it clear that the ESC can only use any powers which may be conferred on it by the Special Tribunal Canon 2007 where the Synod of Diocese has not excluded the ESC’s power to prosecute its bishop.
5. The amendment also assists a person who has a legitimate complaint against the bishop of a diocese which has excluded the prosecuting power of the ESC by referring the person to someone who ought to be prosecuting their complaint if that course of action is appropriate.
6. The amendment preserves the right of diocesan synods to determine what course is appropriate to their circumstances. Thus –
 - (a) The synod of a diocese in which the Special Tribunal Canon 2007 is in force, can decide to allow the ESC to prosecute its bishop should the circumstances make that appropriate.
 - (b) The synod of a diocese in which the Special Tribunal Canon 2007 is in force, can decide to allow the ESC to investigate the behaviour of its bishop but require that the ESC not prosecute. It would then not adopt this amendment and another diocesan bishop or person appointed by the synod may prosecute using the information obtained by the ESC.
 - (c) The synod of a diocese in which the Special Tribunal Canon 2007 is in force, may determine that the ESC shall not exercise the powers conferred on it by that Canon in that Diocese. It can do this only if it has denied the ESC the right to prosecute its bishop and adopts this amendment.
7. The amendments make it clear that the ESC will perform no investigatory function in relation to the bishop of a diocese in circumstances where the synod of the diocese has excluded the power of the ESC to prosecute the bishop. In 2009 the Synod of this Diocese passed an ordinance to exclude the power of the ESC should the Special Tribunal Canon 2007 ever have force and effect in this Diocese.
8. The form of the amending canon introduced at the General Synod in 2010 included a declaration that it affects order and good government. However this was deleted in committee during its passage at General Synod. The Standing Committee nonetheless considers that the amending canon affects order and good government in our Diocese since it concerns the power of the Synod of our Diocese to determine to what extent, if any, the ESC may investigate and/or prosecute our Archbishop under the Special Tribunal Canon 2007.

Recommendation

9. The Standing Committee recommends that Synod pass the bill as an ordinance.

For and on behalf of the Standing Committee.

ROBERT WICKS
Diocesan Secretary

15 August 2011