

An Abysmal Performance

Father Richard Boll, canon lawyer, takes the stand

On 18 May 2000, **Father Richard Boll**, canon lawyer and chancellor for the **Diocese of London**, Ontario, was cross-examined by lawyer **Paul LeDroit** as part of the legal process to have the Roman Catholic Church dropped from a lawsuit launched by several members of the **Swales family**. (The suit stems from the sexual abuse inflicted upon four of the Swales brothers in the late 60s and early 70s by **Father Barry Glendinning**, then a liturgist and Professor at Saint Peter's Seminary in London.) Accompanying Father Boll was **Mr. M. Frederick**, Esq., lawyer for the London Diocese.

Father Boll's inability as a priest and canon lawyer to field a series of questions basic to the law of the Church was shocking, as was his inability to articulate a comprehensive response to many of the questions posed by Mr. LeDroit. In fact, on more than one occasion it seemed that Mr. LeDroit, a non-Catholic trying to understand the structure and law of the Church, had a firmer understanding of the Church than did Father Boll. To add insult to injury, Father Boll arrived without his *Code of Canon Law* and had to use Mr. LeDroit's. Father Boll, a former teacher, was ordained in 1984.

A number of the exchanges between Father Boll and Mr. LeDroit are reproduced below, not in an attempt to comprehend the legalities by which the action against the Church was eventually dropped, but simply to allow Roman Catholics to have a bird's eye-view of this dismal and thoroughly embarrassing canonical performance first-hand. Shortly after this event, Father Boll was charged with sex abuse against young boys.

*On expertise on the State Immunity Act**

(referenced by Father Boll in his 18 May 2000 Affidavit)

Mr. LeDroit I take it there is nothing as a canon lawyer that you could draw on to give that opinion of what the State Immunity Act provides?

Father Boll: Yea, we were taught that. Like I took my Master's Degree at St. Paul's and that was one of the things they covered.

LeDroit: Maybe. But you're not trained to interpret the State Immunity Act, I take it?

Boll: No, no. I just know it, that's all.

LeDroit: Similarly in paragraph 5 when you say, 'As a matter of civil law there is no legal entity recognized as being the church,' that expression of your interpretation of civil law, you don't have any basis of training to express that civil law opinion, do you?

Boll: We had a civil lawyer come in, a QC, and he went through this. Now, personally trained, no. But this guy was one of the head lawyers in Ottawa and he went through this. I mean, that was one of the things they had to do . . .

[* Deals with the provision of immunity to foreign states from the jurisdiction of any court in Canada.]

On who produces the Code of Canon Law

LeDroit: Who is it that prepares, writes or publishes the Code of Canon Law? What organization within the church?

Boll: Likely the Doctrine of... Congregation of the Doctrine of Faith doctrine. They would have the ultimate say. Like they would have, you know how everything else, they have written. Okay, I'll tell you the procedure. A group in there under that congregation would . . .

LeDroit: This is a congregation of the curia?

Promulgation of the 1983 Code of Canon Law

Pope John XXIII announced his decision to reform the Code of Canon Law on 25 January 1959. He appointed the first members of the Pontifical Commission for the Revision of the Code of Canon Law 28 March 1963. In April 1964, 70 consultants were appointed to assist the cardinals of the Commission. The Commission, however, suspended its activity until the completion of the Second Vatican Council.

In the *Apostolic Constitution* (25 January 1983), Pope John Paul II decreed the publication of the new Code of Canon Law.

According to the *Apostolic Constitution*, the Holy Father thanked the many individuals who had been involved in the work: Cardinals Pietro Ciriaci, Pericles Felici and Giacomo Violardo; Father Raimondo Bidagor SJ; Monsignor William Onclin; the then Pro-President of the Commission, Rosalio Castillo Lara; the Monsignors who had served as the Commission's Secretaries; the Cardinals, Archbishops and Bishops who were a part of the Commission; the Consultants of the individual study groups; the many experts drawn from all parts of the world, especially those with expertise in Canon Law, and, the Bishops and Bishops Conferences who were invited to "associate themselves with the work of preparing the new code." ♦

An Abysmal Performance (continued)

Boll: Yes.

LeDroit: What's the congregation again?

Boll: Congregation of Doctrine and Faith. Cardinal Ratzinger's the head of it. R-A-T-Z-I-N-G-E-R. And I have no idea what his first name is.



On the Conference of Bishops

LeDroit: Are you able to tell me where in the code Conference of Bishops is defined?

Boll: If you can...

LeDroit: Yes.

Boll: I don't know it that well. I should have... I was going to bring mine but I forgot it. It would be in here somewhere. That would be it there.

LeDroit: What number?

Boll: 431. I'm not impressed with this thing.

LeDroit: What do you understand the Conference of Bishops to be?

Boll: Okay. In any given country or geographical area, but normally a country, there would be a conference that has . . .for here it's a CCCB. There's a conference of . . .

LeDroit: What does that stand for?

Boll: Canadian Council of Catholic Bishops.

LeDroit: Is council then interchangeable with conference?

Boll: Yeah, in this case. Or is it? Canadian Conference...

Frederick: Conference.

Boll: Conference. I'm sorry. I didn't mean council.



On the Episcopal Conference of Bishops

LeDroit: [. . .] What's an episcopal Conference of Bishops?

Boll: That would be a smaller group normally.

LeDroit: A smaller group of what?

Boll: Of bishops.

LeDroit: Okay.

Boll: Like that could be, it could be larger in the sense, it would go. . .the Pope could call a meeting for a certain geographical area which he does regularly. Just an episcopal council, just a conference. Just bishops. It's nothing... It's a group of bishops coming together for a specific purpose. That's all.

LeDroit: So a bishop from London and a bishop from Timbuktu could get together for some purpose and that would qualify as an episcopal conference?

Particular Churches

Canon 368: Particular churches in which and from which exists the one and unique Catholic Church are first of all dioceses; to which unless otherwise are likened a territorial prelate, a territorial abbacy, an apostolic vicariate, an apostolic prelate, and an apostolic administration which has been erected on a stable basis.

Ecclesiastical Provinces

Canon 431 - §1: Neighboring particular churches are to be brought together into ecclesiastical provinces limited to a certain territory in order that the common pastoral activity of the various neighboring dioceses may be promoted in accord with the circumstances of persons and places and in order that the relationships of the diocesan bishops among themselves may be more suitably fostered.

§2. As a rule exempt dioceses are no longer to exist; individual dioceses, therefore, and the other particular churches which exist within the territory of an ecclesiastical province must belong to this ecclesiastical province.

§3. The supreme authority of the Church alone is competent to establish, suppress or change ecclesiastical provinces, after hearing the bishops involved.



Episcopal Conference

Canon 447: The Episcopal Conference, a permanent institution, is the assembly of Bishops of a country or of a certain territory, exercising together certain pastoral offices for Christ's faithful of that territory. By forms and means of apostolate suited to the circumstances of time and place, it is to promote, in accordance with the law, the greater good which the Church offers to all people.

Canon 448 §1: As a general rule, the Episcopal Conference includes those who preside over all the particular Churches of the same country. . .

§2: An Episcopal Conference can, however, be established for a territory of greater or less extent if the Apostolic See, after consultation with the diocesan bishops concerned, judges that circumstances suggest this. Such a Conference would include only the Bishops of some particular Churches in a certain territory, or those who preside over particular churches in different countries. It is for the Apostolic See to lay down special norms in each case. [the Canadian Conference of Catholic Bishops is an Episcopal conference. The Ontario Conference of Bishops is an Episcopal Conference, as is the Western Catholic Conference etc.] ✦

An Abysmal Performance (continued)

Boll: No. There would have to be. . . I mean, there would have to be a fairly important, you know, agenda. It's not just a meeting. This would be an active meeting with something they're trying to work out.



On the Synod of Bishops

LeDroit: What is a synod of bishops?

Boll: Okay. There are two ways... there's more than two, but a synod is a gathering of bishops again. If they want to have it in a given area for a given topic. Like you wouldn't invite all the bishops of Canada. It might be the French group talking about a very specific thing they want to work on in Quebec. The normal thing that we hear a synod about, like these are big, big deals. They're not small deals. Normally in Rome and the Pope called a synod on his own or some dicastery or something like that wants it. But basically they have a very specific topic that he wants discussed, and there would likely be a letter from the Pope after that. But it's... These bishops represent given areas. Okay, there might be one from Canada, one from the States. It's really a lot from one given area.

LeDroit: How does it differ from an episcopal conference?

Boll: They wouldn't necessarily have to have all the members invited. It would be a very specific topic. And, okay, like Vatican II could have been called a synod. It isn't. But that's where all the bishops come together. A synod would be a smaller group from a wider geographical area really. Like they're important but they're... That's about it.



On the hierarchy of the Church

LeDroit: Let me try to get my understanding of how the structure of the hierarchy of the church is set out. At the lower end of the ladder you have priests and deacons?

Boll: It's not the lower end.

LeDroit: I'm talking about the hierarchy of the church. There's a recognized hierarchy, is there not?

Boll: Yes. But it's a hierarchy of service versus power.

LeDroit: It's what?

Boll: It's a hierarchy of service to serve the people, people of God versus a power structure in that sense. I'm just opposed to saying the Pope's up here and we're down here. I think it's more along that way.



On alienation of property

LeDroit: Is it not the case that if a bishop wants to dispose of

Synod of Bishops

Canon 342: The synod of Bishops is a group of Bishops selected from different parts of the world, who meet together at specified times to promote the close relationship between the Roman Pontiff and the Bishops. These Bishops, by their counsel, assist the Roman Pontiff in the defense and development of faith and morals and in the preservation and strengthening of ecclesiastical discipline. They also consider questions concerning the mission of the world.



According to experts in the field of Canon Law, **three types of synod are possible:**

- (1) a **general ordinary assembly**, which deals with matters affecting the whole Church (i.e., the implementation of Vatican II in 1967). Ordinary sessions now meet every three years;
- (2) a **general extraordinary assembly**, which deals with matters of particular importance at the time (i.e., one in 1985 dealt with life in the Church since the end of Vatican II);
- (3) a **special assembly**, which deals with more restricted local matters (i.e., the Synod for Europe in 1990 was convened to discuss how the Church can respond to the changing circumstances in Europe).



According to the *Catholic Almanac* (1996), the Synod of Bishops is a central ecclesiastical institution, permanent by nature. It is directly and immediately subject to the Pope, who has authority to assign its agenda, to call it into session, and to give its members deliberative as well as advisory authority.

In addition to a limited number of ex-officio members and a few heads of male religious institutes, the majority of members are elected by and representative of national or regional episcopal conferences.

The Pope reserved the right to appoint the general secretary, special secretaries and no more than 15 per cent of the total membership.

The Pope is president of the Synod.

An advisory council of 15 members (12 elected, three appointed by the Pope) provides the secretariat with adequate staff for carrying on liaison with episcopal conferences and for preparing the agenda of synodal assemblies.



An Abysmal Performance (continued)

property over a certain value, he **must** get the authority to do so from the Holy See?

Boll: It's not really. . . He has to tell them what they're doing. He doesn't have to get permission. The only thing if it was so outrageous, then they would say something. But he does not need their permission.

LeDroit: Well, let me refer you to 1292, Canon 1292. And I think it's the second sub-section. You've got my book in front of you there. But it says in the disposition of property over a maximum amount.

Boll: Yeah, but . . .

LeDroit: Can you just read that for us?

Boll: "The permission of the Holy See is required for the valid alienation of goods, selling goods, whose value exceeds the maximum sum, or if it is a question of alienation of something given to the church by reason of a vow or objects which are precious by reason of their artistic or historical significance." I might be wrong in my interpretation, but I have never heard . . .

LeDroit: But that canon . . .

Boll: That's for real. I'm not disagreeing with it.

LeDroit: Would that be contrary to what you said . . .

Boll: Yes, but I'm talking... All I know of for sure, now remembering that, was I have never, ever heard of them stopping anything.

LeDroit: Well, whether he stops it or not, authority has to be sought, does it not, if it's over the maximum amount?

Boll: Yeah, but the ones... They have never turned it down. I know what you're... Okay.



On the dicastery

LeDroit: Would you define dicastery?

Boll: Dicastery is the... There are 11, or I can't even remember the exact number, but different groups of bishops, like one for education, one for making bishops, the Congregation of Doctrine of Faith, things like that.

LeDroit: Are these the congregations within the curia that you're talking about?

Boll: Yeah.

LeDroit: Okay. That is similar...

Boll: That is the curia.

LeDroit: The congregations within the curia are the same thing as the dicastery?

Boll: Yes.

LeDroit: And just for the reporter, would you spell dicastery. Is it D-E-C-A-S-T-R-I?

Alienation of Property

Canon 1292 §1: Without prejudice to the provision of can. 638 §3 [regarding alienation in religious institutes], when the amount of goods to be alienated is between the minimum and maximum sums to be established by the Episcopal Conference for its region, the competent authority in the case of juridical persons not subject to the diocesan bishop is determined by the juridical person's own statutes. In other cases, the competent authority is the diocesan bishop acting with the consent of the finance committee, of the college of consultors, and of any interested parties. The diocesan bishop needs the consent of these same persons to alienate goods which belong to the diocese itself.

§2: The permission of the Holy See is required for the valid alienation of goods whose value exceeds the maximum sum, or if it is a question of alienation of something given to the Church by reason of a vow, or of objects which are precious by reason of their artistic or historical significance.



The Holy See

Canon 361: In this Code the terms Apostolic See and Holy See mean not only the Roman Pontiff, but also, unless the contrary is clear from the nature of things or from the context, the Secretariat of State, the Council for public affairs of the Church, and other Institutes of the Roman Curia.



Dicasteries

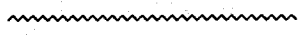
According to the *Catholic Almanac* (1996) "The Roman Curia is the Church's network of administrative agencies (called dicasteries) serving the Vatican and the local churches, with authority granted by the Pope."

"The Curia ... consists of the Secretariat of State, nine congregations (governing agencies), three tribunals (judicial agencies), 11 councils (promotional agencies) and three offices (specialized agencies). All have equal juridical status with authority granted by the Pope."



An Abysmal Performance (continued)

Boll: No, it's D-I something. I can't spell it. I don't know. I'm sorry.



On the composition of the Holy See

LeDroit: So if I said Pope and curia [is the Holy See], would that be...

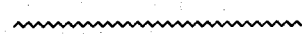
Boll: I would think it's very close.

LeDroit: Is that...

Boll: Very close.

LeDroit: ...inclusive or is there something more than that?

Boll: Well, see, they have advisors coming in and out. I'm not sure how they... I would only say it's close. I don't think it's... Like I know that Ambroic goes in to give . . . Is asked for advice and goes over. You know, different cardinals or different bishops. And just because of that act, they would be considered part of the Holy See. But not... Only a very small part. And only the ones... The only ones I really know of that would be absolutely for sure are the ones that are in Rome itself. Or the Vatican, sorry.



On the definition of the Vatican

LeDroit: I'm still trying to define what the Vatican is. I mean, is it... Getting back to what I said before, is it anything other than a geographical area? Does it include anything within the ecclesiastical structure of the church?

Boll: Yes. The residence of the Pope.

LeDroit: Wherever it may be?

Boll: Wherever what may be?

LeDroit: Wherever the residence of the Pope may be?

Boll: No, no, no. You asked me what the Vatican is other than a piece of ground. That's where he stays. That's his primary residence.

LeDroit: I'm with you there. It's a specific piece of property. My question was does the Vatican, the term Vatican, does it have any ecclesiastical meaning or is it simply a legal meaning of the real estate within the city of Rome?

Boll: I don't really know.



On the legal definition of diocese

LeDroit: Now is there, as what you understand, a legal definition of what a diocese is as well? For example, like the Diocese of London?

Boll: Yeah, it would be called a particular church. And that's right in the code. I don't know what the number is exactly.

Frederick: You mean in a civil sense or canonical sense?

Vatican City

According to the *Catholic Almanac*: "The State of Vatican City (Stato della Citta del Vaticano) is the territorial seat of the papacy. . . . situated within Rome it embraces an area of 108.7 acres. and includes within its limits the Vatican Palace, museums, art galleries, gardens, libraries, radio station, post office, bank, astronomical observatory, offices, apartments, service facilities, St. Peter's Basilica, and neighbouring buildings between the Basilica and Viale Vaticano. The extraterritorial rights of Vatican City extend to more than 10 buildings in Rome, including the major basilicas and office buildings of various congregations of the Roman Curia, and to the papal villas at Castel Gandolfo 15 miles south-east of the City of Rome. Castel Gandolfo is the summer residence of the Holy Father.

"The government of Vatican City is in the hands of the reigning Pope, who has full executive, legislative and judicial power. The administration of affairs, however, is handled by the Pontifical Commission for the State of Vatican City. The legal system is based on Canon Law; in cases where this code does not obtain, the laws of the City of Rome apply. The City is an absolutely neutral state and enjoys all the rights and privileges of a sovereign power. The Secretariat of State (Papal Secretariat) maintains diplomatic relations with other nations. The citizens of Vatican City, and they alone, owe allegiance to the Pope as head of state.

"Cardinals of the Roman Curia residing outside Vatican City enjoy the privileges of extraterritoriality." ♦

Diocese

Canon 369: A diocese is a portion of the people of God which is entrusted for pastoral care to a bishop to be nurtured by him, with the cooperation of the *presbyterium*, in such a way that, remaining close to its pastor and gathered by him through the Gospel and the Eucharist in the Holy Spirit, it constitutes a particular Church. In this Church, the one, holy, catholic and apostolic Church of Christ truly exists and functions. ♦

An Abysmal Performance (continued)

Boll: Oh, I'm sorry. Yeah. I'm just talking canonical. I don't know civil worth a pinch of anything.

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**On the Church of Rome**

**LeDroit:** What's the Church of Rome?

**Boll:** That's a bad term for the Roman Catholic Church.

**LeDroit:** Why do you say bad?

**Boll:** Well, it's derogatory. I mean, that basically... Okay, as far as I know that basically came from some other Christian group thinking that the Pope or Rome was the head of the church and Jesus is the head of the church. So it's meant more as a... or you know, pejorative than a compliment.

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On the Church as a juridical person

LeDroit: Canon 113 says that the Catholic church and the Apostolic See have the status of a moral person by divine disposition. Does that mean that the Catholic Church is a juridical person in the church, in the church's eyes?

Boll: The whole Catholic Church or the Vatican?

LeDroit: I'm just reading the words on the page. Canon 113.

Boll: A moral person is not a juridical person. Yeah, that's what it says, the next one. Do you want me to read it?

LeDroit: Sure.

Boll: "In the church besides physical persons there are also juridical persons, that is, in canon law subjects of obligations and rights accorded to their nature."

LeDroit: And do you say that this says that the Catholic Church is not a juridical person?

Boll: Not... That's the title. There are parts of it you know. The bishop is a juridical person, but the Catholic Church is... I don't know what you'd define it. It would not be juridical *per se*, I know that, juridical person *per se*.

LeDroit: What does *per se* mean?

Boll: Well, in and of itself. Like the bishop in and of himself, because of his, what he's been given by, you know, his ordination to the priesthood and bishop is automatically.

LeDroit: Well, how would you interpret the statement that the Catholic Church has the status of a moral person?

Boll: Well, they're morally responsible. But I don't know how... There's a huge difference between the other one. I don't even remember taking it, so I can't say anything really pertinent to anything.

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**On the Bishop as a representative of the Holy See**

**LeDroit:** But without being a part of the Holy See, does the bishop represent the Holy See in his diocese?

**Boll:** He would represent the church teachings. He wouldn't be representing them. I mean, other than when they teach you stuff like that, you could say to be representative. But basically he's a representative of Christ following the directives of the church. I'm not trying to be pontifical, but that's basically where we come from.

**The Church as a Juridic Person**

**Canon 113:** The Catholic Church and the Apostolic See have the nature of a moral person by divine law itself.

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According to *The Code of Canon Law: a Text and Commentary* (Canon Law Society of America, 1985): "The canon now at the very outset of this chapter that will deal with juridic persons asserts that by divine institution both the Catholic Church and the Apostolic See — they are mentioned separately — enjoy such juridic personality."

An explanatory note prior to canon 113 explains that: "Society is so constituted that some advances could never be achieved individually. Groups must band together for common purposes. . . .these groups are treated by the law as though they, too, were physical persons."

"In past law, these aggregates were called 'moral persons'; a new terminology speaks of "juridic persons" . . . and they are seen as subjects in church law of those rights and obligations that are in accord with the character of the group or aggregate."

**Canon 334:** The Bishops are available to the Roman Pontiff in the exercise of his office, to cooperate with him in various ways, among which is the synod of Bishops. Cardinals also assist him, as do other persons and, according to the needs of the time, various institutions; all these persons and institutes fulfil their offices in his name and by his authority, for the good of all the Churches, in accordance with the norms determined by law.