ECCLESIASTICAL MINEFIELDS by Ian Outerbridge *et al.* (Toronto: Or Emet Publishing, 1994).

Guided by the doctrinal principles contained in the Basis of Union of 1925, *The Manual* is the principle legislative document in the United Church of Canada. Among the many federal and provincial legal provisions and regulations, it also contains the Constitution and the Government of the Church. When taken as a whole, *The Manual* seeks to uphold the rule of law in order to guarantee fair and just treatment for all Church members.

In accordance with the law, *The Manual* is revised and reviewed every two years following the meeting of the General Council. Unfortunately, this process is often left to those uninitiated in legal know-how. As a consequence, many of the articles of *The Manual* prescribe indiscriminate, and in some cases contradictory, laws and regulations. In short, what has emerged is a legal convolution. The annotation pertaining to s. 74 reveals a prime example of the legal turbidity which suffuses the pages of *The Manual*:

> Persons referring to this section ought to be apprised of the "ruling" of the General Secretary ... which is unpublished and unknown but ... has the force of law and in theory supersedes *The Manual* in terms of procedure ... the ruling is of questionable constitutionality ... among other things it is inconsistent with Section 7(b) of *The Manual*.[1]

This legal imprecision, both in substance and in procedure, has led to much confusion throughout the Church, particularly in matters relating to the proceedings against a member of the clergy who is accused of sexual abuse or associated crimes. Understandably, many of those accused, aware of the legal inconsistencies and inadequacies of *The Manual*, have sought justice in the civil courts in an effort to safeguard their legal rights.

On this point, in April 1993, the United Church of Canada published a document entitled "Sexual Abuse (Sexual Harassment, Sexual Exploitation, Pastoral Sexual Misconduct, Sexual Assault) and Child Abuse."[2] The motivation for its drafting came out of the amendments to *The Manual* of the 34th General Council of 1992, which adopted policies and procedures for sexual abuse cases. Though not incorporated into *The Manual*, this policy paper attempted to operate in concert with the specific amendments, and as such laid out more clearly the procedural guidelines for the plaintiff, the respondent and the competent church court hearing the charges.

Thereupon, in four sections, *Ecclesiastical Minefields* attempts to expose, in commentary form, some of the dangers which lie buried in the poorly expressed legal provisions relating to sexual abuse procedures. In fact, the authors of *Ecclesiastical Minefields* apportion a sizeable share of the book to meticulously uncovering the numerous deficiencies, ill-defined (at civil law) terms and discrepant disciplinary and

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1 I. Outerbridge *et. al.*, *Ecclesiastical Minefields* (Toronto: Or Emet Publishing, 1994) at xxvi.

2 *Ibid.* at xxviii.

administrative procedures found both in the guidelines and in *The Manual*.[3] This critique points to serious flaws in the drafting of both documents which tend to leave the accused clergyperson like "a sitting duck floating in a barrel."[4]

At the heart of this work lies the issue of natural justice. The crux of the problem resides in the conflict between the current sexual abuse guidelines and the natural justice tradition of the civil courts; the singular concern is the need to review these guidelines through a formal consultative process with a view to making substantial amendments. The authors claim that such changes, steeped in the tradition of natural justice, would ensure higher standards of procedural fairness for those accused, and thereby restore trust and confidence in the ecclesiastical courts.

The overriding purpose in reforming much of the present church legislation resides in a hope that well-structured mediation processes, imbued with sound legal principles of justice and judicial fairness, will one day handle many of the types of litigation currently before the secular courts. This hope is founded on the observation that the secular courts are quite reluctant to interfere in ecclesiastical matters, especially when the ecclesiastical courts have subscribed to the rules of natural justice and have acted with a high duty of care. Two cases and a case list found in the accompanying appendices provide justification for this assertion.

Indeed, the authors of *Ecclesiastical Minefields* have presented a timely and useful commentary on the current legislation of the United Church of Canada. This book will certainly serve to educate both the clergy and the laity not only in the fundamental principles of law, but also in the particular legislation of a denominational church regarding the policies and practices for cases of sexual abuse. More importantly, *Ecclesiastical Minefields* represents a bold and daring critique of all that appears inconsistent and incomplete within the documents of a denominational church that claims "to safeguard its members."[5] The Church in the modern world is neither expected to act unjustly nor to give the impression of being unjust.

While the criticisms of certain sections of *The Manual* and the Sexual Abuse Guidelines will raise some eyebrows, the many positive proposals advanced by the authors will hopefully encourage debate and speedy reform that will shift the responsibility of the carriage of justice from the secular to the ecclesial's forum. In this way, ecclesiastical courts, mediation hearings and conciliation processes will become the ordinary instruments of justice rather than the extraordinary. In short, while the authors call for well-written and legally binding statements of reform to ensure that rights and obligations within the Church are recognizable and accessible, the disciplinary laws are not viewed as central. Instead, they become the contingent expressions of the continuous working relationships among the various members of the Church.

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3 See especially *ibid.* at 143-93.

4 *Ibid.* at xxvii.

5 *Ibid.* at xxxii.

At times I read the work with great interest, especially the well-written historical review of disciplinary bodies and the sections and cases referring to natural justice. To conclude, I would like to suggest that while the Pauline exhortation to the faithful not to take their disputes before civil authorities[6] still carries much weight within the Roman Catholic Church, it is difficult to sense its force if it is found that canon lawyers show less awareness than civil lawyers of the natural rights of its members. In any event, this book underlines the fact that the present conditions of modern society, by which I include both civil and ecclesial, make the possibility of this happening in any denominational church or tribunal more likely than ever before. All in all, this well-presented and well-researched work puts all confessional churches on notice that a system of discipline that is fundamentally flawed and essentially lacking is no system at all.

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[6] *The Bible* at 1 Cor. 6.