

DEC.  
2020

# ARPA CANADA'S LEGAL ARGUMENTS

IN



## ETHIOPIAN ORTHODOX TEWAHEDO CHURCH V. AGA ET AL.

DEFENDING THE SPIRITUAL JURISDICTION OF THE CHURCH

**IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)**

B E T W E E N

**ETHIOPIAN ORTHODOX TEWAHEDO  
CHURCH OF CANADA ST. MARY CATHEDRAL, MESSALE ENGEDA, ABUNE  
DIMETROS and HIWOT BEKELE**

**APPELLANTS**

Respondents

-and-

**TESHOME AGA, YOSEPH BEYENE, DEREJE GOSHU,  
TSEDUKE GEZAW and BELAY HEBEST**

**RESPONDENTS**

Appellants

-and-

**CANADIAN MUSLIM LAWYERS ASSOCIATION, ASSOCIATION FOR REFORMED  
POLITICAL ACTION CANADA, CANADIAN CIVIL LIBERTIES ASSOCIATION,  
EVANGELICAL FELLOWSHIP OF CANADA AND CATHOLIC CIVIL RIGHTS  
LEAGUE, WATCH TOWER BIBLE AND TRACT SOCIETY OF CANADA, BRITISH  
COLUMBIA HUMANIST ASSOCIATION, SEVENTH-DAY ADVENTIST CHURCH IN  
CANADA, CHRISTIAN LEGAL FELLOWSHIP, NATIONAL COUNCIL OF  
CANADIAN MUSLIMS, EGALE CANADA HUMAN RIGHTS TRUST, CANADIAN  
CENTRE FOR CHRISTIAN CHARITIES**

**INTERVENERS**

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**FACTUM OF THE INTERVENER**

**ASSOCIATION FOR REFORMED POLITICAL ACTION CANADA**

(Pursuant to Rules 42 of the *Rules of the Supreme Court of Canada*, S.O.R./2002-156)

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**Association for Reformed Political Action  
Canada**

130 Albert Street, Suite 1705  
Ottawa, Ontario K1P 5G4

**John Sikkema/Marie-France Major**

Tel: 416-992-9877  
Fax: (613) 249-3238

**Supreme Advocacy LLP**

100 - 340 Gilmour Street  
Ottawa, Ontario K2P 0R3

**Eugene Meehan, Q.C.**

Tel: (613) 695-8855 Ext: 101

Fax: (613) 695-8580

Email: [emeehan@supremeadvocacy.ca](mailto:emeehan@supremeadvocacy.ca)

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## **PART I – OVERVIEW AND FACTS**

1. This case raises important questions of law regarding the independence of religious bodies and the jurisdiction of the civil courts to adjudicate disputes of a religious or ecclesiastical nature. The term “civil” is used in this factum to distinguish civil law, courts, or matters from religious or ecclesiastical law, decision-makers, or matters; “civil” does not distinguish civil and common law.
2. Canadian courts, in keeping with foundational principles underlying our law, should continue to affirm apt limits on courts’ jurisdiction in relation to religious matters and the internal affairs of religious bodies. A religious or other voluntary association cannot dictate to a civil court the limits of the latter’s jurisdiction, but where a matter is ecclesiastical or religious, with no clear property or civil right at stake, civil courts should not claim jurisdiction over that matter.
3. Even if a religious body’s governing documents were intended to create legal relations, a civil claim in relation to them may raise issues that a civil court should decline to adjudicate.
4. A blanket rule that an association’s written “constitution and by-laws” (or similar documents by another name) constitute a contract would contradict precedent and, in some cases, ignore the religious nature of such documents and the intentions of those who adhere to them.
5. ARPA Canada takes no position on the facts of this case.

## **PART II – ISSUES**

6. ARPA Canada will make submissions on the following issues:
  - a. When should a civil court accept or decline jurisdiction to adjudicate a dispute arising within a religious association?
  - b. When or to what extent should a religious association’s governing documents be considered to form a contract or otherwise give rise to civil rights and obligations?
  - c. What is the legal significance of the corporation, if any, in this case?

## **PART III - ARGUMENT**

- a. **Courts should only adjudicate cases in which a property right or other civil right is at stake, recognizing limits of civil jurisdiction in relation to “spiritual jurisdiction”**
7. Section 96 courts are courts of plenary jurisdiction. They have “all the powers necessary

to do justice between the parties” and a “jurisdiction [that] is unlimited and unrestricted in substantive law in civil matters.”<sup>1</sup> Crimes within a church should be prosecuted and abuse should be reported. Courts should not decline to hear tort claims between members of a religious community. Members of a religious association may, like anyone else, form civilly binding contracts with each other. A religious body may choose to adopt a certain legal structure, such as corporation, to enjoy the legal benefits it may provide.<sup>2</sup> These are all *civil matters*. Religious bodies, their members, and their leaders are all rightly subject to civil law.

8. Yet Canada’s courts have been careful to limit their jurisdiction to hear cases regarding *religious* principles, rules, rights, or duties. This is fitting. As a factual matter, a religious body may have very different purposes and expectations when adopting written rules to govern itself than, say, a labour union or professional association.<sup>3</sup> As a matter of law, adjudicating a dispute about a religious body’s rules or teachings raises concerns respecting the religious body’s identity, integrity, and freedom to govern itself, and concerns about the civil judiciary’s competence in such matters, which may involve the interpretation of sacred texts and religious tradition.<sup>4</sup>

9. The present case does not appear to involve a statutory claim, tort claim, a dispute about administering a trust or ownership or use of property, or an employment-related dispute. Rather, it appears to be a claim to have a court interpret, apply, and enforce a body of ecclesiastical law (or parts thereof) as a contract. ARPA Canada makes no submissions on whether the body of ecclesiastical law in this case, by the parties’ mutual intention, became a civilly binding contract. However, it is important to avoid misinterpreting precedents in which a court may have treated religious rules as contractual for the limited purpose of resolving a civil matter as indicating that religious bodies’ governing documents constitute contracts in the ordinary sense.

10. For example, the Court in *Dunnet* declared that courts have no jurisdiction to inquire into a church’s rules, “except so far as may be necessary for some collateral purpose.” A “collateral purpose” could be “[i]f funds are settled to be disposed of amongst members,” or “a right to

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<sup>1</sup> [\*80 Wellesley St. East Ltd. v. Fundy Bay Builders Ltd. et al.\*](#), [1972] 2 O.R. 280 (C.A.) (emphasis added), cited by this Court in [\*Douez v. Facebook, Inc.\*](#), 2017 SCC 33, at para 37.

<sup>2</sup> Its legal structure may or may not overlap with its religious authority structure. See para 32, *infra*.

<sup>3</sup> See paras 26-28 of this factum.

<sup>4</sup> [\*Wall v Judicial Committee of the Highwood Congregation of Jehovah's Witnesses\*](#), 2016 ABCA 255, Wakeling J. in dissent, at notes 84, 90, 91, and 95 [*Wall ABCA*].

enjoyment of any pecuniary benefit” such as “use of a house, or land.”<sup>5</sup> In such cases, courts avoid delving into doctrinal disputes or other religious questions, but defer to the relevant religious authority’s decision – unless there is evidence that a purportedly religious decision was made in bad faith for the purpose of depriving someone of property or civil rights.<sup>6</sup>

11. The jurisdiction issue might be understood by borrowing concepts from Canadian federalism jurisprudence in a loosely analogous way. First, a court should ask what is the “matter” that the plaintiff or applicant wants to resolve. What is the nature of the dispute? Is there a recognized cause of action at common law? What are the remedies sought? Is the court being asked to apply a statute? Is property in dispute? If a “*legal right* of sufficient importance”<sup>7</sup> is the subject of the claim, it is a civil matter, and falls within civil courts’ jurisdiction. Even then, a court should be sensitive toward “religious aspects” that may be involved. To use *Lakeside Colony* to illustrate:

In deciding the membership or residence status of the defendants [civil matter], the court must determine whether they have been validly expelled from the colony [civil aspect]. It is not incumbent on the court to review the merits of the decision to expel [religious aspect]. It is, however, called upon to determine [the civil aspect] whether the purported expulsion was carried out according to applicable rules, with regard to the principles of natural justice, and without *mala fides* [i.e. not colourable].<sup>8</sup>

12. This multi-jurisdictional dynamic is evident in similar cases. In *Ivantchenko*, the Ontario Court of Appeal said “courts must be sensitive to the interplay between civil law and the internal

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<sup>5</sup> *Dunnet v. Forneri*, 1877 O.J. No 227 (Ch.), at para 34 (Appellants BoA, Tab 1). *Dunnet* was cited approvingly by the Manitoba Court of Appeal in *Re Morris and Morris*, 42 DLR (3d) 550 (C.A.).

<sup>6</sup> *Lakeside Colony of Hutterian Brethren v Hofer*, [1992] 3 SCR 165 at 175 [*Lakeside Colony*]. See also *Wall ABCA*, *supra* note 4, at note 91.

<sup>7</sup> *Highwood Congregation of Jehovah’s Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26, at para 27 [*Wall*]; para 29 indicates that “mere membership” in a religious body is not a civil right.

<sup>8</sup> *Lakeside Colony*, *supra* note 6, at 175; Gonthier J. says the rights in question were both property rights and contractual rights (at 174). He then comments that “the question is not so much whether this is a property right or a contractual right, but whether it is of sufficient importance to deserve the intervention of the court and whether the remedy sought is susceptible of enforcement” (at 175); this should not be taken as setting a simple standard of “importance and enforceability” (which might broaden courts’ jurisdiction indeterminately), since *civil rights* were plainly at stake.

law of the religious organization”<sup>9</sup> and, citing *Bruker*<sup>10</sup>, said “the court will enforce the civil incidents of an agreement that originates in a religious context,” but avoid doctrinal disputes.<sup>11</sup>

13. In *Ukrainian Greek Orthodox Church*, this Court said that “unless some property or civil right is affected [...], the civil courts of this country will not allow their process to be used for the enforcement of a purely ecclesiastical decree or order.”<sup>12</sup> In *Cohen*<sup>13</sup>, the applicants sought an injunction to prevent mixed seating of men and women as contrary to the purposes for which a synagogue was held in trust. The judge concluded, “While [...] courts have a role to play when congregations become dissentient in relation to property, contracts, or other civil rights, [...] the issue is fundamentally an ecclesiastical issue which must be resolved outside the courts of law.”<sup>14</sup>

14. Or as the United States Supreme Court stated in *Watson v. Jones* (1871), in a passage that speaks directly to the issue of church membership and discipline:

The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government [...]. But it would be a vain consent and would lead to the total subversion of such religious bodies if anyone aggrieved by one of their decisions could appeal to the secular courts and have them reversed.<sup>15</sup>

### **The rule of law, legal pluralism, and church-state relations**

15. The historian Rémi Brague explains that while the early church had “little need to assert its difference from a civil power that persecuted it,” risk of confusion arose with Constantine and

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<sup>9</sup> *Ivantchenko, et al. v. The Sisters of Saint Kosmas Aitolos Greek Orthodox Monastery*, 2011 ONSC 6481, at para 4 [*Ivantchenko*].

<sup>10</sup> *Bruker v. Marcovitz*, 2007 SCC 54.

<sup>11</sup> *Ivantchenko*, *supra* note 9, at para 7.

<sup>12</sup> *Ukrainian Greek Orthodox Church v. Ukrainian Greek Orthodox Cathedral of St. Mary the Protectress*, [1940] SCR 586, at 591.

<sup>13</sup> *Cohen v. First Narayav Congregation*, [1983] O.J. No. 499 (Ct J) (ARPA Canada’s Book of Authorities (“ARPA BoA”), at Tab 1).

<sup>14</sup> *Ibid*, at para 11.

<sup>15</sup> *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872), at 728 (ARPA BoA, Tab 2). See also *Wall ABCA*, *supra* note 4, at notes 91 and 95, for similar passages from other cases.

the collaboration of Christianity and the Roman Empire.<sup>16</sup> Early in this collaborative period, “Something like a transparent membrane was formed to render the church distinct from the civil power and prevent the one from absorbing the other.” Brague continues: “This first occurred on the juridical level. The privileges accorded to the bishops and the emergence of a canon law prepared the constitution of the church as a society endowed with its own rules; in particular, the church became capable of controlling its conditions of access.”<sup>17</sup>

16. Harold Berman describes the development of the state ruled by law or “law state” as emerging out of the historical struggle between ecclesiastical and secular authorities. Rule of law meant rule *by* law (that authorities would enact laws and establish legal systems), rule *under* law (that they would be bound by laws they enacted), and that each would be limited in its authority by the laws of other jurisdictions. “If the church was to have inviolable legal rights, the state had to accept those rights as a lawful limitation upon its own supremacy. Similarly, the rights of the state constituted a lawful limitation upon the supremacy of the church.”<sup>18</sup> *Legal pluralism*, or the coexistence of diverse jurisdictions and legal systems within the same community, Berman calls “[p]erhaps the most distinctive characteristic of the Western Legal tradition.” It originated, Berman argues, “in the differentiation of the ecclesiastical polity from secular polities.”<sup>19</sup>

17. By the Middle Ages, the Roman Catholic Church claimed jurisdiction not only over ecclesiastical matters, but over marriage, family relations, wills, and various moral offences.<sup>20</sup> Ecclesiastical and civil jurisdiction overlapped. Cases could be transferred from a civil court to a Church court if the civil procedures were adjudged unfair or unfit.<sup>21</sup> Yet even in the Middle Ages, though borders between Church and civil jurisdiction were badly blurred, Brague writes, “everyone was persuaded that they exist.”<sup>22</sup> As the medieval jurist Accursius famously declared,

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<sup>16</sup> Rémi Brague, *The Law of God: The Philosophical History of an Idea* (Chicago: University of Chicago Press, 2007), at 129 [**Brague**] (ARPA BoA, Tab 6).

<sup>17</sup> *Ibid*, emphasis added.

<sup>18</sup> Harold Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Harvard University Press, 1983), (ARPA BoA, Tab 4), at 292.

<sup>19</sup> *Ibid*, at 10.

<sup>20</sup> John Witte Jr., *Law and Protestantism* (Cambridge University Press, 2002), at 35-37 [**Witte 2002**] (ARPA BoA, Tab 12).

<sup>21</sup> *Ibid*, at 36.

<sup>22</sup> Brague, *supra* note 16, at 144 (ARPA BoA, Tab 6).

“Neither the pope in secular matters nor the emperor in spiritual matters has any authority.”<sup>23</sup>

18. In the Reformation, the Church’s expansive powers were challenged. Luther urged that all legal authority be removed from clergy and consigned to the civil magistrates.<sup>24</sup> The Reformers would not have the church bear the sword – that is, coercive or punitive power.<sup>25</sup> Yet Calvin and later Reformers also strongly defended the liberty and *spiritual jurisdiction* of the new Protestant churches.<sup>26</sup> Calvin defended the Genevan church’s spiritual authority to withhold the sacrament of communion against a challenge by the City Council.<sup>27</sup> Calvin maintained that “church discipline requires neither violence nor physical force, but is contented with the might of the word of God.”<sup>28</sup>

19. These basic principles continue to be reflected in our law today. Religious bodies may not exercise coercive power, yet they have a sphere of independent spiritual authority, at the core of which is the authority to determine their own doctrines and decide who may be members.

#### **Foundational principles of Canadian law favour judicial restraint in religion cases**

20. This Honourable Court has stated, “The ‘rule of law’ is a highly textured expression [...] conveying, for example, a sense of orderliness, of subjection to known legal rules, and of executive accountability to legal authority.”<sup>29</sup> All exercise of public power must find its source in a legal rule.<sup>30</sup> This Court has noted that “the government action constrained by the rule of law [...] is usually that of the executive and judicial branches.”<sup>31</sup> The rule of law does not require courts to ensure individuals suffer no unfairness in any sphere of life, but rather that civil authority is

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<sup>23</sup> *Ibid*, at 142.

<sup>24</sup> Witte 2002, *supra* note 20, at 58 (ARPA BoA, Tab 12).

<sup>25</sup> See e.g. John Calvin (trans. H. Beveridge), *Institutes of the Christian Religion* (Hendrickson Publishers, 2007), at 802, “For the church has not the right of the sword to punish or restrain, has no power to coerce, no prison or other punishments which the magistrate is wont to inflict.” [Calvin] (ARPA BoA, Tab 7).

<sup>26</sup> John Witte Jr., *The Reformation of Rights: Law, Religion, and Human Rights in Early Modern Calvinism* (Cambridge University Press, 2007), at 70-73 (ARPA BoA, Tab 13). See also M.H. Ogilvie, *Religious Institutions and the Law in Canada*, 4th ed. (Toronto: Irwin Law, 2017), at 19 (ARPA BoA, Tab 10).

<sup>27</sup> Jules Bonnet, *Letters of John Calvin* (Philadelphia: Presbyterian Board of Publication, 1858) at 424 (ARPA BoA, Tab 5). For context see Bernard Cottret (trans. M.W. Macdonalds), *Calvin: A Biography* (Grand Rapids: Wm. B. Eerdmans Publishing, 2000) at 195-197 (ARPA BoA, Tab 8).

<sup>28</sup> Calvin, *supra* note 25, at 803 (ARPA BoA, Tab 7).

<sup>29</sup> [\*Re: Resolution to amend the Constitution\*](#), [1981] 1 SCR 753, at 805.

<sup>30</sup> [\*Reference re Secession of Quebec\*](#), [1998] 2 SCR 217, at para 71.

<sup>31</sup> [\*British Columbia v Imperial Tobacco Canada Ltd\*](#), [2005] 2 SCR 49, at para 60.

exercised in accordance with intelligible, accessible legal principles, and with appropriate limits.

21. The *Charter* reference to “the supremacy of God” signals “secular humility, a recognition that there are other truths, other [...] normative and authoritative communities that are profound sources of meaning in people’s lives that ought to be nurtured as a counter-balance to state authority.”<sup>32</sup> Iain Benson writes, “Conceiving of [civil] law as ‘total’, ‘comprehensive’, or as an ‘empire’ is not particularly helpful and there are strong reasons to suspect such approaches as hubristic and even [...] *theocratic*.”<sup>33</sup> Rather, “Law has practical and theoretical limits to its proper role and function in a society, and these limits determine its jurisdiction or proper scope.”<sup>34</sup>

**b. Presuming that a religious association’s written constitution or by-laws form a legal contract would be inappropriate and have negative consequences**

22. Religious communities have a long history of expounding religious law and developing unique traditions for interpreting and applying it within their communities.<sup>35</sup> Judges should not be surprised to find reference to “rights” or “obligations” within a body of ecclesiastical or religious law and should not assume that such terms indicate that the document was meant to form a contract.

23. A member or leader of a religious body may intend to be spiritually or morally bound (or “legally” bound in the sense of *religious* law and accountable to a religious authority) by a religious association’s rules or principles without intending to enter a legally binding contract, enforceable in *civil* court. Therefore, even language of a “legal flavour” that suggests an intention to be mutually bound must be understood in its proper context. Likewise, language indicating religious officials’ reliance on written rules in making a decision or judgment should not be presumed to demonstrate that they are cognizant of *civil* legal obligations. Religious persons may, of course, take religious law and legal procedure seriously even if it is not enforceable in a civil court. That a body of religious law is not enforceable in a civil court does not render it meaningless.

24. Those who formulate a body of rules or principles to govern a religious body or community, and the leaders or lay members of a religious body that holds to such a document, might have no

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<sup>32</sup> Bruce Ryder, “State Neutrality and Freedom of Conscience and Religion” (2005), 29 SCLR (2d) (ARPA BoA, Tab 11).

<sup>33</sup> Iain T Benson, “The Limits of Law and the Liberty of Religion Associations” in Iain T Benson and Barry W Bussey, eds, *Religion, Liberty and the Jurisdictional Limits of Law* (Toronto: LexisNexis Canada Inc, 2017), at xxiii, n 5 (ARPA BoA, Tab 3).

<sup>34</sup> *Ibid.*

<sup>35</sup> *Watson v. Jones*, *supra* note 15, at 729 (ARPA BoA, Tab 2).

intention or expectation that such a document will function as civilly binding contracts. The governing documents of a religious body in Canada today may have been written by theologians and clergy from another continent, perhaps living centuries ago. And the same religious document may govern churches in widely disparate legal jurisdictions around the world.<sup>36</sup>

### **Implications for Reformed Christian churches**

25. Assuming jurisdiction to review church membership decision based on an ideological reduction of a church to a multilateral contract formed by the meeting of individual wills fails to respect the nature of the church as (some) Christians understand it. As legal philosopher Herman Dooyeweerd explained, “According to its internal structural principle, the institutional church is characterized as a Christian confessional faith community. It is founded on the spiritual power of the organized service of the Word and sacraments. To define the church as an association with a religious purpose is to contradict its inner nature.”<sup>37</sup> Reformed Christian theology illustrates this.

26. For example, the *Belgic Confession* (1561), which many Reformed churches in Canada and around the world still follow today, states:

[The] church must be governed according to the spiritual order which our Lord has taught us in his Word. There should be ministers or pastors to preach the Word of God and to administer the sacraments; there should be elders and deacons who, together with the pastors, form the council of the church. By these means they preserve the true religion; they see to it that the true doctrine takes its course, that evil men are disciplined in a spiritual way and restrained, and also that the poor and all the afflicted are helped.<sup>38</sup>

27. The *Westminster Confession* (1647), also adhered to by many Reformed Presbyterian churches today, teaches something similar to *Belgic Confession* regarding church officers’ spiritual authority, and also says this with respect to the limits of civil authority:

Civil magistrates may not assume to themselves the administration of the Word and sacraments; or the power of the keys of the kingdom of heaven; or, in the least, interfere in matters of faith. [...] And, as Jesus Christ hath appointed a regular government and

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<sup>36</sup> For example, the *Church Order of Dort*, written in the early 17th century in the Netherlands, still governs the church polity of Canadian Reformed Churches, and churches in other countries. Excerpts are included in Appendix D.

<sup>37</sup> Herman Dooyeweerd (trans. Magnus Verbrugge), *A Christian Theory of Social Institutions* (Ontario: The Herman Dooyeweerd Foundation, 1986) at 92 (ARPA BoA, Tab 9).

<sup>38</sup> See the full Article 29 of the *Belgic Confession* at Appendix B.

discipline in his church, no law of any commonwealth should interfere with, let, or hinder, the due exercise thereof, among the voluntary members of any denomination of Christians, according to their own profession and belief.<sup>39</sup>

28. Moreover, as these confessions note, the procedural and substantive requirements of church discipline are taught in Scripture (Matt. 18:15-20; 1 Cor. 5; 2 Cor. 2:6-11; 2 Thess. 3:14-15). The Holy Spirit helps church leaders to understand and carry out their calling, including with respect to exercising discipline (John 20:21-23). Churches and their leaders are accountable to God for how they exercise (or fail to exercise) church discipline (1 Timothy 5:20-21).<sup>40</sup> In light of this, should a civil court purport to overturn a Reformed church’s decision regarding the spiritual discipline of a member, its leaders may be compelled to engage in civil disobedience.

29. It is therefore important that this Court’s statement in *Wall* that “the Congregation does not have a written constitution, by-laws or rules that would entitle members to have those agreements enforced in accordance with their terms” (para 28) not be misread as a legal rule (i.e., that wherever there is a written constitution, members are legally entitled to have it enforced). In context, this statement from *Wall* is part of a factual finding. This Court was aware of the *Organized to Do Jehovah’s Will* handbook, but found its written rules were not intended to “entitle members to have [them] enforced” in civil court.<sup>41</sup> Of course, its rules had been “enforced” by a different “court” – the Congregation’s “Judicial Committee” – whose ruling this Court decided it could not review.

30. The judgment below does not explain whether or why the Appellant Church’s Constitution, By-laws, and Committee Guidelines differ materially from the “handbook” at issue in *Wall*. This leaves other religious communities to wonder whether their “Church Order” or “Code of Canon Law” (or statement of religious rules or principles by some other name) may constitute a contract. It may be that the present case hinges on the finding that there was “consideration”, which in effect turned these religious documents into a contract, but this is unclear.<sup>42</sup>

### **c. Clarity needed regarding the legal relevance (if any) of the corporation in this case**

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<sup>39</sup> See *The Westminster Confession of Faith*, chapter 23, in Appendix C.

<sup>40</sup> See Appendix A for all Bible references in the English Standard Version.

<sup>41</sup> The *Organized to do Jehovah’s Will* handbook is referred to in *Wall*, *supra* note 7, at para 38. See also the [Factum of the Respondent](#) in *Wall*, at paras 9 and 63.

<sup>42</sup> See Appellants’ Factum, at paras. 96-97.

31. On its own, church membership status is “purely ecclesiastical”<sup>43</sup> and “mere membership in a religious association [...] should remain free from court intervention.”<sup>44</sup> The mere fact that a religious association has a written constitution does not change membership into a legal status. However, a religious body may adopt a legal structure in which it chooses to afford legal status to members, such as by incorporating and making parishioners members of the corporation.

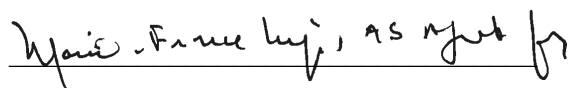
32. The Court of Appeal’s judgment in the present case also does not explain the relevance (if any) of the corporation in this case. The Respondents are not members of the corporation that holds the church property. The *corporation’s* articles or by-laws do not appear to be in issue. Therefore, this does not appear to be a corporate law case. Nor is it a statutory case, unlike others involving disputes within a religious association that is registered under a statutory regime.<sup>45</sup> The contract issue aside, it does not appear that this church polity’s structure, governed by the Constitution and the By-laws, necessarily overlaps with the legal structure (the corporation) in this case. If it does overlap in a legally consequential way, the judgment below does not explain how.

33. A legal structure which gives church members legal standing to challenge governance decisions of church leaders (e.g. wherein parishioners are corporate members and elect church leaders as corporate directors) might be contrary to some churches’ ecclesiology, and therefore such churches might choose to avoid such a legal structure. If, however, courts are quick to conclude that a body of ecclesiastical law sets out parishioners’ legal rights, it may interfere with churches’ ability to govern their internal, religious affairs in accordance with their religious beliefs.

#### **PART IV: COSTS**

34. ARPA Canada seeks no costs and asks that no costs be awarded against it.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**, this 24<sup>th</sup> day of November, 2020.



**John R. Sikkema**  
Counsel for the Intervenor

<sup>43</sup> *Dunnet*, *supra* note 5 (Appellants BoA, Tab 1).

<sup>44</sup> *Wall*, *supra* note 7, at para 24.

<sup>45</sup> For example, *Bains v Khalsa Diwan Society of Abbotsford*, 2020 BCSC 181; or *Lutz v. Faith Lutheran Church of Kelowna*, 2009 BCSC 59.

## **PART VI: TABLE OF AUTHORITIES**

<b><u>Authorities</u></b>	<b><u>Paragraph(s)</u></b>
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<i>Dunnet v Forneri</i> , 1877 O.J. No 227 (Ch.) .....	10, 31
<i>Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall</i> , <a href="#">2018 SCC 26</a> , <a href="#">[2018] 1 SCR 750</a> .....	11, 29, 30, 31
<i>Ivantchenko, et al. v. The Sisters of Saint Kosmas Aitolos Greek Orthodox Monastery</i> , <a href="#">2011 ONSC 6481</a> .....	12
<i>Lakeside Colony of Hutterian Brethren v. Hofer</i> , <a href="#">[1992] 3 SCR 165</a> .....	10, 11
<i>Lutz v. Faith Lutheran Church of Kelowna</i> , <a href="#">2009 BCSC 59</a> .....	32
<i>Re Morris and Morris</i> , <a href="#">42 DLR (3d) 550 (C.A.)</a> .....	10
<i>Re: Resolution to amend the Constitution</i> , <a href="#">[1981] 1 SCR 753</a> .....	20
<i>Reference re Secession of Quebec</i> , <a href="#">[1998] 2 SCR 217</a> .....	20
<i>Ukrainian Greek Orthodox Church v. Ukrainian Greek Orthodox Cathedral of St. Mary the Protectress</i> , <a href="#">[1940] S.C.R. 586</a> .....	13
<i>Watson v. Jones</i> , 80 U.S. (13 Wall.) 679 (1871) .....	14, 22
<i>Wall v. Judicial Committee of the Highwood Congregation of Jehovah's Witnesses</i> , <a href="#">2016 ABCA 255</a> .....	8, 10, 14
<i>80 Wellesley St. East Ltd. v. Fundy Bay Builders Ltd. et al.</i> , <a href="#">[1972] 2 O.R. 280 (C.A.)</a> .....	7

<b>Secondary Sources</b>	<b>Paragraph(s)</b>
Iain T Benson, “The Limits of Law and the Liberty of Religion Associations” in Iain T Benson and Barry W Bussey, eds, <i>Religion, Liberty and the Jurisdictional Limits of Law</i> (Toronto: LexisNexis Canada Inc, 2017)	21
Harold Berman, <i>Law and Revolution: The Formation of the Western Legal Tradition</i> (Harvard University Press, 1983)	16
Jules Bonnet, <i>Letters of John Calvin</i> (Philadelphia: Presbyterian Board of Publication, 1858)	18
Rémi Brague, <i>The Law of God: The Philosophical History of an Idea</i> (Chicago: University of Chicago Press, 2007)	15, 17
John Calvin (trans. H. Beveridge), <i>Institutes of the Christian Religion</i> (Hendrickson Publishers, 2007)	18
Bernard Cottret (trans. M.W. Macdonalds), <i>Calvin: A Biography</i> (Grand Rapids: Wm. B. Eerdmans Publishing, 2000)	18
Herman Dooyeweerd (trans. Magnus Verbrugge), <i>A Christian Theory of Social Institutions</i> (Ontario: The Herman Dooyeweerd Foundation, 1986)	25
M.H. Ogilvie, <i>Religious Institutions and the Law in Canada</i> , 4th ed. (Toronto: Irwin Law, 2017)	18
Bruce Ryder, “State Neutrality and Freedom of Conscience and Religion” (2005), 29 SCLR (2d)	21
John Witte Jr., <i>Law and Protestantism</i> (Cambridge University Press, 2002)	17, 18
John Witte Jr., <i>The Reformation of Rights: Law, Religion, and Human Rights in Early Modern Calvinism</i> (Cambridge University Press, 2007)	18

## Appendix A

*All Bible excerpts in English Standard Version.*

### Matthew 16:16-19

16 Simon Peter replied, “You are the Christ, the Son of the living God.” 17 And Jesus answered him, “Blessed are you, Simon Bar-Jonah! For flesh and blood has not revealed this to you, but my Father who is in heaven. 18 And I tell you, you are Peter, and on this rock[b] I will build my church, and the gates of hell[c] shall not prevail against it. 19 I will give you the keys of the kingdom of heaven, and whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed[d] in heaven.”

### Matthew 18:15-20

15 “If your brother sins against you, go and tell him his fault, between you and him alone. If he listens to you, you have gained your brother. 16 But if he does not listen, take one or two others along with you, that every charge may be established by the evidence of two or three witnesses. 17 If he refuses to listen to them, tell it to the church. And if he refuses to listen even to the church, let him be to you as a Gentile and a tax collector. 18 Truly, I say to you, whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed[a] in heaven. 19 Again I say to you, if two of you agree on earth about anything they ask, it will be done for them by my Father in heaven. 20 For where two or three are gathered in my name, there am I among them.”

### John 20:19-23

19 On the evening of that day, the first day of the week, the doors being locked where the disciples were for fear of the Jews[a], Jesus came and stood among them and said to them, “Peace be with you.” 20 When he had said this, he showed them his hands and his side. Then the disciples were glad when they saw the Lord. 21 Jesus said to them again, “Peace be with you. As the Father has sent me, even so I am sending you.” 22 And when he had said this, he breathed on them and said to them, “Receive the Holy Spirit. 23 If you forgive the sins of any, they are forgiven them; if you withhold forgiveness from any, it is withheld.”

Translation notes: [a] Greek *Ioudaioi* probably refers here to Jewish religious leaders, and others under their influence, in that time

### 1 Corinthians 5

5 It is actually reported that there is sexual immorality among you, and of a kind that is not tolerated even among pagans, for a man has his father's wife. 2 And you are arrogant! Ought you not rather to mourn? Let him who has done this be removed from among you. 3 For though absent in body, I am present in spirit; and as if present, I have already pronounced judgment on the one who did such a thing. 4 When you are assembled in the name of the Lord Jesus and my spirit is present, with the power of our Lord Jesus, 5 you are to deliver this man to Satan for the destruction of the flesh, so that his spirit may be saved in the day of the Lord. 6 Your boasting is not good. Do you not know that a little leaven leavens the whole lump? 7 Cleanse out the old leaven that you may be a new lump, as you really are unleavened. For Christ, our

Passover lamb, has been sacrificed. 8 Let us therefore celebrate the festival, not with the old leaven, the leaven of malice and evil, but with the unleavened bread of sincerity and truth.

9 I wrote to you in my letter not to associate with sexually immoral people— 10 not at all meaning the sexually immoral of this world, or the greedy and swindlers, or idolaters, since then you would need to go out of the world. 11 But now I am writing to you not to associate with anyone who bears the name of brother if he is guilty of sexual immorality or greed, or is an idolater, reviler, drunkard, or swindler—not even to eat with such a one. 12 For what have I to do with judging outsiders? Is it not those inside the church whom you are to judge? 13 God judges those outside. “Purge the evil person from among you.”

### 2 Corinthians 2:5-11

5 Now if anyone has caused pain, he has caused it not to me, but in some measure—not to put it too severely—to all of you. 6 For such a one, this punishment by the majority is enough, 7 so you should rather turn to forgive and comfort him, or he may be overwhelmed by excessive sorrow. 8 So I beg you to reaffirm your love for him. 9 For this is why I wrote, that I might test you and know whether you are obedient in everything. 10 Anyone whom you forgive, I also forgive. Indeed, what I have forgiven, if I have forgiven anything, has been for your sake in the presence of Christ, 11 so that we would not be outwitted by Satan; for we are not ignorant of his designs.

### 2 Thessalonians 3:13-15

13 As for you, brothers, do not grow weary in doing good. 14 If anyone does not obey what we say in this letter, take note of that person, and have nothing to do with him, that he may be ashamed. 15 Do not regard him as an enemy, but warn him as a brother.

### 1 Timothy 5:17-22

17 Let the elders who rule well be considered worthy of double honor, especially those who labor in preaching and teaching. 18 For the Scripture says, “You shall not muzzle an ox when it treads out the grain,” and, “The laborer deserves his wages.” 19 Do not admit a charge against an elder except on the evidence of two or three witnesses. 20 As for those who persist in sin, rebuke them in the presence of all, so that the rest may stand in fear. 21 In the presence of God and of Christ Jesus and of the elect angels I charge you to keep these rules without prejudging, doing nothing from partiality. 22 Do not be hasty in the laying on of hands, nor take part in the sins of others; keep yourself pure.

### John 20:21-23

21 Jesus said to them again, “Peace be with you. As the Father has sent me, even so I am sending you.” 22 And when he had said this, he breathed on them and said to them, “Receive the Holy Spirit. 23 If you forgive the sins of any, they are forgiven them; if you withhold forgiveness from any, it is withheld.”

## APPENDIX B

### *Belgic Confession*

#### Article 29

We believe that we ought to discern diligently and very carefully from the Word of God what is the true church, for all sects which are in the world today claim for themselves the name of church.<sup>1</sup> We are not speaking here of the hypocrites, who are mixed in the church along with the good and yet are not part of the church, although they are outwardly in it.<sup>2</sup> We are speaking of the body and the communion of the true church which must be distinguished from all sects that call themselves the church.

The true church is to be recognized by the following marks:

It practices the pure preaching of the gospel.<sup>3</sup> It maintains the pure administration of the sacraments as Christ instituted them.<sup>4</sup> It exercises church discipline for correcting and punishing sins.<sup>5</sup> In short, it governs itself according to the pure Word of God,<sup>6</sup> rejecting all things contrary to it<sup>7</sup> and regarding Jesus Christ as the only Head.<sup>8</sup> Hereby the true church can certainly be known and no one has the right to separate from it.

Those who are of the church may be recognized by the marks of Christians. They believe in Jesus Christ the only Saviour,<sup>9</sup> flee from sin and pursue righteousness,<sup>10</sup> love the true God and their neighbour<sup>11</sup> without turning to the right or left, and crucify their flesh and its works.<sup>12</sup> Although great weakness remains in them, they fight against it by the Spirit all the days of their life.<sup>13</sup> They appeal constantly to the blood, suffering, death, and obedience of Jesus Christ, in whom they have forgiveness of their sins through faith in Him.<sup>14</sup>

The false church assigns more authority to itself and its ordinances than to the Word of God. It does not want to submit itself to the yoke of Christ.<sup>15</sup> It does not administer the sacraments as Christ commanded in His Word, but adds to them and subtracts from them as it pleases. It bases itself more on men than on Jesus Christ. It persecutes those who live holy lives according to the Word of God and who rebuke the false church for its sins, greed, and idolatries.<sup>16</sup>

These two churches are easily recognized and distinguished from each other.

1 Rev 2:9.

2 Rom 9:6.

3 Gal 1:8; 1 Tim 3:15.

4 Acts 19:3-5; 1 Cor 11:20-29.

5 Mt 18:15-17; 1 Cor 5:4, 5, 13; 2 Thess 3:6, 14; Tit 3:10.

6 Jn 8:47; Jn 17:20; Acts 17:11; Eph 2:20; Col 1:23; 1 Tim 6:3.

7 1 Thess 5:21; 1 Tim 6:20; Rev 2:6.

8 Jn 10:14; Eph 5:23; Col 1:18.

9 Jn 1:12; 1 Jn 4:2.

10 Rom 6:2; Phil 3:12.

11 Jn 4:19-21.

12 Gal 5:24.

13 Rom 7:15; Gal 5:17.

14 Rom 7:24, 25; 1 Jn 1:7-9.

15 Acts 4:17, 18; 2 Tim 4:3, 4; 2 Jn 9.

16 Jn 16:2.

## Chapter 23 Of the Civil Magistrate

1. God, the supreme Lord and King of all the world, hath ordained civil magistrates, to be, under him, over the people, for his own glory, and the public good; and, to this end, hath armed them with the power of the sword, for the defense and encouragement of them that are good, and for the punishment of evildoers.<sup>a</sup>

2. It is lawful for Christians to accept and execute the office of a magistrate, when called thereunto:<sup>b</sup> in the managing whereof, as they

a. Rom. 13:1–4. Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation. For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? do that which is good, and thou shalt have praise of the same: for he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil. 1 Pet. 2:13–14. Submit yourselves to every ordinance of man for the Lord's sake: whether it be to the king, as supreme; or unto governors, as unto them that are sent by him for the punishment of evildoers, and for the praise of them that do well.

b. Gen. 41:39–43. And Pharaoh said unto Joseph, Forasmuch as God hath shewed thee all this, there is none so discreet and wise as thou art: thou shalt be over my house, and according unto thy word shall all my people be ruled: only in the throne will I be greater than thou. And Pharaoh said unto Joseph, See, I have set thee over all the land of Egypt. And Pharaoh took off his ring from his hand, and put it upon Joseph's hand, and arrayed him in vestures of fine linen, and put a gold chain about his neck; and he made him to ride in the second chariot which he had; and they cried before him, Bow the knee: and he made him ruler over all the land of Egypt. Neh. 12:26. These were in the days of Joiakim the son of Jeshua, the son of Jozadak, and in the days of Nehemiah the governor, and of Ezra the priest, the scribe. Neh. 13:15–31. In those days saw I in Judah some treading wine presses on the sabbath, and bringing in sheaves, and lading asses; as also wine, grapes, and figs, and all manner of burdens, which they brought into Jerusalem on the sabbath day: and I testified against them in the day wherein they sold victuals.... And it came to pass, that when the gates of Jerusalem began to be dark before the sabbath, I commanded that the gates should be shut, and charged that they should not be opened till after the sabbath: and some of my servants set I at the gates, that there should no burden be brought in on the sabbath day.... Dan. 2:48–49. Then the king made Daniel a great man, and gave him many great gifts, and made him ruler over the whole province of Babylon, and chief of the governors over all the wise men of Babylon. Then Daniel requested of the king, and he set Shadrach, Meshach, and Abed-nego, over the affairs of the province of Babylon: but Daniel sat in the gate of the king. Prov. 8:15–16. By me kings reign, and princes decree justice. By me princes rule, and nobles, even all the judges of the

ought especially to maintain piety, justice, and peace, according to the wholesome laws of each commonwealth;<sup>c</sup> so, for that end, they may lawfully, now under the new testament, wage war, upon just and necessary occasion.<sup>d</sup>

3. Civil magistrates may not assume to themselves the administration of the Word and sacraments; or the power of the keys of the kingdom of heaven;<sup>e</sup> or, in the least, interfere in matters of

earth. Rom. 13:1–4. Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation. For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? do that which is good, and thou shalt have praise of the same: for he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil.

c. Ps. 2:10–12. Be wise now therefore, O ye kings: be instructed, ye judges of the earth. Serve the LORD with fear, and rejoice with trembling. Kiss the Son, lest he be angry, and ye perish from the way, when his wrath is kindled but a little. Blessed are all they that put their trust in him. 1 Tim. 2:2. [Pray] for kings, and for all that are in authority; that we may lead a quiet and peaceable life in all godliness and honesty. Ps. 82:3–4. Defend the poor and fatherless: do justice to the afflicted and needy. Deliver the poor and needy: rid them out of the hand of the wicked. 2 Sam. 23:3. The God of Israel said, the Rock of Israel spake to me, He that ruleth over men must be just, ruling in the fear of God. 1 Pet. 2:13. Submit yourselves to every ordinance of man for the Lord's sake....

d. Luke 3:14. And the soldiers likewise demanded of him, saying, And what shall we do? And he said unto them, Do violence to no man, neither accuse any falsely; and be content with your wages. Rom. 13:4. For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil. Matt. 8:9–10. For I am a man under authority, having soldiers under me: and I say to this man, Go, and he goeth; and to another, Come, and he cometh; and to my servant, Do this, and he doeth it. When Jesus heard it, he marvelled, and said to them that followed, Verily I say unto you, I have not found so great faith, no, not in Israel. Acts 10:1–2. There was a certain man in Caesarea called Cornelius, a centurion of the band called the Italian band, a devout man, and one that feared God with all his house, which gave much alms to the people, and prayed to God alway.

e. 2 Chron. 26:18. And they withstood Uzziah the king, and said unto him, It appertaineth not unto thee, Uzziah, to burn incense unto the LORD, but to the priests the sons of Aaron, that are consecrated to burn incense: go out of the sanctuary; for thou hast trespassed; neither shall it be for thine honour from the LORD God. Matt. 18:17. And if he shall neglect to hear them, tell it unto the church: but if he neglect to hear the church, let him be unto thee as an heathen man and a publican. Matt. 16:19. And I will give unto thee the keys of the kingdom of heaven: and whatsoever thou shalt bind on earth shall be bound in heaven: and whatsoever thou shalt loose on

faith.<sup>f</sup> Yet, as nursing fathers, it is the duty of civil magistrates to protect the church of our common Lord, without giving the preference to any denomination of Christians above the rest, in such a manner that all ecclesiastical persons whatever shall enjoy the full, free, and unquestioned liberty of discharging every part of their sacred functions, without violence or danger.<sup>g</sup> And, as Jesus Christ hath appointed a regular government and discipline in his church, no law of any commonwealth should interfere with, let, or hinder, the due exercise thereof, among the voluntary members of *any* denomination of Christians, according to their own profession and belief.<sup>h</sup> It is the

earth shall be loosed in heaven. 1 Cor. 12:28–29. And God hath set some in the church, first apostles, secondarily prophets, thirdly teachers, after that miracles, then gifts of healings, helps, governments, diversities of tongues. Are all apostles? are all prophets? are all teachers? are all workers of miracles? Eph. 4:11–12. And he gave some, apostles; and some, prophets; and some, evangelists; and some, pastors and teachers; for the perfecting of the saints, for the work of the ministry, for the edifying of the body of Christ. 1 Cor. 4:1–2. Let a man so account of us, as of the ministers of Christ, and stewards of the mysteries of God. Moreover it is required in stewards, that a man be found faithful. Rom. 10:15. And how shall they preach, except they be sent? as it is written, How beautiful are the feet of them that preach the gospel of peace, and bring glad tidings of good things! Heb. 5:4. And no man taketh this honour unto himself, but he that is called of God, as was Aaron.

f. John 18:36. Jesus answered, My kingdom is not of this world: if my kingdom were of this world, then would my servants fight, that I should not be delivered to the Jews: but now is my kingdom not from hence. Acts 5:29. Then Peter and the other apostles answered and said, We ought to obey God rather than men. Eph. 4:11–12. And he gave some, apostles; and some, prophets; and some, evangelists; and some, pastors and teachers; for the perfecting of the saints, for the work of the ministry, for the edifying of the body of Christ.

g. Isa. 49:23. And kings shall be thy nursing fathers, and their queens thy nursing mothers: they shall bow down to thee with their face toward the earth, and lick up the dust of thy feet; and thou shalt know that I am the LORD: for they shall not be ashamed that wait for me. Rom. 13:1–6. Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation. For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? do that which is good, and thou shalt have praise of the same: for he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil. Wherefore ye must needs be subject, not only for wrath, but also for conscience sake. For for this cause pay ye tribute also: for they are God's ministers, attending continually upon this very thing.

h. Ps. 105:15. ... saying, Touch not mine anointed, and do my prophets no harm.

duty of civil magistrates to protect the person and good name of all their people, in such an effectual manner as that no person be suffered, either upon pretense of religion or of infidelity, to offer any indignity, violence, abuse, or injury to any other person whatsoever: and to take order, that all religious and ecclesiastical assemblies be held without molestation or disturbance.<sup>i</sup>

4. It is the duty of people to pray for magistrates,<sup>k</sup> to honor their persons,<sup>l</sup> to pay them tribute or other dues,<sup>m</sup> to obey their lawful commands, and to be subject to their authority, for conscience' sake.<sup>n</sup> Infidelity, or difference in religion, doth not make void the magistrates' just and legal authority, nor free the people from their due obedience to them:<sup>o</sup> from which ecclesiastical persons are not exempted,<sup>p</sup> much less hath the pope any power and jurisdiction over

i. Rom . 13:4. For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil. 1 Tim . 2:2. [Pray] for kings, and for all that are in authority: that we may lead a quiet and peaceable life in all godliness and honesty.

k. 1 Tim . 2:1–3. I exhort therefore, that, first of all, supplications, prayers, intercessions, and giving of thanks, be made for all men; for kings, and for all that are in authority; that we may lead a quiet and peaceable life in all godliness and honesty. For this is good and acceptable in the sight of God our Saviour.

l. 1 Pet. 2:17. Honour all men. Love the brotherhood. Fear God. Honour the king.

m. Matt. 22:21. They say unto him, Caesar's. Then saith he unto them, Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's. Rom . 13:6–7. For for this cause pay ye tribute also: for they are God's ministers, attending continually upon this very thing. Render therefore to all their dues: tribute to whom tribute is due; custom to whom custom; fear to whom fear; honour to whom honour.

n. Rom . 13:5. Wherefore ye must needs be subject, not only for wrath, but also for conscience sake. Titus 3:1. Put them in mind to be subject to principalities and powers, to obey magistrates, to be ready to every good work.

o. 1 Pet. 2:13–16. Submit yourselves to every ordinance of man for the Lord's sake: whether it be to the king, as supreme; or unto governors, as unto them that are sent by him for the punishment of evildoers, and for the praise of them that do well. For so is the will of God, that with well doing ye may put to silence the ignorance of foolish men: as free, and not using your liberty for a cloke of maliciousness, but as the servants of God.

p. Rom . 13:1. Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. Acts 25:9–11. But Festus, willing to do the Jews a pleasure, answered Paul, and said, Wilt thou go up to Jerusalem, and there be judged of these things before me? Then said Paul, I stand at Caesar's judgment seat, where I ought to be judged: to the Jews have I done no wrong,

them in their dominions, or over any of their people; and, least of all, to deprive them of their dominions, or lives, if he shall judge them to be heretics, or upon any other pretense whatsoever.<sup>9</sup>

## Chapter 24 Of Marriage and Divorce

1. Marriage is to be between one man and one woman: neither is it lawful for any man to have more than one wife, nor for any woman to have more than one husband, at the same time.<sup>a</sup>

as thou very well knowest. For if I be an offender, or have committed any thing worthy of death, I refuse not to die: but if there be none of these things whereof these accuse me, no man may deliver me unto them. I appeal unto Caesar. 2 Pet. 2:1, 10–11. But there were false prophets also among the people, even as there shall be false teachers among you, who privily shall bring in damnable heresies, even denying the Lord that bought them, and bring upon themselves swift destruction.... But chiefly them that walk after the flesh in the lust of uncleanness, and despise government. Presumptuous are they, selfwilled, they are not afraid to speak evil of dignities. Whereas angels, which are greater in power and might, bring not railing accusation against them before the Lord. Jude 8–11. Likewise also these filthy dreamers defile the flesh, despise dominion, and speak evil of dignities. Yet Michael the archangel, when contending with the devil he disputed about the body of Moses, durst not bring against him a railing accusation, but said, The Lord rebuke thee. But these speak evil of those things which they know not: but what they know naturally, as brute beasts, in those things they corrupt themselves. Woe unto them! for they have gone in the way of Cain, and ran greedily after the error of Balaam for reward, and perished in the gainsaying of Core.

q. Mark 10:42–44. But Jesus called them to him, and saith unto them, Ye know that they which are accounted to rule over the Gentiles exercise lordship over them; and their great ones exercise authority upon them. But so shall it not be among you: but whosoever will be great among you, shall be your minister: and whosoever of you will be the chiefest, shall be servant of all. Matt. 23:8–12. But be not ye called Rabbi: for one is your Master, even Christ; and all ye are brethren. And call no man your father upon the earth: for one is your Father, which is in heaven. Neither be ye called masters: for one is your Master, even Christ. But he that is greatest among you shall be your servant. And whosoever shall exalt himself shall be abased; and he that shall humble himself shall be exalted. 2 Tim. 2:24. And the servant of the Lord must not strive; but be gentle unto all men, apt to teach, patient. 1 Pet. 5:3. ... neither as being lords over God's heritage, but being ensamples to the flock.

a. Gen. 2:24. Therefore shall a man leave his father and his mother, and shall cleave unto his wife: and they shall be one flesh. Matt. 19:4–6. And he answered and said unto them, Have ye not read, that he which made them at the beginning made them male and female, and said, For this cause shall a man leave father and mother, and shall cleave to his wife: and they twain shall be one flesh? Wherefore they are no

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## CHURCH ORDER

The Church Order of Dort, which was adopted by the Synod of Dort in 1618-19, has its roots in the early organization of the Reformed Churches in the Netherlands. As early as 1563, these churches began to meet in ecclesiastical assemblies, and in the next eight years the rudiments of the church order were developed and put into practice. For the most part, the decisions of the assemblies in this period leaned heavily on the church orders of the Reformed churches in France and Geneva.

The persecution and the ensuing expansion of the churches in this period fuelled the desire of church leaders to unite the brotherhood in one federation. In 1568, during the darkest days of the persecution, leaders of Reformed churches of the Netherlands met in Wesel to address the great organizational needs in the churches. In 1571, the first Synod of the Reformed Churches of the Netherlands met in the city of Emden, which at the time served as a haven for many persecuted Reformed believers.

The church order adopted at Emden was revised at the Synods of Dort (1574 and 1578), Middelburg (1581), and The Hague (1586), before being adopted by the Synod of Dort in 1618-19. Since this Synod of Dort the Church Order remained in force until 1816, when King William I set it aside and introduced a new Regulation governing the life of the churches. This contributed in part to a conflict in the Netherlands Reformed Church (*Nederlands Hervormde Kerk*), leading to the secession of 1834. At the Union of 1892, a union of the seceded churches with the churches stemming from a second reformational movement (the *Doleantie*), the Church Order of Dort was again recognized as the form of government for the Reformed Churches in the Netherlands (*De Gereformeerde Kerken in Nederland*).

The Canadian Reformed Churches have revised the Church Order to reflect changed circumstances, and to incorporate minor improvements. Fundamentally, the revised Church Order follows the principles and structure of the Church Order of Dort.

### I. INTRODUCTION

#### ARTICLE 1

##### Purpose and Division

For the maintenance of good order in the church of Christ it is necessary that there be offices and supervision of doctrine; assemblies; worship, sacraments, and ceremonies; and discipline.

### II. OFFICES AND SUPERVISION OF DOCTRINE

#### ARTICLE 2

##### The Offices

The offices are those of the minister of the Word, of the elder, and of the deacon.

#### ARTICLE 3

##### The Calling to Office

No one shall take any office upon himself without having been lawfully called thereto.

Only male members who have made profession of faith and may be considered to meet the conditions as set forth in Holy Scripture (e.g., in 1 Timothy 3 and Titus 1) shall be eligible for office.

The election to any office shall take place with the cooperation of the congregation, after preceding prayers, and according to the regulations adopted for that purpose by the consistory with the deacons.

The consistory with the deacons shall be free to give the congregation the opportunity beforehand to draw the attention of the consis-

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**ARTICLE 22**

The Office of Elder

The specific duties of the office of elder are, together with the ministers of the Word, to have supervision over Christ's church, that every member may conduct himself properly in doctrine and life according to the gospel; and faithfully to visit the members of the congregation in their homes to comfort, instruct, and admonish them with the Word of God, reproving those who behave improperly. They shall exercise Christian discipline according to the command of Christ against those who show themselves unbelieving and ungodly and refuse to repent and shall watch that the sacraments are not profaned. Being stewards of the house of God, they are further to take care that in the congregation all things are done decently and in good order, and to tend the flock of Christ which is in their charge. Finally, it is the duty of elders to assist the ministers of the Word with good counsel and advice and to supervise their doctrine and conduct.

**ARTICLE 23**

The Office of Deacon

The specific duties of the office of deacon are to see to the good progress of the service of charity in the congregation; to acquaint themselves with existing needs and difficulties and exhort the members of Christ's body to show mercy; and further, to gather and manage the offerings and distribute them in Christ's name according to need. They shall encourage and comfort with the Word of God those who receive the gifts of Christ's love, and promote with word and deed the unity and fellowship in the Holy Spirit which the congregation enjoys at the table of the Lord.

**ARTICLE 24**

Term of Office

The elders and deacons shall serve two or more years, according to local regulations, and a proportionate number shall retire each year. The place of the retiring office-bearers shall be taken by others, unless the consistory with the deacons judges that the circumstances and the benefit of the church render it advisable to have them serve another term, or to extend their term, or to declare them immediately eligible for re-election.

**ARTICLE 25**

Equality to Be Maintained

Among the elders as well as among the deacons equality shall be maintained with respect to the duties of their office, and also, as far as possible, in other matters, of which the consistory shall judge.

**ARTICLE 26**

Subscription to the Confession

All ministers of the Word, elders, deacons, and professors of theology shall subscribe to the confessions of the Canadian Reformed Churches by signing the form(s) adopted for that purpose.

Anyone refusing to subscribe in that manner shall not be ordained or installed in office. Anyone who, being in office, refuses to do so shall, because of that very fact, be immediately suspended from office by the consistory with the deacons, and classis shall not receive him. If he obstinately persists in his refusal, he shall be deposed from office.

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**ARTICLE 27**

**False Doctrine**

To ward off false doctrines and errors which could enter the congregation and constitute a danger to the purity of its doctrine or conduct, the ministers and elders shall use the means of instruction, of refutation, of warning, and of admonition, in the ministry of the Word as well as in Christian teaching and family visiting.

**ARTICLE 28**

**Civil Authorities**

As it is the office of the civil authorities to promote in every way the holy ministry, so all office-bearers are in duty bound to impress diligently and sincerely upon the whole congregation the obedience, love, and respect which are due to the civil authorities; they shall set a good example to the whole congregation in this matter, and endeavour by due respect and communication to secure and retain the favour of the authorities towards the church, so that the church of Christ may lead a quiet and peaceable life, godly and respectful in every way.

**III. THE ASSEMBLIES**

**ARTICLE 29**

**The Ecclesiastical Assemblies**

Four kinds of ecclesiastical assemblies shall be maintained: the consistory, the classis, the regional synod, and the general synod.

**ARTICLE 30**

**Ecclesiastical Matters**

These assemblies shall deal with no other than ecclesiastical matters and that in an ecclesiastical manner.

A major assembly shall deal with those matters only which could not be finished in the minor assembly or which belong to its churches in common.

A new matter which has not previously been presented to that major assembly may be put on the agenda only when the minor assembly has dealt with it.

**ARTICLE 31**

**Appeals**

If anyone complains that he has been wronged by the decision of a minor assembly, he shall have the right to appeal to the major assembly; and whatever may be agreed upon by a majority vote shall be considered settled and binding, unless it is proved to be in conflict with the Word of God or with the Church Order.

**ARTICLE 32**

**Credentials**

Delegates to the major assemblies shall bring with them their credentials, signed by those sending them; they shall have a vote in all matters except those in which either they themselves or their churches are particularly involved.

**ARTICLE 33**

**Proposals**

Matters once decided upon may not be proposed again unless they are substantiated by new grounds.

**ARTICLE 34**

**Proceedings**

The proceedings of all assemblies shall begin and end with calling upon the name of the Lord.

## CHURCH ORDER

**ARTICLE 34**

At the close of major assemblies, censure shall be exercised over those who in the meeting have done something worthy of reproof, or who have scorned the admonition of the minor assemblies.

Furthermore, each classis, regional synod, or general synod shall determine the time and place of the next classis, regional synod, or general synod respectively and appoint the convening church for that meeting.

**ARTICLE 35****President**

In all assemblies there shall be a president whose task it is to present and explain clearly the matters to be dealt with, to ensure that every one observe due order in speaking, to deny the floor to those who argue about minor things or who let themselves be carried away and cannot control their strong emotions, and to discipline those who refuse to listen.

In major assemblies the office of the president shall cease when the assembly has ended.

**ARTICLE 36****Clerk**

A clerk shall be appointed whose task it shall be to keep an accurate record of all things worthy to be recorded.

**ARTICLE 37****Jurisdiction**

The classis has the same jurisdiction over the consistory as the regional synod has over the classis, and the general synod over the regional synod.

**ARTICLE 38****Consistory**

In all churches there shall be a consistory composed of the ministers of the Word and the elders who, as a rule, shall meet at least once a month. As a rule the ministers of the Word shall preside. If a church is served by more than one minister, they shall preside in turn.

**ARTICLE 39****Consistory and the Deacons**

Where the number of elders is small, the deacons may be added to the consistory by local arrangement; this shall invariably be done where the number of elders or the number of deacons is less than three.

**ARTICLE 40****Constitution of a Consistory**

In places where a consistory is to be constituted for the first time or anew, this shall be done only with the advice of classis.

**ARTICLE 41****Places without a Consistory**

Places where as yet no consistory can be constituted shall be assigned by classis to the care of a neighbouring consistory.

**ARTICLE 42****Meetings of Deacons**

When the deacons meet separately, as a rule once a month, to deal with the matters pertaining to their office, they shall do so with calling upon the name of God. They shall give account of their labours to the consistory.

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The ministers shall acquaint themselves with the work of the ministry of mercy and, if need be, may visit these meetings.

**ARTICLE 43**  
Archives

The consistories and the major assemblies shall ensure that proper care is taken of the archives.

**ARTICLE 44**  
Classis

Neighbouring churches shall come together in a classis by delegating, with proper credentials, a minister and an elder, or, if a church has no minister, two elders. Such meetings shall be held at least once every three months, unless the convening church, in consultation with the neighbouring church, concludes that no matters have been sent in by the churches which would warrant the convening of a classis. Cancellation of a classis shall, however, not be permitted to occur twice in succession.

In these meetings the ministers shall preside in rotation, or one shall be chosen to preside; however, the same minister shall not be chosen twice in succession.

The president shall ask whether the ministry of the office-bearers is being continued, whether the decisions of the major assemblies are being honoured, and whether there is any matter in which the consistories need the judgment and help of classis for the proper government of their church.

The last classis before regional synod shall choose the delegates to that synod.

If two or more ministers are serving a church, those who have not been delegated shall have the right to attend classis in an advisory capacity.

**ARTICLE 45**  
Counsellors

Each vacant church shall request classis to appoint as counsellor the minister it desires as such, to the end that he may assist the consistory in maintaining good order and especially may lend his aid in the matter of the calling of a minister; he shall also sign the letter of call.

**ARTICLE 46**  
Church Visitors

Each year classis shall authorize at least two of the more experienced and able ministers to visit the churches in that year.

It shall be the task of these visitors to inquire whether all things are regulated and done in full harmony with the Word of God, whether the office-bearers fulfil the duties of their office faithfully as they have promised, and whether the adopted order is being observed and maintained in every respect, in order that they may in good time fraternally admonish those who are found negligent in any thing, and that by their good counsel and advice all things may be directed towards the edification and preservation of Christ's church.

They shall submit a written report of their visits to classis.

**ARTICLE 47**  
Regional Synod

Each year some neighbouring classes shall send delegates to meet in a regional synod. If there are two classes, each classis shall delegate four ministers and four elders. If there are three classes, the number shall be three ministers and three elders. If there are four or more classes, the number shall be two ministers and two elders.

## CHURCH ORDER

**ARTICLE 47**

If it appears necessary to convene a regional synod before the appointed time, the convening church shall determine the time and place with the advice of classis.

The last regional synod before the general synod shall choose delegates to that general synod.

**ARTICLE 48****Deputies of Regional Synod**

Each regional synod shall appoint deputies who are to assist the classes in all cases provided for in the Church Order, and, upon the request of the classes, in cases of special difficulties.

These deputies shall keep proper record of their actions and submit a written report to regional synod, and, if so required, they shall give account of their actions.

They shall not be discharged from their task before and until regional synod itself discharges them.

**ARTICLE 49****General Synod**

The general synod shall be held once every three years. Each regional synod shall delegate to this synod six ministers and six elders.

If it appears necessary to convene a general synod before the appointed time, the convening church shall determine the time and place with the advice of regional synod.

**ARTICLE 50****Churches Abroad**

The relation with churches abroad shall be regulated by general synod. With foreign churches of Reformed confession a sister-

church relationship shall be maintained as much as possible. On minor points of Church Order and ecclesiastical practice churches abroad shall not be rejected.

**ARTICLE 51****Mission**

The churches shall endeavour to fulfil their missionary task.

When churches cooperate in this matter, they shall, as much as possible, observe the division into classes and regional synods.

**IV. WORSHIP, SACRAMENTS,  
AND CEREMONIES****ARTICLE 52****Worship Services**

The consistory shall call the congregation together for worship twice on the Lord's day.

The consistory shall ensure that, as a rule, once every Sunday the doctrine of God's Word as summarized in the Heidelberg Catechism is proclaimed.

**ARTICLE 53****Days of Commemoration**

Each year the churches shall, in the manner decided upon by the consistory, commemorate the birth, death, resurrection, and ascension of the Lord Jesus Christ, as well as his outpouring of the Holy Spirit.

**ARTICLE 54****Days of Prayer**

In time of war, general calamities, and other great afflictions the presence of which is felt throughout the churches, a day of prayer

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**ARTICLE 63**

The solemnization of a marriage may take place either in a private ceremony or in a public worship service. The adopted Form for the Solemnization of Marriage shall be used.

**ARTICLE 64****Church Records**

The consistory shall maintain church records in which the names of the members and the dates of their birth, baptism, public profession of faith, marriage, and departure or death are properly recorded.

**ARTICLE 65****Funerals**

Funerals are not ecclesiastical but family affairs, and should be conducted accordingly.

**V. CHRISTIAN DISCIPLINE****ARTICLE 66****Nature and Purpose**

Since church discipline is of a spiritual nature and, as one of the keys of the kingdom of heaven, has been given to the church to shut and to open that kingdom, the consistory shall ensure that it is used to punish sins against both the purity of doctrine and the piety of conduct, in order to reconcile the sinner with the church and with his neighbour, and to remove all offence out of the church of Christ—which can be done only when the rule given by our Lord in Matthew 18:15-17 is followed in obedience.

**ARTICLE 67****Consistory Involvement**

The consistory shall not deal with any matter pertaining to purity of doctrine or piety

of life that is reported to it unless it has first ascertained that both private admonitions and admonitions in the presence of one or two witnesses have remained fruitless, or that the sin committed is of a public character.

**ARTICLE 68****Excommunication**

Anyone who obstinately rejects the admonition by the consistory or who has committed a public sin shall be suspended from the Lord's supper. If he continues to harden himself in sin, the consistory shall so inform the congregation by means of public announcements, in order that the congregation may be engaged in prayer and admonition, and the excommunication may not take place without its cooperation.

In the first public announcement the name of the sinner shall not be mentioned.

In the second public announcement, which shall be made only after the advice of classis has been obtained, the name and address of the sinner shall be mentioned.

In the third public announcement a date shall be set at which the excommunication of the sinner shall take place.

In case a non-communicant member hardens himself in sin, the consistory shall in the same manner inform the congregation by means of public announcements.

In the first public announcement the name of the sinner shall not be mentioned.

In the second public announcement, which shall be made only after the advice of classis has been obtained, the name and address of the sinner shall be mentioned and a date shall be set at which the excommunication of the sinner shall take place.

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**ARTICLE 74**

The time between the various announcements shall be determined by the consistory.

**ARTICLE 69**  
**Repentance**

When someone repents of a public sin or of a sin which had to be reported to the consistory, the latter shall not accept his confession of sin unless he has shown real amendment.

The consistory shall determine whether the benefit of the congregation requires that this confession of sin shall be made publicly and, in case it is made before the consistory or before two or three office-bearers, whether the congregation shall be informed afterwards.

**ARTICLE 70**  
**Readmission**

When someone who has been excommunicated repents and desires to be again received into the communion of the church, the congregation shall be informed of his desire in order to see whether there are any lawful objections.

The time between the public announcement and the readmission of the sinner shall be not less than one month.

If no lawful objection is raised, the readmission shall take place with the use of the form for that purpose.

**ARTICLE 71**  
**Suspension and Deposition of Office-Bearers**

When ministers, elders, or deacons have committed a public or otherwise gross sin, or refuse to heed the admonitions by the consistory with the deacons, they shall be suspended from office by the judgment of their own consistory with the deacons and

of the consistory with the deacons of the neighbouring church. When they harden themselves in their sin or when the sin committed is of such a nature that they cannot continue in office, elders or deacons shall be deposed by the judgment of the above-mentioned consistories with the deacons. Classis, with the concurring advice of the deputies of regional synod, shall judge whether the ministers are to be deposed.

**ARTICLE 72**  
**Serious and Gross Sins on the Part of Office-Bearers**

As serious and gross sins which are grounds for the suspension or deposition of office-bearers the following are to be mentioned particularly: false doctrine or heresy, public schisms, blasphemy, simony, faithless desertion of office or intrusion upon that of another, perjury, adultery, fornication, theft, acts of violence, habitual drunkenness, brawling, unjustly enriching oneself, and, further, all sins and serious misdemeanours that rate as ground for excommunication with respect to other members of the church.

**ARTICLE 73**  
**Christian Censure**

The ministers, elders, and deacons shall mutually exercise Christian censure and shall exhort and kindly admonish one another with regard to the execution of their office.

**ARTICLE 74**  
**No Lording It over Others**

No church shall in any way lord it over other churches, no office-bearer over other office-bearers.