

12.2 REPORT 1 – DEPUTIES FOR APPEAL – APPEAL AGAINST A DECISION OF REGIONAL SYNOD RANDVAAL (Artt 224, 226)

- A. The Synod continues in camera.
- B. Dr RM van der Merwe tables the Report.
- C. The Report will be concluded during the Synod session.
- D. The deputy-chairperson, rev SD Snyman, announces the decision to the parties.

E. REPORT

Mandate

See Acta 2012:27, art 11.3, points 2 and 5.

Matters that the Synod take note of

1. Admissibility: Formal

- 1.1 Notice of appeal was given to both Regional Synod Randvaal as well as the General Synod within six weeks.
- 1.2 The decision being appealed is accurately cited from the official redaction (attached).
- 1.3 The Appeal provides the grounds for appeal.

Decision: Points 1.1 to 1.3 noted.

2. Admissibility: Content

- 2.1 The matter has not formally, in terms of CO, art 46, been tabled at the assembly.
- 2.2 Appeal grounds are clearly set out in the appeal in accordance with CO, art 31.

Decision: Points 2.1 and 2.2 noted.

3. Brief historical overview and summary of content and course of events

(A timeline of the course of events is recorded in the minutes of Regional Synod Randvaal – Continued Regional Synod 2012/13, point 3.)

- 3.1 Br JH and Sr M Kruger already voiced their objection in 2009 to the GK Linden against ministry practices/the ministry model of the congregation not conforming, according to them, to Reformed ministry practices.
The Krugers also appealed against decisions of GK Linden to Classis Greater Johannesburg. The matter was reviewed by the Classis Greater Johannesburg on at least ten separate occasions.
The Krugers, JJ Howell and J Smit subsequently appealed decisions by Classis Greater Johannesburg to Regional Synod Randvaal (2014) and are now appealing to the General Synod 2015.
Although the matter may appear quite intricate in certain respects, due to the long history of events, it would seem that it has remained centred on a single issue throughout.
- 3.2 The question raised is whether Reformed members are entitled to a ministry that conforms to the (method of) spiritual care professed to by the Gereformeerde Kerke in Suid-Afrika, as regulated by the Church Order. The appeal asserts that the right of Reformed members are violated when there is deviated from this method of church ministry (cf. Belgic Confession, artt 30-32; CO, artt 31, 86; Appeal of Jan and Marié Kruger, 27 Sept 2010, point 1).
The Appeal culminates in the stance that both Scripture and the Church Order are the authorities against which church ministry and/or ministry practices/models are measured and that churches in the GKSA that refuse to uphold the Church Order as norm for a ministry model violate the rights of Reformed members.

- 3.3 It would seem from the Appeal that the GK Linden admits that its ministry model deviates from the Church Order (Minutes of Classis, 26 July 2014, points 6 & 8). The Classis Greater Johannesburg also found that the ministry practices of the GK Linden diverge from the literal interpretation of the Church Order, but that such ministry practices are not necessarily in conflict with Scripture or the Confession. The Regional Synod upholds this conclusion (Minutes of Classis 26 July 2014, points 6 & 8:1, 3, 5; Minutes of Regional Synod Randvaal 2014, point 5).
The question herein is whether in the application of the Church Order the distinction between the literal interpretation and application in the spirit/principle of the Church Order (Acta Randvaal, 2014, 5) is a valid distinction?
The appeal avers that Regional Synod Randvaal (2014) does not judge the ministry model of the GK Linden according to the Church Order, as agreed between the churches (CO, artt 31, 86; cf. Acta 2012:27, points 2.5 & 29, 5.2), and as undertaken and signed by church officials in the different forms of ordination and unity (CO, artt 53, 54).
In so doing, the Regional Synod Randvaal and Classis Greater Johannesburg reject the Church Order as norm for church ministry and violate the rights of Reformed members. The Appeal explains that the Regional Synod Randvaal does not recognise that such an approach to the Church Order is rejected by Reformed church law and that the stipulations set out in the Church Order are always normative in nature.
- 3.4 The question is raised whether Scriptural revelation about the governing of the church as professed in the Confession and regulated in the Church Order is reflected in the norms of the church ministry, since the GKSA honours the manner of church governance that Christ reveals in Scripture and agreed to regulate church ministry in accordance with the Church Order (Belgic Confession, art 32; CO, artt 31, 86; cf. point 3.6 of Appeal). Would deviation there from also imply a deviation from Scriptural revelation of God's directives for the building up and building out of His church? This would seem implicit to differentiating between the *ius divinum* and the *ius permisivum*. Both are binding (cf. Smit, 1984:94-95¹). Spoelstra, whose views play an important role in judging this Appeal, distinguishes between the *quod* and the *modus quo*, which rests equally on the above distinction that has been inherent to Reformed church law since Voetius.
- 3.5 The reason for the Appeal against a decision of Regional Synod Randvaal is the appellants' contention that Regional Synod Randvaal only conceded to the face value of the Appeal and still deemed, in conflict with this concession, neither of the principal grounds (Grounds for Appeal 1 and 2) to succeed. This ultimately prevents any restoration of rights concerned at the heart of this matter.
- 3.6 The Appeal points out that the churches of the GKSA collectively agreed to regulate church governance according to the Church Order, as derived from Scripture and the confession (e.g. Belgic Confession, artt 27-32). The churches acknowledge in the Church Order, in other words, the manner in which Christ reveals in Scripture His church must be governed. It is indeed because the churches collectively recognised the existing Church Order to be derived from Scripture and the confession that it is considered a normative authority for church governance. The Church Order in nature reflects Scripture and the Church Order to be normative for such governance (CO, art 31), which enables calling on the Church Order in matters concerning the church.

¹ Smit, C.J. 1984. God se orde vir sy kerk.:94, 95

- 3.7 The GK Linden's admission to deviating from the Church Order implies, according to the appellants, an admission to deviating from Church Order in terms of the so-called *ius divinum* (holy/Godly law as contained in Scripture) and *ius positivum* (based on Belgic Confession, art 30; cf. point 4.2.1.1 of Appeal). The Appeal reasons in point 2.4.2 that the Regional Synod Randvaal does not take this admission into consideration in their decision, but merely offers an oral explanation of the representatives of Classis Greater Johannesburg that attests of the opposite in the decision of Classis Greater Johannesburg (see point 4.2.1.1).
- 3.8 The appellants summarise their petition to the General Synod as follows:
The Regional Synod Randvaal (RSR) violates the law by sustaining the distinction between the so-called literal application of the Church Order and "acting" in the spirit of the Church Order (see point 2.4.1), in terms of Reformed church governance (Church Order), in their review of the information tabled to the SRS and in conflict with the Church Order as well as by not recognising the Church Order as normative in the Kruger/Howell/Smit appeal (cf. Appeal, p5, point 3.1.1).

Decision: Points 3.1 to 3.8 noted.

4. Procedure

- 4.1 Two of the appellants, prof J Smit and br JH Kruger, set out the Appeal before the Deputies on 15 December 2014.
- 4.2 The representatives of the Regional Synod, dr H Goede and rev ASA de Bruyn, also had the opportunity at the meeting to explain and motivate the decision of the Regional Synod Randvaal.
- 4.3 Testimony by both the appellants and the representatives was heard with both parties present.
- 4.4 The testimony, as contained in the document pack (with Appeal and Appendices 1 to 11), was reviewed by the Deputies.
- 4.5 The Deputies also questioned both the appellants and representatives, as part of the evaluation of the matter.
- 4.6 Preliminary findings and recommendations were conveyed to the appellants and representatives, together with an invitation to respond to such findings and recommendations.
- 4.7 Rev de Bruyn forwarded a written response and prof J Smit and elder JJ Howell gave a verbal response on 05 January 2015.
- 4.8 Upon processing of the response, a final Report has been compiled for tabling after the constitution of the General Synod.

Decision: Points 4.1 to 4.8 noted.

5. Review of Appeal grounds

- 5.1 *Point of departure*
 There are a number of distinctions that need to be kept in mind during the review of this Appeal (*inter alia*):
- 5.1.1 The distinction between *jus constituendum* (the law as it should be) and *jus constitutum* (the law as it is).
- 5.1.2 The distinction between *jus divinum positivum* (based on Belgic Confession, art 30) and *jus divinum permissivum* (based on Belgic Confession, art 32).
- 5.1.3 The distinction between the authority of Scripture as *norma normans* (the norming norm), the authority of the confession as *norma normata* (the normed norm) and the authority of the Church Order as *norma ministrans* (attending norm or ministering of the norm).
- 5.1.4 *...in the Church Order people speak in obedience to Scripture through the working of the Holy Spirit² (CJ Smit, 1984:83).*

Decision: Points 5.1 to 5.1.4 noted.

² Smit, C.J. 1984.

5.2 Appeal Ground 1

The appellants assert

that the Regional Synod Randvaal upholds and endorses a distinction between the literal and “another” interpretation and application of the Church Order, a distinction which the Church Order itself does not uphold.

In support of their stance, the Regional Synod Randvaal calls in an invalid and unnuanced manner on documents of particular church canonists.

As such the normative nature and authority of the Church Order is denied and consequently violates church law.

The appellants argue the following

- 5.2.1 The nature and language of the Church Order denote literal interpretation and application. In this regard the Church Order sets out certain stipulations, in accordance with the nature of a point of order or Church Order:
 - 5.2.1.1 Article 1 does not provide a possible way for good order within the church of Christ, but dictates what is necessary and must be upheld for good order in the church.
 - 5.2.1.2 Article 3 stipulates: “*No person shall be permitted...*” This prohibition indeed reflects that conduct in the spirit and principle of the Church Order requires following the formulations and intentions of the articles of the Church Order. This is why churches throughout history collectively considered, in view of the times and circumstances, matters like “exchange of pulpits” and its prudence.
 - 5.2.1.3 Articles 4 and 5 refer to the lawful calling and admission of a candidate student and also an ordained minister. The “lawful” implies that calling and admission can also transpire in an “unlawful” manner. The latter context precludes a distinction between the literal application of the Church Order and conduct “in the spirit” of the Church Order.
 - 5.2.1.4 It would seem that virtually every article of the Church Order is prescriptive in nature and is intended to be applied as formulated.

Church canonical remarks of the Deputies

The question is whether the distinction between a literal interpretation of the Church Order and one in the spirit and principle of the church supposes or describes a valid distinction for church governance/Christ governance at all.

*No Reformed canonical inquiry has been made as yet into the intent of such a distinction between the interpretation and application of the Church Order of the GK Linden, Classis Greater Johannesburg and Regional Synod Randvaal. It would seem that this distinction is derived *inter alia* from Getz’s distinctions between function/form, principle/pattern, message/method and truth/tradition.*

*The characteristic nature (*sui generis*) of the Church Order seems to refute the legitimacy of this distinction. Even the opposite of a belief, according to the spirit and principle of the Church Order: a strict, absolute, literal belief of the Church Order as opposed to a so-called interpretation in the spirit of the Church Order does not make any sense in governing the church of Christ. It leads to a strange argument that was seemingly never the intent of the Church Order.*

Churches agree collectively (according to Scripture) on Christ’s directives for His church and simply apply these in an appropriate and orderly manner within Christ’s church. This is why the Church Order has never been evaluated in terms of its literal or “in spirit and principle” application.

The appellants rightly assess the Church Order to be prescriptive in nature and that it should be applied as formulated.

- 5.2.2 The Regional Synod Randvaal cites Van der Linde (1983:278) out of context in support of its view on the distinction between the literal and “spirit/principle” interpretation of the Church Order.
- 5.2.2.1 Van der Linde (1983) does indeed differentiate between the literal and spirit of the Church Order to assert that a church that is unable to follow the Church Order, due to extraordinary circumstances, may not be denounced or condemned for doing so (*because they have no other recourse, such a deviation is not a sin*).
- 5.2.2.2 In preceding chapters Van der Linde (1983) indicates that revision to a Scripturally-sound Church Order is rarely needed and that *should a local church deem any amendments necessary, the necessity for revision and the manner of revision has to be duly proven and set out according to church procedure at a General Synod. Only once a General Synod has made the relevant revision, is it legal* (translated from Van der Linde, 1983).
- 5.2.2.3 The reference to Van der Linde (1983) does not substantiate the Regional Synod Randvaal’s distinction between the literal application of the Church Order and the application of the Church Order in spirit and principle.
- 5.2.2.4 The appellants are in fact convinced that when read in context, Van der Linde (1983) actually substantiates the stance of the appellants.

Church legislative remarks of the Deputies

It would indeed seem that Van der Linde’s (1983) intent was to describe the exception to the rule (need to deviate from the Church Order) and not to create the opportunity for breaking ranks or for the distinction between a literal and/or other type of interpretation of the Church Order.

- 5.2.3 Spoelstra³’s (1989:24) rejection of the Church Order as church law serves as motivation, within this context, for the distinction between a literal and in spirit/principle interpretation.
- 5.2.3.1 The appellants are of the conviction that the Regional Synod is mistaken in its assertion that Spoelstra’s (1989:24) rejection of the Church Order as church law *ad rem* serves as substantiation for the distinction between a literal and in spirit/principle interpretation of the Church Order.
- 5.2.3.2 The reference to Spoelstra (1989) does not, according to the appellants, support the Regional Synod Randvaal’s distinction between a literal and in spirit/principle application of the Church Order. When read in context, it is clear that the standpoints of the appellants and Spoelstra (1989) are in exact correspondence – as is clear from the following excerpt (translated from the Afrikaans):
- The aspects of the Church Order that are directly based on Scripture are endowed with the authority of Scripture. Other agreements between the churches on how (modus quo) they support each other (quod) in obedience to Christ’s exhortations to His church rest on the authority of such agreement. Truth, honesty and faithfulness therefore demands that the churches individually and in assembly adhere to this agreement. As such, the Church Order can be called on as legal ground for an appeal. In as far as the Church Order relates to church law, for example in terms of the offices (artt 16, 23, 25), the institution of a Church Council (art 37) or how church discipline is to be administered (artt 72-77), no deviation is permissible. Should the interest of the church or churches impede the execution of a formal stipulation, for example the different presentation of nominations (artt 22, 24) or where testimonial for observance of the Lord’s Supper is unattainable in extraordinary circumstances (Article 61), deviation from the usual order is permissible as long as it is in basic compliance with church law, the church founded and in glory to the Lord.*

³ Spoelstra, 1989.

Thus the Church Order is basically contractual in nature and carries greater authority than Synod decisions. It is the agreement that directs Synods and sets out law that is sovereign to church assemblies. In appeals the relevant assembly must therefore conform to the law contained in the Church Order. As such the authority of the Church Order is also serving in nature, serviceable to the kingship of Christ' (Spoelstra, 1989:190 as translated from the Afrikaans).

- 5.2.3.3 The Regional Synod Randvaal also fails to take into account that Spoelstra (1989:190) states "in as far as" the Church Order relates to church law, deviation from the Church Order is not permissible.

Church legislative remarks of the Deputies

It was indeed not Spoelstra's intent (when read in context) to create the opportunity for any other interpretation of the Church Order and it would thus seem that the reference to Spoelstra's stance on Church Order/law is not ad rem.

- 5.2.4 The Regional Synod Randvaal is misapplying CO, art 85 to this matter and also citing it erroneously. The statement of the Regional Synod Randvaal on CO, art 85 is incorrect: The article concedes to "non-essential matters".

- 5.2.4.1 In this regard the appellants explain that the Church Order does not state that the Church Order contains non-essential matters, but that the GKSA may not condemn those churches abroad for upholding "non-essential matters". Article 85 of the Church Order states: "In nonessential matters, churches whose customs differ from ours shall not be denounced." This stipulation attests that the Church Order is not overly prescriptive and only contains the most necessary of stipulations. Decisions on non-essential matters thus reside with the churches and not with the Church Order.

- 5.2.4.2 The Regional Synod Randvaal fails to relate CO, art 85 to the churches' collective agreement to uphold and apply artt 53, 54 and 86. The reference to CO, art 85 does not substantiate the distinction between the literal application of the Church Order and application in the spirit/principle of the Church Order.

Church canonical remarks of the Deputies

It would seem that CO, art 85 is mistakenly applied to the so-called distinction between the literal interpretation of the Church Order and interpretation in the spirit and principle of the Church Order. The intent of CO, art 85 is indeed to prevent denouncement of non-essential matters of churches abroad (that may have different customs). The purpose (spirit and principle – sic!) of CO, art 85 is seemingly not to infer that the Church Order contains non-essential matters.

- 5.2.5 According to the appellants, the Regional Synod Randvaal violates the law by treating the relevant documents in an unnuanced and incorrect manner and making that interpretation the basis of their judgement:

- 5.2.5.1 It does so by conceding to Classis Greater Johannesburg that it measured the ministry practices of GK Linden against the Church Order. The minutes of the Classis is cited to attest that the opposite is indeed the case. The minutes of the Classis (26 July 2014) states a deviation from the Church Order and declares, without any substantiation, how the ministry practices of GK Linden are in conflict with the Church Order but not necessarily with Scripture and the Confession. No mention is made of CO, art 3. The question is whether the individuals that minister the Word at GK Linden are *lawfully called* and *permitted* to the office.

The Classis Greater Johannesburg did not offer judgement in this regard in terms of CO, art 31, but cited the reason that the GK Linden would not be acting outside of the Church Order in doing so as: condoning both a literal and another interpretation of the Church Order.

Church canonical remarks of the Deputies

It would seem from the testimony and reasoning of the appellants that the Regional Synod Randvaal indeed conceded to the Classis Greater Johannesburg that the Classis Greater Johannesburg reviewed the Zppeal against the Church Order, but that the minutes of the Classis Greater Johannesburg attests of the opposite – especially in relation to the application of CO, art 3.

5.2.5.2 The appellants find the statement that *in terms of questions arising over the Church Order, Scripture and the Confession are as a rule involved, regardless of whether the appeal specifically requires such* (see 3.4 above) in conflict with CO, artt 31, 33 and 86 as well as Synod 2012 (Acta 2012:27-29). Both the Church Order and the Synod decision hold forth Scripture and the Church Order as the norms for judging church matters. The Synod(s) approved the whole of the Church Order as being measured against Scripture and the Confession, hence the point of departure of church governance being the normative character of Scripture and the Church Order. Should any person contend that the Church Order is erroneous, invalid, in need of revision or addition church procedure must be followed as indicated in CO, artt 46 and 86. The Church Order is itself is subject to judgement (cf. Spoelstra, 1989:190).

Church canonical remarks of the Deputies

The appellants rightly point out that the Church Order and Synod decisions indicate that both Scripture and the Church Order be considered norms for judging church matters. The argument of the appellants makes it clear that the church does not have two sets of norms, only Scripture applies. The Church Order indeed embodies Scripture principles, as set out in the Confession, for church practice. The Church Order is thus not an “authority” apart from Scripture.

5.2.5.3 The one-sided and unsubstantiated assertion of Regional Synod Randvaal that the Appeal ground, about which Classis Greater Johannesburg (26 July 2014) was to render judgement, had already succeeded on a previous occasion (at Classis Greater Johannesburg 19 May 2012) is incorrect. The Classis Greater Johannesburg of 19 May 2012 expressly distanced itself from the possible validity of the Appeal grounds and only made a technical concession to the success of the appeal. Classis Greater Johannesburg strongly denies that the content of the Appeal grounds would succeed at all. The Regional Synod Randvaal also fails to indicate the relevance of a previous appeal having succeeded according to these grounds.

Church canonical remarks of the Deputies

Documents and testimony seem to show that Classis Greater Johannesburg did indeed not pronounce the essence of the grounds for petition as having succeeded and has not reviewed the implication of the Appeal possibly succeeding.

5.2.5.4 The similarly one-sided assertion (see point 5.1.2.3 of the Appeal) of the Regional Synod Randvaal that the appellants’ “claim” that the Appeal grounds, about which the Classis Greater Johannesburg had to pronounce judgement, were not addressed is unacceptable derives from the fundamental misconception of the matter in its entirety (cf. 25 November 2014, point 5.1.1.3).

The Regional Synod Randvaal avers that the Classis Greater Johannesburg must be viewed in terms of the decision made by the continued Regional Synod (Acta Continued Assembly of Regional Synod Randvaal 2012 – 19 November 2013). The Regional Synod Randvaal's reading of the decision (Acta 2012/13:74-75, point 4.2) is erroneous. The Classis Greater Johannesburg made no mention of the Appeal grounds and if no judgement was made on the Appeal grounds, then the appeal has not been reviewed and concluded (CO, art 31). No indication is given in the minutes of the Classis Greater Johannesburg (26 July 2014, 8) that the Appeal grounds were reviewed at all or that a judgement was rendered. The Regional Synod Randvaal's stance rightly rests on the misconception that an Appeal can be concluded by merely judging the evidence provided, without reviewing and judging the Appeal grounds in light of such evidence.

Church canonical remarks of the Deputies

The testimony and reasoning seem to reflect that the Classis Greater Johannesburg did indeed not review the Appeal grounds, but that the review of the evidence of the Appeal led to decision of the Classis Greater Johannesburg to shift the review to the ministry practices of the GK Linden, rather than reviewing and concluding the Appeal grounds. The Regional Synod Randvaal conceded such to the Classis Greater Johannesburg.

5.2.5.5 The Appeal ground (see point 5.1.1.5) did not succeed, because the Regional Synod Randvaal found that the Classis Greater Johannesburg failed to determine whether the so-called five practices of the GK Linden are in conflict with Scripture and the Confession. Within the context of the Appeal, Appeal Ground 1 should succeed in accordance to the reasoning of the Deputies. The appellants point out that even should the Classis Greater Johannesburg not find the conduct of the GK Linden in conflict with Scripture and the Confession, the GK Linden and Classis Greater Johannesburg are still not entitled to act in contravention of the Church Order until such time that a General Synod decides otherwise.

Church canonical remarks of the Deputies

The finding of the Regional Synod Randvaal is self-explanatory: The Regional Synod Randvaal acknowledges that the so-called five practices were not exegetically assessed and judged. Based on this, the Appeal ground should have succeeded. The Regional Synod Randvaal itself calls it a serious shortcoming of the Classis Greater Johannesburg's review of the matter.

Summary and final considerations of Appeal Ground 1

Three issues are raised in this Appeal ground:

- (1) *The Regional Synod Randvaal upholds and endorses a distinction between the literal and "other" interpretation and application of the Church Order, which is in conflict with the Church Order itself.*
- (2) *The normative nature and intent of the Church Order is as such denied.*
- (3) *The Regional Synod Randvaal erroneously calls, in support of their stance, on certain church canonists by referencing the work of such experts in an invalid and unnuanced manner.*

In terms of the reasoning of the Regional Synod Randvaal, the following

- (a) *The Regional Synod Randvaal argues that Classis Greater Johannesburg used the Church Order as measure to review matters (previous Appeals), even if the impression is given that this is not the case (see Appendix 10, point 5.1.1.1 and especially point 5.1.1.1.1).*
- (b) *The Regional Synod Randvaal takes note that Classis Greater Johannesburg intends to adhere to the spirit and principles of the Church Order, even if there is deviation from the letter of the Church Order (see Appendix 10, point 5.1.1.1.2).*

- (c) *The Regional Synod Randvaal deems the appellants' view that the Classis Greater Johannesburg is in conflict with the Church Order if it rejects the literal interpretation thereof, but the spirit and principle is upheld as erroneous (see Appendix 10, point 5.1.1.1.3).*
- (d) *The Regional Synod Randvaal cites excerpts from work by Van der Linde and Spoelstra in substantiation that the Church Order cannot always be literally applied, as though a non-literal application of the Church Order would be in conflict with Godly revelation (see Appendix 10, point 5.1.1.2).*

Reasoning

- (i) *Through its judgement in point 5.1.1.1.3, the Regional Synod Randvaal indeed declares itself in favour of a distinction between a literal and an "in-spirit/-principle" interpretation of the Church Order – just like Classis Greater Johannesburg and GK Linden. The representatives of the Regional Synod Randvaal also explained it as such. Such a distinction is not possible, because it goes against the spirit and character of the Church Order and undermines the trust that the churches have in each other. What we mean, we set out in the Church Order – and what we set out in the Church Order, we mean.*
- (ii) *The Church Order is indeed normative in so far as it gives voice to Scripture. The regulative matters are clearly distinguishable. The regulative was also collectively agreed and cannot be one-sidedly left behind. CO, Article 86 is clear in this regard.*
- (iii) *Referencing the work of church canonists to substantiate a stance is in itself always problematic (see point 5.2 of the Appeal). The standpoints of canonists have to be read in context and the appellants rightly point out how the remark of Van der Linde was cited out of context (points 4.1.1.2 and 4.1.1.3 of the Appeal). Spoelstra clearly states in terms of CO, art 86 that churches must remain true – in accordance with their goodwill towards each other – to their agreement of mutual recognition, support and assistance in church governance to fulfil their calling to be a true church.*

Finding in regard to Appeal Ground 1

The Regional Synod Randvaal violates the law by finding, based on the information tabled to it that a valid distinction can be made between the literal application of the Church Order and so-called application in the spirit and principle of the Church Order.

Decision

The Appeal succeeds on this ground.

5.3 Appeal Ground 2

The appellants argue

that the Regional Synod Randvaal conceded to the Classis Greater Johannesburg regarding the Scriptural principle (cf. Acta 2012:24-27) that deponents/testimony must be thoroughly tested before judgement can be made, without indicating the testimony offered at the Regional Synod Randvaal, in which way the testimony was reviewed by the Regional Synod Randvaal or to refute the evidence of the appellants.

The appellants argue as follows

5.3.1 *The Regional Synod Randvaal violates the law by not reviewing, measuring and reporting on the testimony of the representatives of the Classis Greater Johannesburg in terms of CO, art 31 and the decision of Synod 2012 (Acta 2012:24-27) and as such fails to refute the evidence of the appellants.*

5.3.1.1 The appellants point out that the Regional Synod Randvaal should have determined and confirmed, according to the testimony of the Classis Greater Johannesburg, whether its stance in making a decision on 26 July 2014 over the literal application of the Church Order and application according to the spirit and principle of the Church Order is correct, as understood by the appellants. In this regard the Regional Synod Randvaal received the following testimony:

The representatives of CGJ confirmed that they do not consider the Church Order to be “in conflict” with Scripture/the confession or deem/treat it in “opposition” to Scripture/the Confession. They do allow for the possibility of reformulation or revision of some of the articles of the Church Order in accordance to art 86.

5.3.2.2 The Regional Synod Randvaal accepts, according to the appellants, this testimony of the representatives without clearly setting out/formulating and reviewing the representatives' testimony in the Reports. The evidence produced by the appellants at Regional Synod Randvaal is not debated or refuted by Regional Synod Randvaal.

Church canonical remarks of the Deputies

The appellants indicate a possible shift in focus between what the Regional Synod Randvaal terms a “cursory and unclear formulation” and “(indeed deficient) recording” of the minutes of the Classis Greater Johannesburg (26 July 2014, 8) as well as the finding of the Classis Greater Johannesburg “that the Church Order was indeed used as measure for review (cf. point 8 of the minutes)”. Point 8 speaks of the functioning of the Church Order, but in the sense that the Church Order does not necessarily (literally) need to be followed. The representatives of the Classis Greater Johannesburg go on to elucidate the Classis decisions in a way that it would seem the Classis Greater Johannesburg and GK Linden do not deem or treat the Church Order as “in conflict” or in “opposition” to Scripture/the Confession and also provide for the possible revision or reformulation of Church Order articles.

The representatives of the Regional Synod Randvaal indicate that they enquired of the representatives of Classis Greater Johannesburg whether they endorse the Church Order, which the representatives confirmed. With that the Deputies of Regional Synod Randvaal deemed the matter to be concluded. The testimony, in which beacons were possibly shifted, was thus not reviewed.

Representatives are only supposed to elucidate the decision of the assembly. A reading of the discussion and decision contained in the minutes (Classis Greater Johannesburg, 26 July 2014, Appendix 3) shows a discrepancy between the decision taken and the view of the representatives (as cited in Appeal Ground 2) that led to that appeal ground not succeeding. It would seem that the representatives substantiated more than just the decision afterwards and outside of their mandate.

This Appeal ground raises two issues

The Scripture principle (in reference to Synod 2012) requires that testimony be thoroughly reviewed prior to reaching a decision. This was not done, according to the appellants, since:

- (a) The Regional Synod Randvaal concedes to the Classis Greater Johannesburg, without indicating the testimony tabled to the Regional Synod Randvaal.*
- (b) The Regional Synod Randvaal concedes to the Classis Greater Johannesburg, without indicating how Regional Synod Randvaal measured the testimony.*

The Regional Synod Randvaal concedes to the Classis Greater Johannesburg without refuting the evidence of the appellants.

It would seem that the following two Scripture principles at issue:

audi et alteram partem, and

on the testimony of two or three a matter stands firm (Deut 17; 1 Tim 5, etc).

Finding regarding Appeal Ground 2

The Regional Synod Randvaal did not, in accordance to Acta 2012 (2012:24-27) thoroughly evaluate testimony prior to reaching judgement and conceded to the Classis Greater Johannesburg without indicating the testimony tabled to Regional Synod Randvaal, the way in which the testimony was reviewed by Regional Synod Randvaal or refuting the evidence of the appellants.

Decision

The Appeal succeeds on this ground.

5.4 Appeal Ground 3

The appellants assert

the Regional Synod Randvaal violates CO, art 30 by making a judgement that precludes judgement in terms of CO, artt 30 and 31.

The appellants argue

- 5.4.1 that Regional Synod Randvaal is mistaken in their assertion that Appeal Ground 3 (Regional Synod Randvaal – 25 November 2014) deals with the failure to comply with a Synod decision by the chairman of the assembly, viz. that the opening of an assembly may not prejudice the assembly.
- 5.4.1.1 Appeal Ground 3 in actual fact deals with every church assembly determining its own procedure in accordance with the Church Order and as such, the appellants point out that this issue is not about the law on precedents. Neither does it relate to the failure to comply with a Synod decision. During the opening of Classis Greater Johannesburg the Scriptural principle of unbiased judgement of matters was threatened by the manner of the opening (cf. the reasoning in Acta 1964:13-14).
- 5.4.1.2 The Regional Synod Randvaal violates the law by not addressing the consequences of the decision that the assembly is prejudiced by the opening. An important point is the Deputies deeming a mistake to have been made during the opening, which on the whole influenced the further decisions made at the assembly. The Regional Synod Randvaal speaks in this regard of a “real” possibility that the assembly was prejudiced by the opening and for this reason the appeal succeeds on this ground.
- 5.4.1.3 Regional Synod Randvaal does not take into account that Classis Greater Johannesburg did not make use of the opportunity during its proceedings to set the matter right. The relevant order suggestion was vetoed. The Regional Synod Randvaal errs in continuing on with the matter, given a possible analogy with Synod 1964 where the matter was addressed and resolved during the Synod. Classis Greater Johannesburg did, however, not take the opportunity to correct the error during its session.
- 5.4.1.4 Regional Synod Randvaal violates the law by deciding on imposing a sanction that has no impact on the wrong that was caused by the opening. The violation of the law by Classis Greater Johannesburg can in no way be rectified, given that the main grounds of the Appeal does not succeed. Classis Greater Johannesburg cannot, as is the apparent assumption from the judgement, not finalise the matter in terms of CO, artt 30 and 31. The grounds according to which the matter was to be addressed did not succeed at Regional Synod Randvaal. The wrong done to the appellants remains unresolved, while the individual who committed the wrong is merely admonished at the next Classis. Regional Synod Randvaal fails, however, to take into account that it prejudiced the whole assembly and the resulting consequences. It does not rectify the matter.

Church canonical remarks of the Deputies

One issue is raised in the Appeal ground

Regional Synod Randvaal's pronouncement on the Appeal prevents any further action on the actual cause for the appeal, viz. the ministry model in Classis Greater Johannesburg.

In regard to the reasoning and conduct of Regional Synod Randvaal, the following:

- (a) Regional Synod Randvaal agrees that prejudice may indeed have been possible (Appendix 10, point 5.3.1.2), without detailing the consequences of such prejudice.*
- (b) Regional Synod Randvaal rules on a formal ground (a real possibility of prejudice), without relating it to any material grounds (the first ground of the Appeal) that the Appeal succeeds as a whole (Appendix 10, point 5.3.3.1).*
- (c) Regional Synod Randvaal decides to refer the matter, in accordance with CO, art 43, to personal and confidential debate at an upcoming assembly of Classis Greater Johannesburg, for which a debate agenda is compiled (Appendix 10, points 5.3.3.2 and 5.3.3.3).*

This is the essence of the matter. As at Classis Greater Johannesburg, the appellants' appeal also succeeds at Regional Synod Randvaal – on a formal ground – while the content of the matter remains untouched. Regional Synod Randvaal endeavours to further continue discussion, but then in terms of CO, art 43 that pertains to the admonition of undesirable conduct.

The appellants rightly assert that the pronouncement of Regional Synod Randvaal wronged them, given that the actual cause for the Appeal, viz. the ministry model of GK Linden, is still not addressed and cannot in this way be further debated.

Finding in regard to Appeal Ground 3

It would seem that Regional Synod Randvaal violates CO, Article 30 by making a pronouncement that precludes administration of justice in terms of CO, Article 30 and 31.

Decision

The Appeal succeeds on this point.

Decision: Points 5.1 to end of 5.4.1.4 noted. The Deputies acted according to the approved working method and deliver decision according to mandate.

6. Final finding and recommendation

The Appeal succeeds on all three grounds.

6.1 Finding

The Appeal succeeds overall and proves infringement of rights.

6.2 Decision

6.2.1 The Appeal succeeds on all grounds.

Decision: Points 6.1 to 6.2.1 noted. The Deputies acted according to the approved working method and deliver decision according to mandate.

6.2.2 The review of the documents informed the Deputies on the underlying problem:

6.2.2.1 In Appendix 7 GK Linden underscores that it is led not so much by the Confession and Church Order, but by the Word of God. *The spiritual method of management and ministry patterns in the RC Policy is not determined by the CO, but in the Word of God. Neither the CO nor the Three Formularies of Unity have the purpose of determining the spiritual management and ministry patterns in a limiting way for every local church, even if they refer to many forms, patterns, methods, functions and traditions.* GK Linden's approach to the Church Order is confirmed on page 2 of Appendix 11 when referring to the conduct of the appellants as "the legalistic, juristic approach and criticism of the RCL" that is considered unnecessary.

- 6.2.2.2 Appendix 8 (the conduct of Regional Synod Randvaal 2013) confirms above problem.
- (a) Classis Greater Johannesburg explains in Attachment A the Appeal could not succeed on the literal interpretation of the Church Order, because then all the churches within Classis Greater Johannesburg would be discredited.
 - (b) GK Linden calls, in Attachment B, an open/positive debate on the ministry model of GK Linden at Classis Greater Johannesburg the right path to the root of the matter. The original question of the appellants remains: Does the model meet the requirements of the Church Order?
- 6.2.2.3 Regional Synod Randvaal responds by recommending a discussion in accordance with CO, art 43 at Classis Greater Johannesburg. This does not resolve the matter, since CO, art 43 deals with the admonition of those whose conduct during an assembly merits disciplinary action or disregarded the admonition of a minor assembly. This does not pertain to this case.
- 6.2.2.4 Classis Greater Johannesburg repeatedly endeavours to resolve the matter. Comparing the ministry model of GK Linden to those of neighbouring churches is not the answer, since that is not the action sought.

Decision: Points 6.2.2 to 6.2.2.4 noted.

6.2.2.5 The core of the problem lies in GK Linden's understanding of the Church Order.

Decision: Point 6.2.2.5 noted (amendment already added – Deputies Acta).

6.3 For the finalisation of the matter

6.3.1 The newly proposed Appeal procedure makes provision for Deputies: Appeal to address the legal consequences of the judgement.

The Deputies: Appeal compiles a final report in which the following is recorded:

7.6.7 Where applicable, a breakdown of the legal consequences of the judgement.

7.6.8 Where applicable, recommendations for a pastoral path towards clearing up of infringement of rights or erroneous perception of such infringement of rights.

Decision: Noted.

6.3.2 In light of the specific issue the Appeal addresses, the Deputies recommend that the appellants' requests, as indicated in 3.3 of their Appeal, be referred to the yet to be appointed Deputies CO, art 49 to address the matter in consultation with the Deputies: Appeal.

Decision: Approved.