

BRIEFING NOTE

GAUM and others vs DUTCH REFORMED CHURCH and others

On 21 August 2018, the Pretoria High Court will hear argument in an important case that could potentially have dire implications for the autonomy of the Church – and indeed the broader religious community - in South Africa.

The issue before the Court is the 2016 decision by the General Synod of the Dutch Reformed Church (DRC) pertaining to the authority of their congregations to make independent decisions relating to same-sex marriages / civil unions. However, it has morphed into a case which potentially challenges the ability of each denomination, church or religious grouping to set their own doctrine and to be entitled to govern their internal affairs according to their interpretation of their religious doctrine.

This situation has now further come about because of an application by the Commission for Gender Equality (CGE) to intervene as a "Friend of the Court" (Amicus Curiae) in the case. The CGE are asking the Court to find that, from a constitutional point of view, religious organisations / groupings should not have a discretion to decide whether or not they recognise same-sex civil unions / marriages / relationships.

Should the Court make such a finding, it effectively means that churches and religious organisations can be forced to adopt certain ("politically correct") doctrinal positions, even if such positions go directly against their religious convictions and beliefs. This is a severe infringement of religious freedom and the autonomy of the religious community as a whole. It must therefore be defended at all costs.

For this reason, it is very important that denominations, churches and religious groupings in South Africa - irrespective of their own doctrinal views on the issue of same-sex relationships within the Church - intervene and make their voices heard in the matter. The primary aspect of this case on which we believe all can agree, concerns the vital importance of protecting the autonomy of the Church and the broader faith community from external interference in their beliefs.

Background facts of the abovementioned case:

The applicants seek a review of the DRC's decision (in November 2016) to reverse an earlier decision (of 2015), which permitted congregations to allow – but did not oblige – ministers to solemnise same-sex civil unions, and which also removed the celibacy requirement for gay and lesbian ministers.

The bulk of the applicants' case concerns certain procedural irregularities, on the basis of which they allege the (2016) decision should be set aside and corrected by the Court. The application goes further however and alleges that the DRC's decision amounts to unfair discrimination against gay and lesbian people, is unconstitutional and should for this reason be set aside and corrected by the Court.

It is on this constitutional point where there is a grave danger for interference with the autonomy of the Church – and indeed the ability of each denomination, church or religious grouping to set their own doctrines, regulations and rules according to their interpretation of their Holy texts.

Call to Action:

In order to draw the Court's attention properly to what we believe the correct constitutional position relating to the autonomy of the Church should be, a group by the name of **The Alliance Defending the Autonomy of churches in South Africa (ADACSA)** has been formed which is applying to become *Amicus Curiae* in the above case.

Your Church / ministry / organisation can become part of ADACSA. The Constitution of ADACSA as well as a draft resolution is attached hereto.

Could you please urgently consider your participation and if you would want to become part of ADACSA **complete the attached resolution and return it at your earliest convenience to:** ursulak@motcon.co.za;

For more information please contact the instructing attorneys Maphalla Mokate Conradie Inc on 012 369 6200 or:

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