

[Draft] Memorandum

Date: July •, 2025

To: Nick Geleynse, Chair, Board of Directors, Classis Huron of the Christian Reformed Church in North America

From: Wayne Gray

Subject: Questions on Classis Huron's Corporate Constaning Documents, etc.

1. Questions

What follows is our opinion on the following questions that we have been asked:

Questions: Assuming Classis Huron intends to follow the decisions of the Christian Reformed Church in North America (“CRCNA”) Synod 2024 (in particular, its decisions about re-signing the covenant for officebearers and limited suspension), can Classis Huron of the Christian Reformed Church in North America (“Classis” or the “Corporation”) follow/implement them at this time, based on the *Canada Not-for-profit Corporations Act*¹ and Classis's current articles and by-laws? Could Classis Huron follow the decisions if it amended its articles and by-laws first?

2. Scope of Review and Assumed Facts

In providing this opinion, we have reviewed the following documents:

- (a) article 89, Acts of Synod 2024, the Synod decision requiring the re-signing of the covenant for officebearers (the “Covenant”) on a yearly basis (the “Covenant Decision”);
- (b) Classis overture (motion) dated March 11, 2025;
- (c) minutes of the Classis special meeting of members dated April 7, 2025 (the “Minutes”);
- (d) certificate and articles of incorporation of Classis issued on November 11, 2015 (the “Articles”);

¹ S.C. 2009, c. 23 (the “CNCA” or the “Act”).

- (e) by-laws of Classis dated effective September 20, 2017 (the “**BL**”);² and
- (f) rules of Classis (also called the Handbook) dated September 2021 (the “**Rules**”).

In addition to the above, we have considered the provisions of the CNCA, the regulations³ made under the CNCA and such case law as we consider pertinent to the questions asked.

We have not reviewed the church order of the CRCNA, comprised of the original Church Order of Dort 1618-19, as subsequently revised and amended by CRCNA. Nor have we reviewed the specific language of Synod’s decision on limited suspension (the “**Suspension Decision**”). Based on discussion of the Suspension Decision in the Minutes, our understanding is that, if one or more of the delegates appointed by a member of Classis fails to sign the Covenant annually, the votes of the member who appointed that delegate will be disregarded (that is, that a member’s voting rights will be suspended until all three delegates have executed a current Covenant).

We assume that Classis is a soliciting corporation – i.e., that is it has received more than \$10,000 in donations from non-members in one or more of its last three financial years.⁴

3. Analysis

(a) If implemented, would the Covenant Decision and the Suspension Decision (collectively, the “Decisions”) contravene the Articles, BL or Rules and, if so, how would the inconsistency be resolved?

Classis is governed by the CNCA. The CNCA provides for various mandatory and default rules and facilitates private ordering so that, within certain limits, corporations enjoy significant flexibility in choosing internal governance rules that best work for the corporation and its constituents (mainly, members, directors and officers).

The Act mandates that a corporation have Articles and, while it does not mandate by-laws, most CNCA corporations adopt by-laws to better set forth in one place the rules that are to apply and spare its constituents having to wade through the entire Act and the CNCR to find guidance on what rules regulate the activities or affairs of the corporation.

The Act does not provide for policies or rules. A policy or rule that regulates the activities of the corporation is a “by-law”. It does not cease to qualify as a by-law because it uses a different name – just as a board of directors is a board despite calling itself by another name.⁵

² Note that the copy of the BL provided to us is unsigned. For the purposes of this report, we assume that it was duly passed by the directors and confirmed by the members. A copy should have been filed with Corporations Canada. We can seek an executed copy from Corporations Canada if you do not have a copy.

³ *Canada Not-for-profit Corporations Regulations*, SOR/2011-223 (the “**CNCR**” or the “**Regulations**”).

⁴ Reading together CNCA, s. 2(5.1) and CNCR, s. 16.

⁵ For consistency with the Articles and BL, this memo refers to the Board, rather to the Administrative Committee. Nothing turns on the differing terminology.

The Act provides civil (or secular) rules governing a corporation. It does not provide for ecclesiastical laws – except to the limited extent of providing that, with respect to certain remedies, a court has no power to make an order in respect of a tenet of faith of a religious corporation.

What, then, is the hierarchy of rules that apply to a CNCA corporation? They are, in descending order, as follows:

- (1) Act;
- (2) Regulations;
- (3) Articles; and
- (4) BLs.

Other documents (such as the Rules and Order) have no governance relevancy except to the extent that (a) they are incorporated by reference in the Articles or BLs (and, therefore, in substance made part of the Articles or BLs) and (b) are consistent with the Act, Regulations, Articles and BLs.

With that overview, we now turn to the intersection of the Decisions with the Act, BLs and Rules.⁶

The Act provides, as a default rule, that each member has one vote at a meeting of members:⁷

Unless the articles otherwise provide, each member is entitled to one vote at a meeting of members.

In fact, the articles of Classis do not provide for more than “one member, one vote”. The BL provisions providing for three votes per member, divided into three separate delegates, is therefore currently invalid.

The Act also provides that Classis must recognize any individual authorized by a member corporation or other entity to represent the member at meetings:⁸

- (6) The corporation shall recognize any individual authorized by a member corporation or other entity to represent the member at meetings.
- (7) The individual may exercise on behalf of the member corporation or other entity all the powers of that corporation or entity.

We, therefore, doubt the validity of s. 18 of the BL, which provides for various eligibility criteria applying to delegates (who are indistinguishable from representatives under ss. 154(6) and (7) of the Act) which are administered by a Credentials Committee, who can have first-time delegates

⁶ We drop further reference to the CNCR because it does not factor into the analysis that follows.

⁷ CNCA, s. 154(5).

⁸ *Ibid.*, ss. 154(6) and (7).

sign a Covenant.⁹ On its face, s. 18 qualifies or restricts a corporate¹⁰ member's unfettered right to choose who will represent it at a meeting of members. It appears that the Decisions would go even further. They would mandate that each delegate/representative execute a Covenant annually and, if any one or more individuals fail to do so, the member loses the right to vote. This is inconsistent with the Act, the Articles and the BLs.

Further, if tested in a court, it is questionable whether a by-law that provides that a member must split its votes using different delegates/representatives would withstand close scrutiny under s. 154(6). If a member appoints individual (D1) to exercise one vote, s. 154(6) allows the member to appoint D1 to exercise all three votes. There is nothing in s. 154(6) to the effect that, if a member has 100 votes, it must appoint 100 separate representatives. Such a rule would disenfranchise the member who has the right to exercise multiple votes.

Section 158 provides for the power to discipline members as follows:

The articles or by-laws may provide that the directors, the members or any committee of directors or members of a corporation have power to discipline a member or to terminate their membership. If the articles or by-laws provide for such a power, they shall set out the circumstances and the manner in which the power may be exercised.

In this case, neither the Articles nor the BL provide for any discipline of a member, including limited or temporary suspension. Implementation of the Suspension Decision would be invalid under the Act, the Articles and BLs.

(b) Could Classis Validly Implement the Decisions if it First Amended its Articles or BLs?

It is questionable whether the Covenant Decision could be implemented without violating ss. 154(6) and (7) of the Act. The Act does not contemplate imposing conditions or qualifications on a corporate member's choice of representative. Under the Act, a corporate member can freely choose its representative for the purpose of exercising its rights at a meeting of members. In contrast to many other provisions of the Act (such as, for example, ss. 154(4) and 158 discussed above), ss. 154(6) and (7) cannot be varied by the Articles or BLs. As a soliciting corporation, Classis cannot validly adopt a unanimous member agreement ("UMA") to override other provisions of the Act.¹¹

That said, it may be possible to amend the conditions of membership to specify that a member must, as a condition to becoming a member, provide initial Covenants signed by at least three of its directors, officers or employees. It could add to or replace these from time to time. A

⁹ Note that, even if s. 18.2 of the BL were valid, it only requires that the first-time delegate sign the Covenant once, not annually. Nor does the BL provide for the suspension of a member's vote if a first-time delegate fails to comply with the Covenant requirement.

¹⁰ For the purposes of this discussion, we refer only to corporate members. However, ss. 154(6) and (7) in fact extend to non-corporate members (other than a member who is an "individual", defined as a human being). An unincorporated church would fit the definition of "entity", which is defined as "a body corporate, ..., a trust, ... or an unincorporated association or organization" (CNCA, s. 2(1)).

¹¹ CNCA, s. 170(1).

Covenant could expire after one year or, for ease of administration, at the end of each year. If the member failed to keep at least three Covenants in place, it could be subject to a discipline provision in the BL, which might expressly include possible suspension of its vote.

If the Articles were amended to provide for three votes per member, the BLs could provide for a process for the suspension of votes (implementing something along the lines of the Suspension Decision).¹² But the member must be given notice of the alleged default, have an opportunity to make representation and have an unbiased tribunal as the decision-maker.¹³ The case law demonstrates that it is generally unwise to adopt unfair or unbalanced discipline provisions.¹⁴

4. Summary

We summarize our conclusions as follows:

1. Implementation of the Decisions would contravene the Act, Articles and BL of Classis, rendering the implementation invalid.
2. It is not possible to amend the Articles or BLs to enable Classis to validly condition or qualify who a member may choose to appoint as its delegate at a Classis meeting of members.
3. However, it might be possible to amend the BLs by special resolution to make it a condition of membership that a corporate member have at least three Covenants, which it can replace.
4. It would also be possible to amend the BLs to provide that a member who fails to keep at least three Covenants in place is subject to a discipline process, which may include the suspension of its voting rights so long as the condition remains uncured.
5. If Classis wishes to validly continue with three votes per member, it must amend its Articles to opt-out of the one member, one vote default rule. It seems doubtful that Classis can insist that a corporate member's votes be exercised by three different delegates/representatives. However, if set out in the Articles, it may be that members will adhere to it to preserve tradition, making the validity point a non-issue in practice. It

¹² Note that s. 67 of the BL, providing that it can only be amended if confirmed by special resolution of the members (that is, two-thirds of the votes cast), is invalid because it contravenes s. 7(4) of the CNCA. If Classis wants this rule to survive, it must amend its Articles to provide that the BLs can only be amended if the amendment is confirmed by special resolution. Otherwise, with certain exceptions (including conditions of membership), members approve BL amendments by ordinary resolution (that is, 50.1% of the votes cast).

¹³ *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 SCR 165 (S.C.C.) (where the court applied principles of natural justice).

¹⁴ See, for example, *Lakeside Colony*, *ibid.* and *Surrey Knights Junior Hockey v. The Pacific Junior Hockey League*, 2018 BCSC 1748, affirmed 2020 BCCA 348 (at stake was the continuation of a team, with all its junior age players, as a member of the Pacific Junior Hockey League because of the coach's misbehavior).

encourages more extensive participation at meetings of members.

Wayne Gray¹⁵

¹⁵ *Practice carried on through a profession corporation.