

Legal Desk Report 2023 (Report 4.8)

Introduction.

Dear Delegates, the role of church law is to enable us as members of God's body to use our gifts and talents to the glory of God. Church law's aim is to foster good working relationships in the local congregations and in the greater CAPE CHURCH. Church law clearly clarifies and defines duties and expectations of a local congregation and its members; and the duties and the expectations between the congregations, the synod and church council. There are three main sources that according to the Lutheran Tradition govern our church law: the Word of God, the Three Creeds, and the Confessional Writings. Church law is never static and always evolving.

Training

Over the past year I have met with the following congregation to do a workshop around the constitution of the Cape Church that governs the congregation order B200. The outline of the training is as follows:

- Overview of who we are as the Cape Church;
- Overview of the Church Structure;
- A condensed overview of the constitution of the CAPE CHURCH;
- Introduction in to defining what the duty of a congregation is;
- The role of the ministry – pastors and preachers;
- The Role of the Church Committee;
- The role of the General Meeting;
- The role of Visitations;
- Lastly working through the congregation's constitution.

The congregations where I have done the training are St Crucis, Bellville; Strand Street and Stellenbosch. Please feel free to contact me and to invite me to come and do training with your congregation.

For the last two synod preparation meetings I have prepared a brief overview of the structure of the CAPE CHURCH; how synod functions; and what the duties and responsibilities are of a delegate.

Assisting Congregations with NPO

Dr Chris Johl has assisted the Bloemfontein congregation with drawing up a new constitution that is in line with the NPO act. A reminder that if a congregation is registered as an NPO the congregation needs to submit an Annual Narrative Report with the Audited Financial Statements to the Department of Social Development. I thank Dr C Johl who is always willing to assist and to help with church law matters.

New Proposed Marriage Law

The Department of Home Affairs has released a draft document dealing with the New Marriage Bill. The new bill aims to bring existing marriage laws under one legislative umbrella following existing family law developing in a fragmented manner dispersed between three different pieces of legislation:

- The Marriage Act – for monogamous marriages of opposite-sex couples
- The Recognition of Customary Marriages Act – for polygamous marriages of opposite-sex couples

- The Civil Union Act – for monogamous partnerships for same-sex and opposite-sex couples

Some significant proposed changes from the green paper outlining the plans for the bill include:

- Enabling legal marriages for South Africans of different sexual orientations, religions, and cultures.
- Implementing strict age rules for marriage, aligning them with the Children’s Act.
- Aligning marriage, marital property, and divorce legislation to address matters of marital property and intestate succession upon marriage dissolution.
- Ensuring equitable treatment and respect for religious and customary beliefs as per Section 15 of the Constitution.
- Addressing the solemnization and registration of marriages involving foreign nationals.
- Addressing the solemnization and registration of customary marriages involving non-citizens, particularly cross-border communities or citizens of neighbouring countries.¹

Policy for Preventing Sexualized Violence

Most Lutheran Churches worldwide have developed a policy for preventing Sexual Violence. As Church Council and the Legal Desk we are currently working on such a document. The aim of this policy document would be to preventing such incidents by:

- Addressing the issue
- Clarifying how incidents are dealt with.
- Making the institution’s position on this issue transparent to all employees and making it mandatory.
- Indicating the consequences for misconduct.
- Identifying channels and contact persons for incidents.

Updating of Church Orders and Proposed Task Team

Working through the Orders of the CAPE CHURCH it was noted that some documents are signed, and others are not signed by both signatories. In addition, the constitution needs to be update as well. For example:

- The age limit for serving as a churchwarden and a delegate has changed at the last Synod meeting. The age limit changed from 21 to 18 and from 70 to 75.
- The Constitution of LUCSA, LWF and UELCSA have changed so the versions in our constitution are outdated.

Brining the constitution up to date will require some work. Church council proposes a task team to look at the constitution and to update the Orders. As well as formatting the orders in a more usable format. Dr C Johl and Mrs Samantha Vockerodt have indicated their willingness to assist.

May we then as the CAPE CHURCH become familiar with our constitution and may it evolve to help us to be God’s Church with and for the people of God there where God has placed us.



Kind regards
Pastor Hans-Peter von Fintel

¹ <https://businesstech.co.za/news/government/702405/big-changes-for-marriage-in-south-africa-proposed-laws-now-open-for-comment/>