12.4 REPORT 3 – DEPUTIES FOR APPEAL – APPEAL HLJ MOMBERG AGAINST A DECISION OF REGIONAL SYNOD PRETORIA (Artt 227, 228)

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 acting chairperson, rev HJP de Beer, announces the decision to the parties.

E. **REPORT**

Mandate

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

Matters that the Synod take note of

1. Admissibility: Formal

1.1 Notification of Appeal was given to both the Regional Synod Pretoria as well as the General Synod within six weeks.
1.2 The reason for Appeal is cited correctly within the attached official redaction.
1.3 The grounds for Appeal are clearly set out.

Decision: Points 1.1 to 1.3 noted.

2. Admissibility: Content

2.1 The Appeal has not as yet officially been tabled to the assembly, in accordance with CO, art 46.
2.2 The grounds for Appeal are clearly set out in terms of CO, art 31.

Decision: Points 2.1 and 2.2 noted.

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

3.1 The formal review of the overall matter started in February/March 2010.
3.2 The appellant confessed a number of sins before the Church Council and congregation.
3.3 The Church Council provisionally suspends the appellant and calls up a *Classis contracta*, in accordance with CO, artt 79 and 80.
3.4 The *Classis contracta* convenes on 11 April 2011 and decides to suspend the appellant and refer the matter to the Classis.
3.5 The matter would be further addressed at an extraordinary Classis on 10 May 2011, but an Appeal by the appellant is upheld and the matter returns to the Church Council.
3.6 The Church Council and two neighbouring Church Councils are unable to come to agreement at a further *Classis contracta*, on 2 February 2012, and a Special Classis is called to address the overall matter *de novo*.
3.7 The matter is taken up on 13 to 27 March 2012 and it is decided to suspend the appellant from the office of minister of the Godly Word.
3.8 An Extraordinary Regional Synod Pretoria is convened on 29 May 2012 to review the matter, upon addressing an Appeal from the appellant. The Appeal does not succeed and the appellant is consequently expelled from office, in accordance to CO, artt 79 and 80, at a Classis on 5 to 10 June 2012.
3.9 The appellant gives notice of Appeal to General Synod 2015 in which the appellant alleges being wronged on three grounds (summarised in essence from the appellant's summary on page 13 of the Appeal):
3.9.1 The "rules of natural law", as prescribed by the Word of God, has not been met by the Regional Synod in the following instances:

3.9.1.1 Complaints against an accused must be clearly stated and proven (cf. Appeal Ground 1 and Appeal Grounds 3-8 before the Regional Synod), whereby the Regional Synod simply disregarded the supporting evidence as mere background information.

3.9.1.2 The appellant has the right to be reheard (cf. Appeal Ground 2), which Regional Synod denied by disregarding the evidence offered as mere background information.

3.9.1.3 Preconceived judgement is prohibited (cf. Appeal Ground 1, 3 and Appeal Grounds 1, 2 and 9 before the Regional Synod), whereby the Regional Synod left the offered information unreviewed as mere background information and then mandated dismissal, despite the fact that the call on the General Synod makes the case *sub judice*.

3.9.2 The Regional Synod does not give account of the review of the Appeal grounds by judging the evidence untrue and/or valid or not. The Regional Synod only presented unsubstantiated counter arguments or findings and should have offered and proven transparent substantiation and motivation.

3.9.3 This injustice leads to dismissal from office of the appellant, in conflict with CO, art 31, while the suspension remains *sub judice* dependent on the judgement of the General Synod. Would it be valid legal action if it is argued that given the right to Appeal, dismissal from office may proceed?

Decision: Points 3.1 to 3.9.3 noted.

4. Procedure

4.1 Br HLJ Momberg is given opportunity to state his Appeal on 19 March 2014.

4.2 The representatives of the Regional Synod, dr GJ Meijer and rev HPM van Rhyn, also receive the opportunity to explain and motivate the decision of Regional Synod on this date.

4.3 Testimony from both the appellant and representatives is heard in the other's presence.

4.4 The testimony, as contained in the documentation, is reviewed by the Deputies (cf. Appeal with Appendices 1 to 4; Appeal tabled to Regional Synod Pretoria and written response from the appellant and representatives).

4.5 The Deputies question both the appellant and representatives in their review of the case.

4.6 Preliminary findings and recommendations are forwarded to the appellant and representatives on 13 August, with an invitation to offer a response before the Deputies.

4.7 The Deputies receive and review the written responses from both the appellant and representatives on the preliminary findings and recommendations of the Report.

4.8 A final Report is drawn up and tabled upon the constitution of the General Synod.

Decision: Points 4.1 to 4.8 noted.

5. Account and explanation of the relevant legal principles

5.1 *Appeal Ground 1*

<u>The appellant alleges</u>

that evidence submitted with his appeal was not reviewed and judged by the Regional Synod, but disregarded as background information. Although he called on the evidence in his Appeal, the Regional Synod found that he failed to prove the stated Appeal grounds. His rights were violated by the failure to review the substantiation of his Appeal.

5.1.1 The appellant asserts

that he explained the intent and content of the documentation to the Regional Synod and also provided such with an index to facilitate review at the Regional Synod (cf. point 2.1.1 of Appeal). The appellant chronologically argues the alleged violation resultant from the decision(s), according to the nine grounds of Appeal that were tabled at Regional Synod Pretoria – 29 May 2012 (cf. points 2.1.2 to 2.1.10 of Appeal) as follows:

Canonical considerations of the Deputies: Appeal

a. Levels review – CO, art 46

The review and finalisation of matters related to CO, artt 79 and 80 normally occur according to set levels of review by the different church assemblies. The Church Council can, for example, only address a CO, artt 79 and 80 case to a certain extent (charge, prima facie, investigate, etc.). Then the Classis contracta can address certain matters (suspension, etc.), but not matters that the Church Council has already finalised.

Then the Classis of Deputies of the Regional Synod convenes (regarding dismissal), but cannot repeat actions already taken by the Church Council or the Classis contracta.

Calling on major assemblies results in material that were to be finalised by the Church Council, Classis contracta and Classis respectively once again arising. Although appeal sometimes brings this material before a major assembly, the material in this Appeal is interwoven into the Appeal grounds to such an extent that clear distinction (in accordance with CO, art 46) is highly complex. In a sense the same matters have already (at times twice) been reviewed (by the Classis and the Regional Synod).

b. The appellant's or Regional Synod's responsibility?

The key question of this Appeal ground is the following:

Does the mere submission of indexed documentation (as evidence) without further substantiation of Appeal grounds suffice or must all documentation (as evidence) still be thoroughly referenced, argued and substantiated?

May any major assembly be expected to summarily review and judge evidence should the appellant not substantively indicate such (orally or in writing)?

To what extent is it the judging body's responsibility to require an account from the appellant during the review of the Appeal? The appellant assumes, on the one hand, the Regional Synod will work through the documents regarding the alleged violation of rights and makes himself available for further elucidation upon request. The Regional Synod, on the other hand, has only rendered judgement on the Appeal grounds before it.

Should a legal body reach its own conclusions from the documentation or is it the appellant's responsibility to thoroughly argue the Appeal grounds, by referring to and holding forth the conclusions reached in the documentation? It would appear that this is more than just a simple misunderstanding between two parties.

It seems the Regional Synod is of the view that only that which is clearly tabled, argued and proven from the Appeal may be reviewed by the Regional Synod. The Regional Synod considers in this Appeal the submitted evidence, without clear argument thereof, not merely as elucidation of proof of the Appeal grounds, but as background documentation that relates to the course of the matter. The grounds of the Appeal are to be reviewed, according to the Regional Synod, and not the simply the evidence.

c. Proof of allegations

The appellant claims in this Appeal ground that he proves violation of rights, as before the Regional Synod, but it seems that it is a mere repetition of the issue tabled to the Regional Synod:

The proof of the Appeal ground the appellant offers appears to be only claims that are seemingly substantiated in certain documentation. The major assembly is to find the necessary proof by working through the evidence.

Although the Deputies of the General Synod worked through the evidence, it still remains unclear how and to what extent the documents relate to the relevant claims.

d. Sufficient copies of all documentation under review

Did the appellant only submit the evidence, as per the index, in original hardcopy? There may well not be actual prescriptions on the format in which the evidence is to be submitted and offered as testimony, but it is noted that a significant part of the relevant evidence (in this technological age) was only available in a single original hardcopy. The appellant indexed and orally explained the structure and self-awarded status thereof to the Commission. The decision of the General Synod on Appeals 2012 (GKSA 2012:29, 5.1) indicates that the availability and duplication of the Appeal and evidence, the appellant deems important, is the appellant's responsibility.

5.1.2 Appeal Ground 1 of the Appeal at the Regional Synod (cf. point 2.1.2 of the Appeal)

The appellant argues that the Regional Synod did not address Appeal Ground 1 correctly, because it deals with the possible bias of a scribe of the Classis and not the involvement of the Church Council. Because the Regional Synod did not review the file of documentation he provided, the Regional Synod could not review and judge his allegations, thereby violating his rights (cf. point 2.1.2 of the Appeal).

Canonical considerations of the Deputies: Appeal

a. Scribe, not the Church Council and scribe

The appellant rightly asserts that the Appeal ground pertains to a possibly biased scribe of the Classis and not the involvement of the Church Council. The misperception of the Regional Synod can likely be attributed to the fact that the involvement of the scribe is so interwoven into the Appeal ground's detailing of the so-called vindictive campaign of the Church Council. The Regional Synod reviewed the conduct of the Church Council and scribe.

The essence of this Appeal ground is that the review and judgement of the documentation would not only have cleared up the above misunderstanding, but also prevented the violation of the appellant's rights.

The scribe serving on the Commission of the Classis of 05 June 2012 was, according to the appellant, consulent of the congregation until October 2011. This consulent had to, as chairman of the Church Council, address charges, aid in lodging charges against the appellant and sign correspondence pertaining to the CO, artt 79 and 80 matter. The appellant alleges that the consulent's aid to the Church Council prejudiced his service as scribe of the Commission of the Classis, making him part of the vindictive campaign against the appellant and as such already found the appellant guilty in his work with the Church Council. The appellant also cites the vested interest of the scribe from having grown up in this congregation, received financial aid during his studies from the congregation and also has friends and family in the congregation.

According to the appellant, the scribe is the head of the administrative case-making function of the Classis and serves as such in a leading advisory capacity in the matter at the Classis.

Canonical considerations of the Deputies: Appeal

a. Consulent and scribe of Classis Commission

The appellant could either be right or wrong regarding the scribe's possible bias in the overall matter. The appellant, however, does not relate the examples cited to his own documentation or clearly indicate how and to what extent the scribe displayed such bias. It may well seem obvious to the appellant, but should have been thoroughly elucidated and indicated.

Example 1: The alleged correspondence in language and style of Church Council and Classis documents should have been clearly indicated and explained according to the Appeal documents, prior to the Regional Synod's review and judgement*.*

Example 2: Was the intent that the Regional Synod go find the scribe's alleged leadership role in the vindictive campaign of the Church Council in the submitted documents, without this claim having been argued orally and/or in writing in reference to the evidence?

Example 3: Should the Regional Synod have sought to establish and reviewed the scribe's alleged biased conduct resultant from his personal interest of having grown up the congregation, received financial aid for his studies and family ties? Was it the Regional Synod's responsibility to endeavour to find substantiation thereof in the evidence submitted?

Example 4: Is it responsible to allege the strong leading influence of a scribe of a Commission in a complete major assembly of Reformed church governance, without citing specific incidences and the extent of such incidence?

Example 5: Can the consulent's work in a congregation simply be called prejudicial and biased, without clear argument and reference? Providing evidence that an individual served as consulent does not in itself prove anything.

The question is not whether the person could have influenced the judgement, but whether it has been proven that the person did indeed strongly influence the matter.

b. Subsequent to decision on Commission's work

Is it appropriate and orderly in Reformed Church governance to cite the conduct of a Commission and its scribe in support of possible injustice, at two subsequent major assemblies, after their work has been completed and accepted? The approval of the recommendations of a Commission's report becomes the business of the assembly, not that of the Commission, doesn't it?

5.1.3 Appeal Ground 2 of the Appeal before the Regional Synod (cf. point 2.1.3 of the Appeal)

The appellant argues that Classis Die Moot conducted the "hearing" *de novo* independently within the assembly and then instructed a Commission to advise the assembly over the charge. This implies that the Commission's task pertained and was confined to the charge already heard *de novo* by the assembly. The Commission acted outside of its mandate, according to the appellant, by convening a mini hearing independently; requesting additional data, hearing new testimony and acting as though the matter had not yet been tabled at the overall assembly. The Regional Synod did, therefore, not review the evidence supporting the Appeal ground and thus concluded that the appellant did not prove violation of rights.

<u>Canonical considerations of the Deputies: Appeal</u>

a. Well-defined instruction of Commissions

The custom in Reformed Church governance is that when a charge is laid before a major assembly, it is reviewed to a greater or lesser extent and should resolution on the matter not be reached, a Commission is appointed (to advise the assembly on the charge). The Commission is either clearly mandated to formulate an already-taken decision, part thereof or a specific point (ad hoc) or to generally advise the assembly on addressing the charge.

When it is simply advising the assembly on how to address the charge tabled, it is customary for the Commission to consider and weigh all the relevant testimony to offer the assembly comprehensive advice on the matter.

All testimony or documentation that forms part of the review is subject to the condition that it thoroughly informs the assembly in terms of all testimony and documentation the Commission reviewed as well as the methodology the Commission followed.

A review of the minutes does not reflect anything different from the usual instruction to a Commission. When the instruction to a Commission of the Classis was not properly formulated upon appointment of the Commission, it is quite difficult to determine in hindsight the instruction to the Commission by the Classis.

It would seem that the Commission had a broader conception of their instruction than indicated by the appellant.

The Commission was to advise the Classis "on addressing the CO, art 79/80 charge...", upon which the written charge sheet and written defence are referred to the Commission. The work of the Commission is then condoned through the approving decision of the Classis.

The appellant's version of the instruction to the Commission would hold that the Classis clearly outline and confine their task to the content discussed at the preceding Classis contracta and during the full assembly de novo. This interpretation of the instruction cannot be surmised from the minutes.

The appellant reasons that since the same matter reviewed at the *Classis contracta* is reviewed *de novo* by a major assembly, precisely the same information and testimony (matter?) are again presented. The full Classis is to judge the same facts.

<u>Canonical considerations of the Deputies: Appeal</u>

a. The same matter is again tabled

The appellant rightly asserts that the same charge and same defence and same testimony tabled to the Classis contracta should once again be tabled before the full Classis. Given that the assembly no longer exists and since it is impossible to exactly duplicate the events, it is to be endeavoured to present the matter the same as much as possible.

That is the one side of the matter. The other side of the matter is that it is a greater assembly than the preceding one and differs in constitution. Greater talent is now available, other questions are posed, other input is given, other ("new") testimony becomes part of the review of the charge. This new dynamic, led by the Spirit of God, intends to conduct a more comprehensive review of the aspect(s) that could not be resolved at the previous assembly. The same Scriptural testimony features, but is addressed in a greater ("more complete") way. The difference and dynamic of an assembly offering greater input imbue matters with a new dimension.

The appellant avers that the relevant information considered and witnesses questioned fall outside the Commission's mandate.

Canonical considerations of the Deputies: Appeal

a. Evidence and testimony outside the Commission's mandate

The appellant does not pertinently indicate which instruction of the Classis and the extent to which the Commission acted outside its mandate. It would seem that the Commission simply performed the work reasonably expected of a Commission. The Commission was tasked to advise the assembly on all aspects related to the charge, precisely because the full assembly would not be able to review (all) the matters as intensively. Part of the Commission's responsibility is also of course to continually sift through the information at its disposal. Advice on dealing with a CO, artt 79 and 80 charge is negotiating their way through the matter to identify the items of importance.

The appellant explains that testimony raised new issues and existing matters, set in writing, came under renewed fired and exceeded the mandate of the Commission. The appellant alleges that he provided evidence to show that the mini hearing, new data, new testimony and actions fall outside the Commission's mandate.

Canonical considerations of the Deputies: Appeal

a. Proof of unlawful evidence and testimony

Appeal Ground 2, tabled to the Regional Synod, does not contain specific reference and argument on references. The course of the matter is commented upon from the previously failed appeal and from allegations (of which some may be true) made.

Why would a Commission be appointed if not to review inter alia additional testimony and documentation to establish their veracity. The question is: Wouldn't the Commission of the Classis have reviewed anything other than that already tabled at the full assembly? What would, for example, have become of canonical advice should the Commission have needed it. May even new Scriptural, confessional or canonical input not be obtained? May any delegate offer input?

b. Whole hearing concluded?

The appellant asserts that the hearing was completely finalised during the assembly, although testimony of such was not recorded in the minutes. The Classis would have probably clearly minuted that the Commission may not further investigate. The minutes do not indicate that the assembly had already in principle reached a decision on the charge or that the "hearing" of the matter had been concluded. Could the Classis continued debate in the interest of the matter subsequent to the Commission's report, if the Commission had exceeded its mandate? It would seem that the appellant did not prove beyond reasonable doubt that the "hearing" was essentially concluded.

5.1.4 Appeal Ground 3 of the Appeal before the Regional Synod (cf. point 2.1.4 of the Appeal)

The appellant asserts that he, upon reference to evidence contained in the files, indicated that the testimony tabled to the Classis was invalid and unsound. Since the Classis erred in its points of departure, the Classis also erred in its approach. The Regional Synod does not give an account of the review of the appellant's arguments. If the Regional Synod reviewed and considered the evidence, they would not have come to such a finding.

Canonical considerations of the Deputies: Appeal

a. Erroneous points of departure and approach

The appellant takes the points of departure of the Classis and then comments thereon (without real references), for application to his view of the matter – hence, the finding of the Regional Synod that the appellant did not refute the testimony in any way.

This once again raises the question: Where lies the burden of proof?

What defines the substantiation of an Appeal? Is it the mere existence or submission of documentation or in arguing the Appeal according to its appeal grounds?

The question that every major assembly considers with any Appeal document is whether the Appeal is proven/accounted for through its Appeal grounds. Do the Appeal grounds prove violation of rights, with documentary and oral substantiation, or not? It must be clearly shown how and where documentation referenced support the Appeal grounds.

The burden in this Appeal does not rest so much on the clear substantiation of the Appeal, but on the mere existence of the so-called objective documentation the Regional Synod was to study and review to determine whether the Appeal grounds stand the test.

The appellant expects that the Regional Synod should have undertaken such study and posed questions, instead of the appellant clearly indicating the matters of import in the documentation and why as well as to what extent certain parts of the documents are ad rem. The burden of proof lies with the appellant. The Regional Synod merely considers the Appeal, together with its grounds for Appeal, tabled to it.

5.1.5 Appeal Ground 4 of the Appeal at the Regional Synod (cf. point 2.1.5 of the Appeal)

The appellant asserts that the issue is not whether admission of guilt stymies disciplinary action, but whether “ministry of reconciliation” (absolution and pardoning) stymies the church route of CO, artt 79/80.

Canonical considerations of the Deputies: Appeal

a. Ministry of reconciliation and CO, artt 79 and 80

Admission of guilt is undeniably the foundation of the “ministry of reconciliation”. This principle has been weighed often in the past. The fact is confession of guilt (as basis for reconciliation and absolution) and remorse does not erase the impact on the glory of Christ in ministry (cf. Acta GKSA 1976:387, art 106 – Part Synod Eastern Transvaal on the impact of dishonour the office, even upon reconciliation) Achan confesses his sin, in verses 20-21 of Joshua 7, but is still stoned to death (Jos 7:25).

These two routes of confession of guilt and ministry of reconciliation do not cancel each other out – on the contrary, they go hand in hand. Drawing a distinction between confession and the ministry of reconciliation, which is actually a single process, does not exonerate the one who committed the sin in office. The Regional Synod referred to the canonical manuals in this regard.

A confession may well lead to reconciliation and absolution of all parties, guided by the Church Council, and the Church Council may well administer reconciliation as such, but it does not erase the rippling effect of for example murder or adultery in the church and world. In sinful times gross and public sin, punishable before the church and authorities, maligns the glory of God in ministry, even despite full forgiveness - hence, the application of CO, artt 79 and 80.

It is the level of finalisation of the Church Council and Classis/Regional Synod that is in question here. The issue pertaining to the Church Council is that of reconciliation, while the issue pertaining to the Classis/Regional Synod is that of dismissal from office.

5.1.6 Appeal Ground 5 of the Appeal before the Regional Synod (cf. point 2.1.6 of the Appeal)

The appellant asserts that he indicated, through extensive oral and written testimony contained in evidence submitted, the testimony against him is intrinsically contradictory, does not confirm the truth and is otherwise not valid (cf. point 2.1.6.3). The appellant in turn accuses the Regional Synod of not giving an account of the extensive testimony the appellant offered.

Canonical considerations of the Deputies: Appeal

a. Proof of gross public and continued guilt

The appellant once again addresses in the Appeal before the Regional Synod the testimony arisen from the charge against him. At no time does he deny the testimony that Charge 1 of Charge Sheet 1 levels against him, but seeks indisputable, clinical proof that he commits gross, public and continued sin. The appellant argues the same in terms of the testimony of his family (Charge 2, Charge Sheet 1).

The question is: If the Church Council, in good conscience before the Lord, verified the appellant's involvement in the charges according to church procedure and is convinced of the public, gross (punishable before the church and authorities) and often pursuance thereof, could the Church Council be obliged to: seek additional indisputable, clinical proof in people's closed and private lives to set out this public, gross sin in fine detail? Seeking indisputable, clinical proof in any person's life is not only extremely difficult, but can bring Church Councils in conflict with the law. Not even to speak of when such person(s) does not understand, is unwilling to cooperate or knows exactly how to prove the opposite. It would not seem to be the intent of CO, artt 79 and 80 for a Church Council to launch the detailed investigation the appellant expects.

The testimony the Church Council offers on a charge, in good conscience before the Lord, over the gross, public and sometimes continued conduct of a servant of the Lord cannot summarily be disregarded by the expectation of and calling on detailed investigations that are not proper for a church to conduct.

b. Opinions, proof and authority

The appellant comments upon every statement of the Church Council: "It is someone's 'opinion' of me. Where's the proof?"

The question is: Who is this "someone" to which the appellant refers? It would see the appellant primarily refers to the Church Council that the Lord appointed to also reside, in good conscience, over the appellant's instruction and life. This authority, the Lord entrusted to them, arose upon extensive investigation and surely many a prayer in good conscience before the Lord. There may possibly be shortcomings, but to degrade the authority the Lord ordained in this manner calls to the fore the fifth commandment: How does the appellant treat the authority the Lord placed over him not only in terms of decisions of the Church Council, but also decisions of major assemblies?

If the authority of the Church Council is so heartily embraced in the ministry of reconciliation, why then the struggle to deal with the authority of the Church Council in administering discipline?

Repeatedly demanding proof and repeatedly inserting personal interpretation, even in reference to events and evidence, is not proof of violation of rights – even if the appellant offers comprehensive interpretation of the various aspects.

c. Commandments first the route of CO, art 72

The appellant maintains under Charge 1 of Charge Sheet 2 that HC, Answer 109 is actually applicable toward the church process instituted in accordance with CO, art 72 and not to be summarily employed in the application of CO, artt 79 and 80. The church route of discipline would first have to show that the sin was repeatedly committed, before official discipline comes into play.

All canonists agree that official discipline should always take priority, for the glory of the Lord that is present in an office of the church. When it appears that any commandment (like the seventh commandment), according to the Church Council, is grossly and publicly transgressed, CO, artt 79 and 80 apply. CO, art 72 and associated articles should also subsequently follow.
Committing a gross and public sin does not mean that the church or authorities must first impose discipline or punishment and that it is only considered gross and public when committed repeatedly. This is the reason that CO, art 80 does not endeavour to provide a complete list of sins. The Church Council is to determine whether it is a gross and public sin.
e. Rationalisation of sin
The appellant's protest in points 5.5.4.2 to 5.5.4.3.10 at the Regional Synod is almost not worth mentioning. It appears that the appellant once again answers to the Church Council's investigation, with all kinds of reasoning (that could threaten CO, art 46). It almost seems like a kind of rehearing of the entire matter. He rightly does not succeed, even with such comprehensive argument, to prove that the Classis gave forth "unsubstantiated statements and one-sided opinions". The Regional Synod conceded that the Classis appropriately dealt with oral and written testimony and witnesses.

5.1.7 Appeal Ground 6 of the Appeal at the Regional Synod (cf. point 2.1.7 of the Appeal)
The appellant asserts that the time the Appeal Commission afforded the Appeal would not have made it possible for them to fully review the reasoning set out in the Appeal before the Regional Synod.

Canonical remark of the Deputies: Appeal
a. Time devoted to Commission
The methodology of the Commission and the time a Commission devotes to a particular matter or appeal is not proof that the matter or appeal was not adequately addressed or that the matter or appeal was not thoroughly disseminated.
The appellant argues in Appeal Ground 6 that CO, artt 79 and 80 cannot be applied in terms of the transgression of one of the commandments, before the route of discipline of CO, artt 72, 73, 74 and 76 has been taken. See canonical remarks above under Appeal Ground 5 for a review of this aspect.

5.1.8 Appeal Ground 7 of the Appeal at the Regional Synod (cf. point 2.1.8 of the Appeal)
The appellant avers that the Classis did indeed consider the relevant testimony, but that he and the Classis and the Regional Synod did not apply the same criteria to determine the testimony applicable to the matter. The appellant considers certain testimony as out of date and endeavoured to indicate such. He reasons that the Regional Synod did not weigh his evidence and thereby violated his rights in proving this Appeal ground.

Canonical remarks of the Deputies: Appeal
a. Criteria
Regional Synod Pretoria is of the conviction that all information weighed was relevant to the enquiry to rightly be weighed and employed in reference to a CO, artt 79 and 80 charge, for advising the Classis.
The appellant's reasoning, measured and analysed against his criteria, is understandable, but it does not prove the Classis' criteria wrong.

The appellant asserts that his Appeal succeeding at Classis Die Moot (15 March 2011) annulled the "outdated data" in the charge sheet and could thus not be used in Charge Sheet 1.

Canonical remarks of the Deputies: Appeal

a. Outdated data

It seems that the appellant return in his reasoning of this matter to his conviction that the so-called "new testimony" was not truly new and that it only served to open the way for the outdated testimony to be included in the charge sheet.

The Regional Synod rightly responds that the Classis, despite the appellant's reasoning, did consider all relevant testimony and that the concept of "outdated testimony" (as argued) does not apply.

Fact is: A thorough review of the overall charge necessitated the Classis to weigh all relevant testimony related to the matter or charge. This would include all relevant information in favour of the appellant.

5.1.9 Appeal Ground 8 of the Appeal at the Regional Synod (cf. point 2.1.9 of the Appeal)

The appellant argues that the Commission of the Regional Synod did not weigh the proffered information and as such violated his rights in proving his Appeal ground.

The appellant avers in Appeal Ground 8 before the Regional Synod that the Classis repeatedly concluded with the allegation that he did not want to use the testimony of his wife and concluded the protest each time with the statement that he did not wish to proof his innocence by tabling the relevant data before the Commission.

Canonical remarks of the Deputies: Appeal

a. Proffered data not weighed, but charged

The appellant once again offers "proof" in this Appeal ground of the failure of the Regional Synod and Classis to address the facts he presents, but continues to make own inaccurate conclusions: like accusing him of not wanting to include the testimony of his wife and that he refuses to answer to the charge that makes him guilty before the seventh commandment. It seems that the appellant prefers to not truly disseminate the significant testimony of his wife and the failure to disclose information, but to rather cloak it in strongly rational wording. Despite the reasoning of the appellant, the Regional Synod is (rightly so) satisfied that the evidence at the disposal of and considered by the Classis is not only ad rem, but sufficient to prove the appellant guilty of the charges. Despite having ample opportunity, the appellant did not disprove his guilt before the Regional Synod

5.1.10 Appeal Ground 9 of the Appeal at the Regional Synod (cf. point 2.1.10 of the Appeal)

The appellant argues that the Regional Synod concedes to the Classis, in spite of the Classis' failure to weigh the testimony he presented. The appellant reasons that the Church Council that must serve the law of Christ was no longer objective given the events of the past two years and thus his rights were violated. Events were indeed influenced by the inability of the *Classis contracta* not being able to reach consensus.

Canonical remarks of the Deputies: Appeal

a. Two parties in the matter

Although the Church Council erroneously referred to the "matter between" the Church Council and the appellant, it was not the intention of Reformed Churches for the application of CO, artt 79 and 80 to become about two parties in a case. Based on the documents and testimony before it, the Classis decided that the Church Council and appellant were not merely parties in a dispute.

It has to be conceded that terminology like "charge" and "defence" should not form part of Reformed Church governance terminology and assemblies should take care in their usage of such terms. The Regional Synod determined that the Church Council (as the appellant claims) does not have legal judgement, like in a legal case. Since the Church Council and the neighbouring Church Councils could not reach a resolution, they referred the matter to the Classis in accordance with CO, artt 79 and 80 to address the matter de novo.
Christ ordained the local church as complete and independent church of Christ and that He rules His church through the Church Council when dealing with a charge levelled in accordance to CO, artt 79 and 80.

5.1.11 Finding in regard to Appeal Ground 1
No violation of rights is proven.

5.1.12 Decision
Appeal does not succeed in terms of Appeal Ground 1.

5.2 *Appeal Ground 2*

5.2.1 The appellant alleges
that the Regional Synod carefully considered and reported the elucidation of the Classis, while the evidence the appellant submitted was merely considered and treated as background information. The appellant also avers that his extensive evidence was not properly recorded in the Report, tabled to the Regional Synod, and merely states that the appellant failed to prove his case. This action prevented him from being heard (*audie et alteram partem*) and thus violated his rights.

The appellant asserts
that it would seem that the Church Council and others grabbed at the ample opportunity to provide the Classis' Commission with information, but that he only made formal arrangements with the Commission on the consideration of his documents. He *inter alia* suggested that the Commission first carefully study the evidence and should the Commission have any questions, he would be willing to answer to the queries. He assured the Commission that all he had to say was comprehensively set out in the Appeal grounds. The substantiation of his arguments can be found in the documentation he submitted.

Canonical remarks of the Deputies: Appeal

a. Once again: Where lies the burden of proof?

The question is: Wherein lies the heart of the substantiation of an Appeal? Does it lie in the mere existence or submission of documentation or in arguing the Appeal according to its Appeal grounds?
What defines the substantiation of an Appeal? Is it the mere existence or submission of documentation or in arguing the Appeal according to its Appeal grounds?
The question that every major assembly considers with any Appeal document is whether the Appeal is proven/accounted for through its Appeal grounds. Do the Appeal grounds prove violation of rights, with documentary and oral substantiation, or not? It must be clearly shown how and where documentation referenced support the Appeal grounds.
The burden in this Appeal does not rest so much on the clear substantiation of the Appeal, but on the mere existence of the so-called objective documentation the Regional Synod was to study and review to determine whether the Appeal grounds stand the test.

The Regional Synod must undertake such study and pose questions, instead of the appellant clearly indicating the matters of import in the documentation and why as well as to what extent certain parts of the documents are ad rem.
The burden of proof lies with the appellant. The Regional Synod merely considers the Appeal, together with its grounds for Appeal, tabled to it.

b. Audie et alteram partem

Can the appellant claim that he was not properly heard if he submitted documents into evidence with the suggestion that the documents first be reviewed and should this not occur, the major assembly contravened the audie et alteram partem rule?
It is true that the documentation is at the complete disposal of the Regional Synod should it seek to look into a certain matter, but the purpose of so-called evidence is not to be worked through in its entirety by a major assembly. It may seem obvious to the appellant which documents and in what facet they are ad rem, but it is not the intent of CO, art 31 that a major assembly be expected to undertake a comprehensive study into the testimony to and then pose questions for elucidation.

c. Test of objectivity

Extensive presentation of evidence must also stand the test of objectivity and not only present the matter from the appellant's perspective. The approach of the appellant seems to be one in which he takes every matter that served at the Classis and subjectively comments thereon in strongly language in an endeavour to show the strength of the argument.

d. The content recorded in a Report

The Regional Synod not having recounted certain things in a Report does not prove that they were not considered. It is impossible recount (especially in such an intricate Appeal) every aspect that went into consideration. It would indeed take up a great deal of time. The Regional Synod does not review in detail everything before them, given that an important part of their task is to sift through the documentation to identify the important information. The goal of an Appeal is to determine whether infringement of rights occurred and the Regional Synod fulfilled this obligation.

5.2.2 Finding in regard to Appeal Ground 2
No violation of rights has been proven.

5.2.3 Decision
Appeal does not succeed in terms of Appeal Ground 2.

5.3 *Appeal Ground 3*

5.3.1 The appellant alleges
that the Regional Synod's decision led to his wrongful dismissal from office, while the calling of this assembly makes the matter *sub judice* in accordance with CO, art 31.

The appellant asserts
that he the validity of this appeal ground is directly dependent on the validity of the above two Appeal grounds. The appellant could not call on the Regional Synod in terms of the Classis' decision to proceed with his dismissal from office, since the Regional Synod cannot be judge in its own case and thus the call on the General Synod.

<u>Canonical considerations of the Deputies: Appeal</u>

a. CO, artt 30, 31 and sub judice

Given that the Classis with Deputies from the Regional Synod has the power and calling to finalise the matter, in accordance with CO, artt 79 and 80, judgement in this matter could not be reserved – not even for review under CO, art 31. This does not, however, mean that the matter could not in future be reviewed in terms of CO, art 31.

Notice of Appeal could not make this particular matter sub judice, especially after an Appeal was tabled at the Regional Synod. If that could happen, it could take years to reach an outcome in a matter.

In accordance to CO, art 30, ecclesiastical matters are dealt with in an ecclesiastical manner. A church Appeal differs from an Appeal in a world court in that such a court sets aside a verdict until the Appeal has been concluded. Then a verdict is rendered.

The lengthy course of the matter and the consequent ministry need were the grounds upon which the Appeal was finalised before the Regional Synod and the matter was ultimately brought to completion.

An Appeal can only be brought against a decision of an assembly and not against the consequences, effects or issue of a decision.

5.3.2 <u>Finding in regard to Appeal Ground 3</u>

No violation of rights is proven.

5.3.3 <u>Decision</u>

Appeal does not succeed in terms of Appeal Ground 3.

Decision: Points 5.1 to 5.3.3 noted. The Deputies acted according to the approved working method and deliver decision according to mandate.

6. Final finding and recommendation

6.1 *Finding*

No violation of rights is proven.

6.2 *Decision*

The overall Appeal does not succeed.

Decision: Points 6.1 and 6.2 noted. The Deputies acted according to the approved working method and deliver decision according to mandate.