THREE RECENT CASES CONFIRM CANADIAN APPROACH TO CHURCH PROPERTY DISPUTES

MH Ogilvie*

In three recent Canadian provincial appellate court cases, the courts confirmed that the proper approach to disputes arising from religious institutions is simply to interpret and apply to constitutions of those institutions in the same manner as non-religious institutions. The American "neutral principles" approach was dismissed either directly or indirectly, and a straight-forward Canadian approach adopted.

Dans trois récentes décisions rendues par des cours d'appel de provinces canadiennes, les cours ont confirmé que la méthode qu'il faut adopter dans les conflits impliquant des établissements religieux consiste tout simplement à interpréter et à traiter les règles régissant ces établissements de la même manière que celles des établissements non religieux. Les cours ont rejeté directement ou indirectement l'approche dite des « principes neutres » de la doctrine américaine et ont plutôt adopté une approche canadienne plutôt directe.

1. Introduction

Two recent decisions from the Ontario Court of Appeal[1] suggest that Canadian courts are no longer uncertain about their role in adjudicating internal church disputes. Combined with an earlier decision from the British Columbia Court of Appeal,[2] they allow one to state confidently that the role of the courts in adjudicating internal religious disputes is no different than their role in adjudicating the internal disputes of any other organization. In a sentence: courts examine the constitutional documents of the religious organization, decide whether they have been followed precisely, and if so, confirm the internal decision to be the correct

* Professor of Law and Chancellor's Professor, Carleton University, Ottawa, and of the Bars of Ontario and Nova Scotia.

1 *Pankerichan v Djokis*, 2014 ONCA 709, 123 OR (3d) 131 [*Pankerichan*]; and *Incorporated Synod of the Diocese of Huron v Delicata*, 2013 ONCA 540, (2013), 117 OR (3d) 1, leave to appeal to SCC refused, 2014 CanLII 16017, online: CanLII <canlii.ca /t/g6g3c> [*Delicata*].

2 *Bentley v Anglican Synod of the Diocese of New Westminster*, 2010 BCCA 506, [2011] 2 WWR 247, leave to appeal to SCC refused, [2011] SCCA No 195 [*Bentley*]. See also MH Ogilvie, "Judicial Restraint and Neutral Principles in Anglican Church Property Disputes: Bentley v Diocese of New Westminster" (2011) 13:2 Eccl LJ 198 [Ogilvie, "Bentley"].

application of the constitution (or if not, vacate it and order that internal procedures be followed). This means that courts need no longer shy away from religious disputes, although all three courts expressed an appropriate modesty in the face of theological claims. It also means that courts need no longer attempt to define the so-called "neutral principles of law" of American First Amendment jurisprudence or decide whether they are helpful, because all three courts either expressly or implicitly found that they are not. Rather the courts adopted the classic Canadian approach to the adjudication of internal disputes of simply interpreting the constitutions voluntarily adopted by the religious institutions as they would the constitutions of secular organizations.

It remains, then, for this note simply to review the cases and abstract the principles, reformulating them as a set of rules for future judicial use. It also remains to remind both religious actors and their legal counsel that arguments derived from theology and based on the autonomy from the civil law of religious institutions are not, and never have been, a part of the common law, notwithstanding theological claims to the contrary. These cases demonstrate that the best way for religious institutions to ensure that theological claims are not subject to secular judicial adjudication is to follow their own constitutions properly, so that should an aggrieved person appeal to the courts, the matter can be quickly resolved on the basis of constitutional interpretation and due process without resort to any underlying theological issues. Since virtually all constitutions of religious institutions expressly reserve theological issues to their appropriate, respective ecclesiastical authorities, secular courts respect those provisions and merely ensure that they are internally followed without intervening in the theological issues themselves.

2. Discussion

The most recent case, *Pankerichan v Djokic*,[3] was somewhat unusual insofar as it involved a property dispute that did not result from a schism within a church but from a disagreement over whether a bishop could replace a congregational board with a temporary trusteeship with authority over congregational property. Several disputes had occurred between the executive board of the congregation and the diocese involving payment of diocesan dues and the forced retirement of a beloved priest. Following a protest at the installation of the new priest, the bishop and diocesan administrative board appointed temporary trustees to manage congregational property and finances. The appellants, various members of the executive board and of the congregation, applied for declarations that the congregation's elected trustees had authority to deal with the property and

3 *Pankerichan, supra* note 1.

that the replacement constituted a wrongful invasion of a property trust. Their claim rested on the assertion that, pursuant to the *Religious Organizations' Lands Act* (*ROLA*),[4] the diocese had no express power to replace the trustees and that internal constitutional documents of the church granting the diocese power to do so were subordinate to public legislation. The respondents, the diocesan bishop and diocesan council members, argued that they had acted in good faith in the application of the internal rules of the church and of the *ROLA*, and that the matter should be resolved within private canon law through the application of the diocesan legislation. The internal legislation at issue consisted of a validly enacted constitution (the "statute") and by-laws, under which a congregational board is expected to uphold the statute and by-laws in addition to obeying the diocesan bishop. Section 31.15 of this statute permitted the diocesan board and bishop to appoint a temporary trusteeship.

The application judge refused to grant the declarations. He found that because the congregation was not incorporated its property was held in trust under the *ROLA*, and that because the church's constitution did not confer individual property rights on individual members, the property would devolve to the diocese upon the dissolution of the congregation. Section 3(2) of the *ROLA* provides that trustees hold office "unless the constitution or a resolution of the religious organization otherwise provides," so that when the diocese acted pursuant to the church's constitution to replace the executive board with a temporary trusteeship it acted properly, both within its internal legislation and the *ROLA*. Thus, the application judge concluded there was no breach of any law.

The issue on appeal was simply whether the congregational property was to be managed by the executive board or the temporary trustees. On appeal, the appellant argued that the *ROLA* did not permit the constructive removal of the trustees of real property; that the *ROLA* overrode any diocesan legislation; and that a court should not have resort to internal church constitutions but should apply a purely secular American approach of neutral principles of law. Speaking for a unanimous court, Lauwers JA addressed each issue.

First, he confirmed that the purpose for which the *ROLA* was originally enacted was to permit unincorporated religious organizations which hold property by trust deed to enjoy the benefit of perpetual

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4 RSO 1990, c R23. It should be noted that the leading case on the priority of private legislation over the *ROLA* was not argued or considered by the Court; see *Re Incorporated Synod of the Diocese of Toronto and HEC Hotels Ltd* (1987), 61 OR (2d) 737, 44 DLR (4th) 161 (CA). See also MH Ogilvie, "The Legal Status of Ecclesiastical Corporations" (1989) 15 Can Bus LJ 74.

succession for their trustees. Its purpose was not to force governance changes on religious organizations which hold property in some other way or are governed hierarchically rather than congregationally.[5]

Secondly, he confirmed the judicial approach to religious disputes within religious organizations that had been developing in recent earlier cases, asserting that the law is not arcane but simply involves the application of ordinary trust and contract law principles.[6] He applauded the approach of judicial diffidence and opined that disputes about doctrine are not "appropriate for judicial determination," although he did not expressly exclude such determination.[7] He noted two reasons for judicial diffidence: the *Charter* protection for freedom of religion, and the risk that judicial misunderstanding of a religious tradition and culture could saddle an organization with unworkable consequences.[8] Then he reviewed *Bentley v Anglican Synod of the Diocese of New Westminster*[9] and *Delicata v Incorporated Synod of the Diocese of Huron*,[10] observing that in both cases the appellate courts applied the same method to resolving disputes about the ownership of property related to parishes seeking to leave the Anglican Church of Canada (ACC) and take with them property they regarded as theirs. He analyzed the applicable legislation including private acts, canon or church law, and deeds or by-laws, without making a determination about the underlying doctrinal issue in the dispute.[11]

Applying this approach to the dispute in the case, the Court agreed that the *ROLA* applied to trusteeship of the congregational property and, pursuant to section 3(2), examined the applicable portions of the church's constitution including the statute, bylaws, and deeds to find that the church's constitution superceded the *ROLA*. The Court held that the diocese acted correctly, pursuant to the powers given to it by the constitution, in replacing the executive board with a temporary trusteeship. There was no breach of any law, whether civil or ecclesiastical.[12]

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5 *Pankerichan, supra* note 1 at paras 47-51, relying on Ontario Law Reform Commission, "Report on Mortmain, Charitable Uses and Religious Institutions" (Toronto: Ministry of the Attorney General, 1969), which preceded the enactment of ROLA.

6 *Ibid* at para 52, relying on MH Ogilvie, *Religious Institutions and the Law in Canada*, 3rd ed (Toronto: Irwin Law, 2010) at 217, 291ff [Ogilvie, *Religious Institutions*].

7 *Ibid* at para 54.

8 *Ibid* at para 55.

9 *Bentley, supra* note 2.

10 *Delicata*, *supra* note 1.

11 *Pankerichan, supra* note 1 at paras 57-64.

12 *Ibid* at paras 65-73.

Finally, the Court considered and dismissed the application of the American neutral principles of law doctrine in church disputes. The issue arose because the appellants framed one of their arguments thus: no consideration should be given to the church's constitution; the Court should instead follow two earlier Ontario Court of Appeal cases in which the Court declined jurisdiction.[13] The Court defined the neutral principles doctrine as stated in *Jones v Wolf,*[14] meaning that a court must characterize church constitutional documents in a completely secular manner and rely on well-established concepts of trust and property law. The Court further noted that *Jones* did not regard the doctrine as mandatory in all church dispute cases. The *Jones* decision permitted deference to the church's internal decision and abstention from further adjudication. The Court concluded that the neutral principles approach did not preclude examination of internal constitutional documents.[15] The Court stated that the application judge's decision was consistent with the courts' usual approach and the neutral principles rule, and that he did not need to determine any church doctrine.[16]

The Court then disagreed with the appellant's argument that earlier Ontario cases had adopted the neutral principles doctrine as binding in property disputes. *Balkou v Gouleff* was cited but deemed not to apply to the property dispute in the case; rather, the Court applied it to the issue of which church jurisdiction a parish fell under.[17] In *Montreal and Canadian Diocese of the Russian Orthodox Church Outside of Russia Inc v Protection of the Holy Virgin Russian Orthodox Church (Outside of Russia) in Ottawa Inc*, the Court shied away from applying it to a doctrinal schism.[18] Both cases were short endorsements, not full decisions, so not too much of jurisprudential significance should be read into them.[19] Finally, the Court adopted the caution of Dickson J in *R v Big M Drug Mart Ltd*[20] that American constitutional law is not particularly helpful because the Canadian constitution does not contain an "anti-establishment

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13 *Balkou v Gouloff*, 68 OR (2d) 574, [1989] OJ No 655 (CA)[*Balkou*]; *Montreal and Canadian Diocese of the Russian Orthodox Church Outside of Russia Inc v Protection of the Holy Virgin Russian Orthodox Church (Outside of Russia) in Ottawa Inc,* (2002), 167 OAC 138 [*Holy Virgin*] (CA).

14 493 US 595 (SC 1979) [*Jones*]. For a recent reconsideration of the American jurisprudence, see Ira C Lupu and Robert W Tuttle, *Secular Government, Religious People* (Grand Rapids, Michigan: Eerdmans Publishing Co, 2014) at 61-72.

15 *Pankerichan, supra* note 1 at paras 76-78.

16 *Ibid* at para 79.

17 *Balkou* , *supra* note 13, cited in *Pankerichan*, *ibid* at para 81.

18 *Holy Virgin*, *supra* note 13, cited in *Pankerichan ibid* at para 82.

19 *Ibid* at para 84.

20 [1985] 1 SCR 295, [1985] 3 WWR 48 at paras 105, 109.

principle" analogous to the First Amendment.[21] The significance of this observation is, presumably, that the absence of an anti-establishment clause means that Canadian courts need not defer to the decisions of religious organizations as if there is an autonomous constitutional zone within which they may operate, rather the courts are free to interpret constitutional documents in litigation before them. The Court concluded that there has been no Canadian adoption of the American neutral principles doctrine; rather courts "have not hesitated to interpret religious documents that involve doctrinal matters when adjudicating church property cases."[22] The Court did so in this case and found for the respondents.

Although factually a straightforward case, *Pankerichan* confirmed two propositions. First, the proper approach to internal religious institutions disputes, including property disputes, is for courts to ensure that the religious institution has followed its own constitution by applying the normal rules of construction to constitutional documents such as incorporating legislation, by-laws and internal canons or codes of law and practice. Secondly, the normal principles of the common law relating to contract, trust and property apply, including any applicable legislation, whether public or private. Religious institutions operate within the secular realm and it should not surprise when secular law is applied.

At first glance, these two rules potentially impact theological or doctrinal matters because, by not abstaining from all involvement, courts are involved in making decisions when religious institutions experience conflict. But on second glance, this is not the case. Since virtually every religious institution has established rules and bodies for making decisions on theological matters, the actual role of the courts is simply to ensure that those internal processes are followed without commenting on theological decisions made by those bodies. Once a decision to change a theological position is taken, a civil court refrains from comment on the substantive merits or theological correctness of that decision and merely ensures that the process has been properly followed, thereby leaving theological change to the religious institution itself.

After *Pankerichan*, however, the role of the neutral principles of law is less clear. While the Court dismissed the application of neutral principles

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21 Dickson J's observation was actually in relation to s 2(a) of the Charter not the neutral principles of law doctrine *per se*.

22 *Pankerichan*, *supra* note 1 at para 86. Although not cited in recent cases such as those under discussion, the Supreme Court of Canada established this approach in the context of the discipline of members in *Lakeside Colony of Hutterian Brethren v Hofer*, [1992] 3 SCR 165, [1993] 1 WWR 113 [*Hutterian Brethren*]. See also MH Ogilvie, "Comment" (1993) 72:2 Can Bar Rev 238.

of law to the dispute before it, it was unclear which version of the neutral principles of law doctrine the Court was referring to, if not all of the versions. Several versions of the doctrine are found in American jurisprudence:[23] 1) complete abstention from adjudication by simple refusal to hear a dispute; 2) deference by the civil courts to decisions made by the appropriate body in a religious institution; 3) adjudication by the civil courts on the basis of construction and application of the constitution of the religious institution; and 4) adjudication by the civil courts on the basis of purely secular civil law principles, using incorporating legislation and validly enacted by-laws pursuant thereto, which are a part of the applicable secular civil law but not any internal canons or other internal law or law codes. While it is possible logically to separate these four positions, the first and second are effectively identical to each other, as are the third and fourth. Abstention and deference effectively permit internal decisions made by appropriate bodies of religious institutions to stand. Adjudication based on civil law instruments such as legislation and by-laws voluntarily adopted by religious institutions also effectively incorporates any internal law, by virtue of the fact that internal law is either expressly or implicitly the basis for private incorporating legislation and any consequent by-laws in most religious institutions.[24]

By adopting an approach involving the construction and application of a religious institution's own constitution within the general context of contract, trust and property law, the Ontario Court of Appeal appears to adopt the third definition stated above of neutral principles of law, notwithstanding its express rejection of the doctrine itself. This approach is in line with earlier Canadian decisions which have addressed the argument that the American neutral principles doctrine should be applied.[25] In short, the Court chose one of several possible contents for the neutral principles doctrine and re-characterized it as the correct Canadian approach. This seems a little disingenuous on the Court's part, but on the other hand, clarification of the proper Canadian approach without the complications of the American First Amendment jurisprudence (of which

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23 These are set out and reviewed in MH Ogilvie, "Church Property Disputes: Some Organizing Principles" (1992) 42 UTLJ 377 [Ogilvie, "Church Property Disputes"]; Kent Greenawalt, "Hands Off! Civil Court Involvement in Conflicts Over Religious Property" (1998) 98 Col L Rev 1843; and Alvin J Esau, "The Judicial Resolution of Church Property Disputes: Canadian and American Models" (2002) 40 Alta L Rev 767 (which adapts Greenawalt to the Canadian situation).

24 There may be exceptions but I have never seen any in my experience of reviewing and advising religious institutions on these matters. If there are discrepancies between legislation and internal codes, it is likely a matter of oversight in drafting the legislation.

25 See e.g. *Bentley v Anglican Synod of the Diocese of New Westminster*, 2009 BCSC 1608, [2009] BCJ No 2336 (QL) [*Bentley BCSC*].

the neutral principles doctrine is a part) is most helpful. It may also explain the slightly disconcerting assertion[26] that while courts interpret religious documents involving doctrinal matters to mean that doctrinal matters are at bottom what constitutional interpretation is about, the role of the courts is limited to interpreting the constitutional documents, leaving the doctrinal outcome to fall where it may. This approach may be contrasted with the more robust approach of the UK Supreme Court in its recent decision *Shergill v Khaira*[27] in which it asserted that civil courts may have to make objective assessments of theological issues in order to resolve a dispute.[28]

Pankerichan may also be contrasted with the earlier Ontario Court of Appeal decision, *Delicata*, in which a differently-constituted bench approached the construction issue more directly. *Delicata* is the more recent of two decisions in which Canadian appellate courts have addressed the issue of property ownership when parishes claimed their property after leaving the ACC over changes in practice relating to the blessing of same-sex marriages.[29] In *Delicata*, the Synod of the Diocese of Huron voted to request that its bishop grant permission for blessing civil marriages between same-sex couples, but while the bishop was considering this request a parish in the diocese voted at a vestry meeting by 109-1 (1 abstention) to leave the diocese. The parish initiated a legal action for the property on the basis that it was held in trust by the diocese for the purpose of "traditional, orthodox" Anglican teaching; the diocese sought a declaration that it owned the property. The trial judge found that "parish" meant an entity existing in perpetuity under a bishop and not the members of the congregation from time-to-time; that only the General Synod of the ACC has the final word on theological issues around same-sex matters; that the property must be left behind by the members of the congregation who departed; and that the vestry vote was illegal because it was held among the members of the congregation who left while the parish remained.

Pepall JA, for a unanimous Court, agreed with the findings of the trial judge after examining only the canons of the diocese relating to property holding and the ACC's incorporating legislation, which provided that approval for dealing with any property must be given by the bishop of a

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26 *Delicata*, *supra* note 1 at para 86.

27 [2014] UKSC 33 at para 45

28 For greater analysis of the recent English jurisprudence, see MH Ogilvie, "The Meaning of 'Religion' and the Role of the Courts in the Adjudication of Religious Matters: An English and Canadian Comparison" (2015) Can Bar Rev (forthcoming).

29 The history of the ACC in relation to this matter is summarized in *Bentley BCSC*, *supra* note 25 at paras 7-171; and Ogilvie, "Bentley," *supra* note 2 at 199-201.

diocese and the executive committee of the synod of a diocese.[30] The Court further dismissed an unjust enrichment argument in respect to financial contributions to the parish on the ground that they were to the parish,[31] and awarded costs to the diocese on the ground that litigation over religious convictions is not a "safe harbour from costs."[32] In contrast to *Pankerichan*, the Court did not consider the jurisprudential issue of how it should proceed, but merely proceeded directly to the interpretation of the relevant constitutional provisions. It did not consider the same-sex issue at all.

Delicata was decided in the shadow of *Bentley*, which was the only decision it considered, and on the assumption that the approach in *Bentley* was correct. In the *Bentley* case, four parishes in the Diocese of New Westminster left the diocese over the issue of same-sex blessings and the diocese initiated internal processes within the diocese to secure the properties of those parishes. Again, the parishes argued that the properties were held in trust for Anglican ministry consistent with historic, orthodox Anglican doctrine and practice, and commenced a legal proceeding for a cy-près declaration that the properties be so used. The diocese argued that neutral principles of law should be applied to the interpretation of the legislation incorporating the diocese, which expressly provided that the properties were held by the diocese for the purposes of Anglican ministry in the diocese and the ACC. The parishes agreed that the diocese held the properties pursuant to the legislation but further argued that Anglican ministry meant traditional, orthodox Anglican practice and doctrine. The trial judge found the properties were intrinsically part of the diocese because the diocesan legislation requires approval from the bishop and diocesan executive committee for their use. Secondly, he found that the meaning of Anglicanism cannot be defined by traditional and orthodox Anglican doctrine and practice as such criteria are too uncertain and subjective; rather the criteria for Anglicanism is the eligibility to remain within the ACC in full communion with the world-wide Anglican Communion and with ministry and liturgy acceptable to that communion. Thirdly, the Court said that, in any case, the General Synod has found that same-sex blessings do not conflict with core doctrine as defined by the historic creeds of the church, so there is no breach of trust. Finally, the Court found that the properties were meant to be held in trust for the purposes of Anglican ministry as defined by the ACC. The Court of Appeal confirmed that the properties were held in trust by the diocese for the purposes of ministry in accordance with Anglican doctrine as determined

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30 *Anglican Church of Canada Act,* SO 1979, c 46, s 2.

31 *An Act to Incorporate the Anglican Synod of the Diocese of New Westminster*, SBC 1893, c 45, s 6.

32 *Delicata, supra* note 1 at para 79.

by the General Synod of the ACC. Therefore, the parishes could not remove themselves from the diocese and retain the properties for Anglican ministry as they understood it.

In coming to this result, the Court of Appeal expressly renounced an American-style neutral principles of law approach. It understood the concept to mean that civil courts should decline jurisdiction to adjudicate disputes from religious institutions (the first option above), and observed that Canadian courts normally accept jurisdiction, if reluctantly. The Court interpreted the relevant constitutional documents as it would the constitutional documents of any other organization. It concluded that the diocese and the ACC had proceeded with change in a constitutionally proper manner, without addressing the underlying theological issue of same-sex blessings.

The significance of these three recent cases is that they confirm that the American neutral principles of law doctrine does not apply to the adjudication of disputes from religious institutions in Canada. While it remains uncertain which particular version of the doctrine the various courts were rejecting, it is clear that they effectively rejected all of them as well as the notion that a principle couched in American First Amendment jurisprudence would be applicable in Canada to disputes from religious institutions. The decision in *Balkou* suggested that courts should never adjudicate such disputes, a notion that has also been implicitly overruled. Once this complication was cleared away, all three courts concurred that the proper Canadian approach to such disputes is simply to examine the constitution of the religious institution at issue to decide whether it has complied with its constitutional requirements relevant to the matter at issue. While this approach is identical to one of the versions of the American neutral principles of law doctrine, it is more importantly the approach used in earlier Canadian cases relating to the discipline of members and the approach long used by Canadian courts in dealing with disputes from other private organizations. In *Lakeside Colony of Hutterian Bretheren v Hofer*,[33] the Supreme Court of Canada required the colony to follow its constitution in deciding whether to expel members, and to apply the principles of natural justice as well.[34]

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[33] *Hutterian Brethren, supra* note 22. For earlier cases about the expulsion of members, see Ogilvie, *Religious Institutions*, *supra* note 6 at 311-16.

[34] It also confirms the approach in the only earlier church property dispute of underlying theological issues: *United Church of Canada v Anderson* (1991), 2 OR (3d) 304 (Sup Ct); see also Ogilvie, "Church Property Disputes," *supra* note 23. Recent lower court decisions applying constitutions to disciplinary matters include *Ivantchenko v The Sisters of St Kosmos Aitolas Greek Orthodox Monastory*, 2011 ONSC 6481, 211 ACWS (3d) 88; and *Diaferia v Elliott,* 2013 ONSC 363, [2013] OJ No 1055 (QL).

In light of the fact that Canadian courts have taken this approach for several decades, it might be wondered why cases continue to appear in the courts based on the arguments either that civil courts have no jurisdiction to determine disputes from religious institutions as argued in *Pankerichan*, or that they do have jurisdiction even to determine theological questions as argued in *Bentley* and *Delicata*. There is clearly some confusion as to the proper role of civil courts, or possibly, some optimism that they will come up with the "right" theological answer. Whatever the reason, after these cases, it ought finally to be clear that the role of courts is limited to deciding whether there has been compliance with constitutional documents. As with disputes from non-religious institutions, civil courts act as the final arbiter of constitutional compliance.

This should neither surprise nor appall religious institutions and their legal advisers. It should not surprise because religious institutions that voluntarily use civil legal instruments such as private acts of incorporation, public legislation such as the *ROLA*, and by-laws to organize their property should expect those instruments to be applied to them by civil courts. Nor should it appall because the interpretation of constitutional documents, including internal documents such as canon law, does not directly involve making theological decisions for the religious institution. Most constitutional documents contain provisions whereby theological decisions are set apart for specific bodies within the religious institution following specific procedures, and the role of a civil court is limited to ensuring these procedures are followed, without offering directives as to what the theological outcome should be. The enforcement of internal voluntarily assumed procedures could be construed as civil courts indirectly making theological decisions for religious institutions. However, the risk of theological change is ultimately voluntarily assumed by those who choose to be members. This creates the realistic possibility that decisions about theological matters may be made which members do not like, leaving them with only the option to leave. As *Delicata* and *Bentley* clearly show, appealing such decisions to the civil courts in the hope that they will reverse or otherwise change a theological decision will not result in change because civil courts will simply decline jurisdiction once they have established that proper procedures have been followed.

3. Conclusion

It remains, then, to restate the principles adopted by Canadian courts for the adjudication of disputes from religious institutions after these three recent cases:

1. The role of a court in the adjudication of disputes from religious institutions is to interpret the constitutional documents relevant to the dispute at issue, apply the ordinary rules of construction, and enforce the interpretation providing that it does not directly involve a decision about a theological matter which should be left to the religious institution.

2. Enforcement may involve either vacating the decision of the religious institution if it does not comply with the court's interpretation of the proper constitutional procedure and ordering the religious institution to reconsider the matter, or enforcing a decision which properly complies with constitutional requirements.

3. An implicit corollary to these principles is the notion that Canadian courts should adopt a modest and restrained approach to adjudication in light of the deeply held theological beliefs that typically undergird such disputes.

American neutral principles of law have no role in the adjudication process. There is no interference with the section 2(a) *Charter* freedom of religion rights of the parties because the court is not adjudicating matters of theological belief. Once it is accepted by religious actors that civil courts play no role in adjudicating theological disputes, cases such as *Bentley* and *Delicata*, in which a civil court is asked directly to make a theological decision, should be less likely to be referred to the civil courts. Cases like *Pankerichan*, on the other hand, are likely to continue because they involve disputes about constitutional interpretation, a matter always suitable for the civil courts.