

## APPENDIX S

*his appeal, he shall receive a suitable rebuke by the appellate court."* Unfortunately, there isn't a parallel provision whereby the SJC can rebuke a lower court for unfair procedures, or gross errors of judgment, or harmful constitutional misinterpretations. When the SJC reverses or corrects a lower court's decision, or rules an action is errant, the lower court usually suffers little consequence, especially when compared to the appellant or complainant who, even though he may prevail in the ultimate Decision, has often endured many months of hardship and, sometimes, even financial consequences.<sup>1</sup>

/s/ RE Howie Donahoe

**CASE 2019-01  
COMPLAINT OF TE RHETT DODSON, ET AL.  
vs.  
OHIO PRESBYTERY**

**DECISION ON COMPLAINT  
October 18, 2019**

### I. SUMMARY OF THE FACTS

- Pre-2010 Mr. Travis Dougherty shared his writing on the Trinity with Pastor Kreg Bryan and a ruling elder from Grace PCA, in Hudson, Ohio. According to Mr. Dougherty neither raised concerns about his views, and both offered words of encouragement.
- 2010 TE Rhett Dodson was given a copy of Travis Dougherty's self-published book *The Holy Trinity*. Mr. Dougherty, who was a member of the church before TE Dodson arrived, pointed out that the book contained certain things on which they would likely disagree. TE Dodson read the book and did disagree with what he called "a grave error, if not outright heresy." However,

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<sup>1</sup> While it doesn't directly apply in this Case, *BCO* 40-5 ("General Review & Control") gives a higher court the authority to "censure the delinquent court" when it finds the court is culpable of "an important delinquency or a grossly unconstitutional error." It's unfortunate *BCO* 42-9 (Appeals) & 43-10 (Complaints) don't likewise give our higher courts that explicit authority. (The word "censure" in *BCO* 40-5 is used in a broader sense than the four censures listed and described in *BCO* 30 - "Church Censures.")

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TE Dodson chose not to pursue the issue, both because he could “detect no indication that he [Mr. Dougherty] was attempting to spread his error or recruit people to his position,” and because he hoped that he could minister to Mr. Dougherty and lead him to “revise or reform his position.”

- 2010 From 2010-2016, Mr. Dougherty was a member in good standing of Grace PCA. He was allowed to teach in the adult Sunday School program, including a class on the Trinity. Apparently, there were some “friendly conversations” between Mr. Dougherty and one or two ruling elders regarding the former’s views.
- 2015 Mr. Dougherty was nominated as a candidate for the office of Deacon.
- 08/16 Near the end of the period of officer training Mr. Dougherty submitted a 17-page paper outlining his exceptions to the Westminster Standards. One of his exceptions stated in part,
- “In my view, God is the Father, Son, and Spirit, considered collectively. The Father is not the whole essence or God, but rather the essence is the Father, Son, and Spirit considered as a unity in light of generation and procession. God is one in the sense that Father, Son, and Spirit are united by way of eternal generation and procession, but manifold in the sense that God is Trinity, since there are 3 distinct Persons.” He went on to say “this implies that the Father, Son, and Spirit are ‘parts’ of the essence, since each one is assumed to not be the entire essence or Yahweh. My view would be akin to saying that a car engine can be 100% car, without being 100% *of* the car.”
- 08/16/16 Mr. Dougherty was admonished at a Session meeting for his errors. He was told that his error was serious and that Session wished him to engage in pastoral-theological counseling to correct his errors. Whether this action was a formal admonition under *BCO* 30-2 or a more “informal” admonition is not clear in the Record.

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- 09/28/16 The Session met with Mr. and Mrs. Dougherty to explain the process of counseling it wished to pursue.
- 12/16 Over four-month period, TE Dodson met with Mr. Dougherty three times to discuss the latter's views and to seek to counsel him.
- 05/15/17 The Doughertys decided to begin attending a Reformed Baptist Church, both because they felt awkward at Grace PC and because of a disagreement with Session over how their son's request for membership was handled.
- 07/17 Two ruling elders met with the Doughertys at their home. The meeting was described as cordial, but during the meeting Mr. Dougherty expressed concern about where things were heading.
- 08/17/17 Session charged Mr. Dougherty "with the sin of heresy in your denial of the biblical doctrine of the Holy Trinity." That letter, as contained in the trial transcript (which is the only place it is contained in the Record), continued "We therefore summon you to appear before the Session. And the summons was for October 5, 2017 to answer this charge."
- 08/21/17 Mrs. Dougherty sent an e-mail to Session stating "I do not believe that each divine Person is the whole essence (or God). It does not seem reasonable to me. I am convinced the average evangelical Christian doesn't think of God that way."
- 10/07/17 Mrs. Dougherty, reflecting on a meeting with Session that apparently occurred on 10/05/17, responded to a request from TE Dodson that she reconsider the view set forth in her 08/21/17 e-mail by reiterating her position.
- 11/02/17 Session admonished Mrs. Dougherty and warned her about the danger of embracing these views. Again, the Record is not clear as to whether this was a "formal" admonition.
- 01/20/18 Session conducted the trial of Mr. and Mrs. Dougherty. Included in the trial transcript is the text of a letter to Mrs. Dougherty, which is undated, charging her "with the sin of heresy for making the following statements. I do not believe that each

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divine person is the whole essence for God. I do not believe that each person by themselves, is the whole God. I agree with my husband in the opinion that an infinite and divine person does not have to be the whole God in order to be wholly God.” [Note: Punctuation and lack of quotation marks reflects the original transcript.] The letter also states, “we therefore summon you to appear before the Session on December 7, 2017.”

- 01/20/18 During the trial TE Dodson was the Prosecutor, TE Mark Bell was invited by Session to moderate, the three ruling elder members of Session served as judges, and the Doughertys defended themselves. The Doughertys pled “not guilty.” The Prosecutor presented as evidence the 17-page exception document prepared by Mr. Dougherty and the two e-mails from Mrs. Dougherty. He also called TE Scott Cook (ARP) and TE Deryck Barson (Philadelphia Presbytery), both of whom testified regarding the erroneous doctrinal issues raised in the written exhibits and the implications of those views. The Doughertys called TE Mike Waters, Pastor at Heritage Reformed Baptist Church (the church the Doughertys were attending). TE Waters affirmed the serious problems with the Doughertys’ views, but urged that Session would “judge the Doughertys shy of un-Christianing them... and thus viewing these people or that person as non-Christians, and thus would no longer be welcome in any orthodox church.” TE Waters asked, on behalf of the elders of Heritage Reformed Baptist Church, that the Session of Grace PC “allow [the Doughertys] to become formally here soon [*sic*] under the oversight and care of our assembly.” TE Waters also asserted that the Doughertys had not spread their views or tried to “get a following” (either at Grace PC or Heritage RBC), were willing to be taught, and “understand that they need to be open and pliable and humble in being instructed.” Two of the ruling elders asked TE Waters about Mr. Dougherty having written in his paper that he would “continue to write,” whether Mr. Dougherty would “denounce the book he wrote,” and whether TE Waters’ church would allow him to continue to write on the Trinity. TE Waters stated, “I allow our members to have some liberties.” He went on to state that he would certainly caution Mr. Dougherty to study the issue more and “to move away from” his views. He said Mr. Dougherty would have to answer for himself whether he intended to continue to write on the Trinity.

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TE Dodson's introductory closing argument focused entirely on the Doughertys' doctrinal errors, particularly that "they do not understand the difference between essence and person" and they "have a beef with the doctrine of perichoresis," and on the implications of those errors.

Mrs. Dougherty read the closing statement for the defendants. She asserted

Currently there is no writing of Travis Dougherty that is available for view of public on the record anywhere. There is no book currently published on his view of the Trinity. At present, for the record, his plan is to keep it that way. If he does at some point down the road decide to publish something or write something formally, he would absolutely discuss it with Pastor Mike Waters, or whoever it was that would be shepherding over us at the time. Because he would not take that step without authoritative oversight, of course. So currently, there is no threat right now at this point in our family and in our current situation for a writing to ever be published. Obviously, we all have things we say we'd like to do someday, but whether that be that we'll ever get to those or not, it just depends on the time.

So, for the record, his plan right now is to keep things the way that they are. There is nothing published on the Trinity on his position formally, and there is no plan to do so in the current season of our lives. Any decision to do that at that time down the road in the future, he would, obviously, seek the wisdom of the shepherd over oversight of our family."

She then went on to say:

...we have been willing to discuss and learn over the course of the last year and a half, when this first was brought to the attention of the church. This was the summer of 2016. We continued to stay at this church until May 2017. We were willing to begin

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upon reeducation with the Session, with Pastor Rhett. It appeared to both my husband and myself that there was an unwillingness to prioritize possible discussion and interactions, and it was sporadic in the scheduling of meetings. There were only a few meetings held between my husband and Pastor Rhett Dodson over the course of nearly 10 months.

Mrs. Dougherty then summarized the doctrines of the Trinity that she and her husband affirm, and she restated and defended their particular views. She stated,

In short, it is our view that the biblical material can be more readily explained, both logically and exegetically, apart from the perichoretic doctrine. Accordingly, we believe that God, that is, the essence, exists as the natural, interdependent unity of the three infinite, divine persons. The three persons have a singularity of will and attribute because they are eternally, perpetually, indivisibly united as one God through generation and procession.

She also asserted that “partialism” does not show up on a Wikipedia list of heresies on the Trinity and stated,

If partialism is understood to imply that each person is only partly God, then we deny the charge, as we have consistently affirmed that each person is 100% God, fully God. We believe a person can be 100% God without being 100% of God, wholly God without being the whole of God.

The remainder of her closing statement was an argument that their view, if incorrect, “is not a serious enough offense to merit excommunication.” This was based on the assertion that their views were reasonable, that they were not contumacious (which they defined as “stubborn resistance to authority”) as demonstrated by their interactions with Session, and that they had “never tried to persuade any member of Grace PCA of their opinion regarding the perichoresis.”

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TE Dodson concluded his closing argument by reiterating that the Doughertys' views are clearly heretical. He stated,

This is not heresy with a small 'h.' It is gross. It is catastrophic error, because it redefines God. A person can go through the steps of the court process, but if they are found guilty of heresy, this court has no other choice but to follow the path of excommunication.

He went on to say,

The Doughertys are not only guilty of egregious heresy, but they are, as a result, in violation of their membership vows. With their view of God, they can no longer say that they receive and rest upon Christ as he is offered in the gospel, because the Jesus they espouse is not the Jesus Christ of the New Testament. I want to be extremely clear about that. The Son, if he is not 100% of Yahweh, cannot be the full, divine essence.

He added,

Their views are, therefore, injurious to their souls. This cannot be a light matter. It boggles my mind that another Christian church would see someone denying something as clear and absolute as paragraph three of the second London Baptist Confession, which, as has been pointed out, is even clearer than the Westminster Confession. That the three persons are "of one substance, power and eternity, each having the whole divine essence, yet the essence undivided." With that core doctrine of God being denied, yet they would willingly accept them into membership as Christians. It boggles my mind.

- 01/20/18    The Session unanimously found the Doughertys guilty. In their comments all three ruling elders mentioned them being guilty of heresy. One member of Session stated explicitly that he believed

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them to be guilty of “being incorrigible and contumacy.” Following the vote, the Moderator stated “And the censure that the Session is then putting on for this case, I understand, would be excommunication because of the nature of the guilty plea. Is that correct?” Two of the ruling elders are recorded as saying “Yes.” A motion was then passed to “perform the censure.” The Moderator then imposed the censure using the formula that is bolded in *BCO* 36-6.

- 02/16/18 The Doughertys filed with Presbytery a “Request for a Special Commission” that includes a letter of appeal. The letter makes clear that the Doughertys were not appealing the guilty verdict, only the censure that was imposed on them.
- 04/09/18 The Executive Committee of Presbytery found the Appeal administratively in order and recommended Presbytery establish a commission under *BCO* 42-8.
- 05/05/18 Ohio Presbytery approved the formation of the Judicial Commission, with TE Scott Wright as Chairman, and consisting of at least two teaching elders and two ruling elders. TE Wright was appointed by the Moderator to fill the seats on the Commission and report back to Presbytery. Later in the meeting the four other members of the Commission were reported to Presbytery.
- 05/23/18 The Judicial Commission held its first meeting.
- 06/26/18 The Judicial Commission held its second meeting.
- 08/23/18 The Judicial Commission conducted a hearing on the Appeal.
- 09/05/18 The Judicial Commission approved its final report. The report contained three judgments relating to the issue “Did Grace Session act properly in excommunicating Travis and Sherylyn Dougherty?”

### **Judgment**

1. **No.** The commission finds that Grace Session **did not act properly** in excommunicating Travis and

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Sherylyn Dougherty, so it **does not sustain** the censure of excommunication inflicted by Grace Session.

2. This commission **reverses** the decision of Grace Session to excommunicate the Doughertys.
3. This commission **instructs** Grace Session to transfer the Doughertys to Heritage Reformed Baptist Church per the request of both the Doughertys themselves and Rev. Mike Waters, pastor of Heritage Reformed Baptist Church. This is the church the Doughertys have attended for the past year. This commission **further instructs** Grace Session to notify the leadership of Heritage Reformed Baptist Church about the Doughertys' conviction of heresy so that the elders of that church may seek to extend pastoral care and theological education to the Doughertys. [Emphasis original.]

- 10/06/18 Presbytery approved the action of Judicial Commission by a vote of 20-4.
- 10/10/18 The Clerk of Presbytery delivered the judgment to the parties.
- 10/29/18 The Grace PC Session filed a Complaint with the Stated Clerk of Presbytery against Presbytery's action in reversing the censure of excommunication that had been inflicted on the Doughertys.
- 02/02/19 Ohio Presbytery denied Complaint of Grace PC Session by a vote of 12-6.
- 02/07/19 The Session carried their Complaint to the General Assembly.
- 06/06/19 The Panel of the SJC, consisting of TE David Coffin (chairman), TE Paul Kooistra, RE Frederick Neikirk, and alternates TE Charles McGowan and RE E.J. Nusbaum held a hearing on the Complaint. TE Dominic Aquila and RE

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Rhett Dodson spoke for the Complainants. TE Scott Wright served as the Respondent's Representative.

### **II. STATEMENT OF THE ISSUES**

1. Did Ohio Presbytery err in its Judgment 1 by incorrectly interpreting and applying *BCO* 27-5 and 33-2 when they reversed the censure of excommunication against Travis and Sherylyn Dougherty?
2. Did Ohio Presbytery err in Judgments 1 and 2 in finding the censure of excommunication to be too severe in this case, and thus in not exhibiting great deference to the actions of Session (*BCO* 39-3(3); 42-3)?
3. Did Ohio Presbytery err in Judgment 3 by failing to impose another censure or instructing the Grace PC Session to impose another censure, and when it instructed the Grace PC Session to transfer the Doughertys to another church, thus resulting in no censure being imposed on the Doughertys?

### **III. JUDGMENT**

1. Yes, Presbytery erred in concluding that the *Book of Church Order* requires that indefinite suspension must precede excommunication.
2. No.
3. Yes, Presbytery erred in overturning the censure of excommunication without either imposing a new censure or remanding the matter to the Session for the imposition of a new censure, and Presbytery erred by exceeding its power when it acted to instruct Session to transfer the Doughertys to another church.

### **IV. REASONING AND OPINION**

#### **Judgment 1**

Presbytery asserts that *BCO* 27-5(d) and 33-2 require that one must be suspended from the sacraments before they can be excommunicated, particularly in a case of contumacy. Presbytery asserts that the words "must" and "and" in 27-5(d) indicate that the censures must be imposed in the order

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indicated in that section. In other words, a court must impose suspension prior to imposing excommunication and deposition. Presbytery further argues that 33-2, with its cross-reference to 32-6, requires that the censure for contumacy be suspension from the sacraments.

We find both these arguments to be unpersuasive. If 27-5(d) must be read as requiring that the censures must always be imposed in the order listed, then in every case the first censure that would have to be applied would be admonition. But admonition, by definition, is applied only to one who is deemed to be penitent (see 30-1) and thus admonition could not logically be required to precede either indefinite suspension or excommunication (which are to be applied only to the impenitent). This fact, alone, must lead us to conclude that the list in 27-5(d) is not intended to mandate the order in which the censures are to be applied.

Even if there were a requirement in 27-5(d) that the censure be imposed in the order given, it seems that the whole of 27-5 has in view primarily “personal offenses” (see *BCO* 29). This is particularly reflected in “step b” which asserts the Biblical mandate that individuals are responsible to “admonish” one another. Clearly this is not admonition in the sense of *BCO* 30-2 because, in the flow of 27-5(a-d), no court is involved in “step b.” In other words, what is front and center in *BCO* 27-5 is the flow of process when individuals find themselves aggrieved. This cannot be determinative for cases involving “general offenses.” *BCO* 31-7 is explicit that “if the prosecution is instituted by the court, the previous steps required by our Lord in the case of personal offenses are not necessary.” Thus, the requirement of the flow of steps for discipline involving “personal offenses,” including any order in which censures must be imposed, cannot be taken as mandatory for cases involving “general offenses,” such as the heresy charge that is at the heart of 2019-01 (see *BCO* 29-3).

Finally, the requirement of *BCO* 33-2 that when one is found contumacious “he shall be immediately suspended from the sacraments” contains, as Presbytery notes, a cross-reference to *BCO* 32-6. But 32-6 is dealing with the very specific situation in which one has demonstrated himself to be contumacious by refusing to obey a citation or by refusing to plead. Unless one is going to argue that 32-6 contains the only examples of what it means to be contumacious, a reference to the censure to be imposed in the case of a very particular manifestation of contumacy cannot be taken as determinative for what censure must follow for any contumacious behavior.

In sum, Presbytery incorrectly interpreted the PCA Constitution when it concluded the Session erred, as a matter of Constitutional Law (*BCO* 39-3(4)), by imposing on the Doughertys the censure of excommunication without first imposing the censure of indefinite suspension.

## Judgment 2

*BCO* 30-4 states “Excommunication is the excision of an offender from the communion of the Church. This censure is to be inflicted only on account of gross crime or heresy and when the offender shows himself incorrigible and contumacious.”

Session concluded the Doughertys’ views constituted heresy, and Presbytery acknowledged that assessment. Presbytery did not, however, agree with the assessment that the Record showed that the Doughertys were contumacious, an element that must be present for the censure of excommunication to be appropriate (*BCO* 30-4). We conclude that Presbytery was correct and within its rights in making this assessment.

The finding of contumacy as a basis for excommunication requires separate evidence in the Record at or before the point at which the decision is made to excommunicate the individual. Such evidence could take the form of a showing of the individual’s unwillingness to participate in the disciplinary process as set forth in *BCO* 32-6. It could take the form of a separate charge, that would have to be voted on separately, filed either with the charge of heresy or at a later date (as, for example, in *BCO* 30-3, paragraph 4). Conceivably, it could even take the form of evidence introduced in the Record during the trial on the heresy charge, so long as it was clear that the point of the particular evidence was to demonstrate a pattern of contumacious behavior.

None of those elements was present in this case. The Doughertys clearly participated in the process. There was no separate charge of contumacy leveled against them. Most importantly, there is no evidence in the trial record of the Doughertys’ contumacious behavior. The entirety of the Prosecution’s evidence, whether in exhibits, witnesses, or opening and closing statements, focused only on the nature of the heresy. Contrast this with the clear statements of the defense witness that the Doughertys were not and had not been spreading their views, were willing to be taught, and that they “understand that they need to be open and pliable and humble in being instructed,” and with the Doughertys’ repeated statements that they were

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willing to continue counseling, that they respect the authority of church leaders, and that they did not plan to take any steps to spread their views.

Now it is certainly possible that the defense statements were not accurate, but that would require a demonstration in the Record. The Prosecution never rebutted or presented evidence against the Defense's statements. Indeed, the closest thing to a rebuttal was two ruling elders' characterization of what Mr. Dougherty said in his "exception paper," about "continuing to write" (which characterizations were vague paraphrases that may not accurately convey Mr. Dougherty's points), questions from those two ruling elders to TE Waters (which are just that - questions, not evidence), and a statement from one member of Session during the 32-15(5) "roll call" phase of the proceedings that "I don't see that we have other choice but to find them guilty of partialism and heresy. And may I say, being incorrigible and contumacy" (but a statement of a judge is not evidence - it would still require an evidentiary base).

In their response to the Doughertys' appeal Session argued that the Doughertys were contumacious because they "walked away from the counsel of the Church" by going to another church, that they were contumacious in removing themselves to another church and making it clear that they would not return to Grace PC, and by "continuing in their unbelief with no signs of reconsidering or holding open the possibility they could be wrong." But, the Prosecution did not present any evidence in the trial to support these claims and, as Presbytery notes, the Doughertys were in good standing at the time they began to attend another church, they stated repeatedly during the trial that they were willing to continue to meet with Session (or with the Pastor at Heritage Reformed Baptist Church) for ongoing counseling, and they stated repeatedly that they were open to being persuaded they were wrong.

Session further argued in their response to the appeal that "since being convicted of this soul-destroying heresy six month ago, the Doughertys have given no indication that we are aware of that they are willing to repent of or even reconsider their position. We believe this is further proof of their incorrigibility." But what happened in the six months after the trial cannot be a basis for the imposition of the censure of excommunication at the trial. We affirm that the Presbytery was obligated to exhibit great deference to the Session with regard to factual matters and even with regard to the appropriate censure to impose after a disciplinary trial. (*BCO* 39-3(2,3)) But "great deference" is not the same as "complete deference." Indeed, "mistake or injustice in the judgment and censure" is one of the grounds for appeal specified in *BCO* 42-3. In the Panel hearing Complainants affirmed that the higher court must be able to review a finding of contumacy. At the same time, they argued Presbytery should have acceded to the Session's decision

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because the members of Session must have been aware of things that demonstrated the Doughertys' contumacy, and that there were things that had transpired with regard to the Doughertys that were not recorded in the minutes of Session (none of which were in the Record, in any case). But to accept that logic would make it impossible for a higher court ever to review, much less overturn for reasons of injustice, the decision of a lower court regarding a finding of contumacy.

We further note that Complainant's view at this point seems fundamentally unfair to defendants. How could one ever defend against a finding of contumacy when not charged with contumacy and when no evidence was presented that the defense could either accept or seek to rebut? How could the cross-examination required by *BCO* 32-13 ever happen?

Had the Session presented in the Record at trial evidence for the Doughertys' contumacy Presbytery's responsibility to defer to the judgment of the lower court would have been much higher. But no such evidence was presented at the trial. The entire focus of the Prosecution was on the nature and implications of the Doughertys' heretical views. To say that one can be excommunicated even for clearly heretical views on the Trinity without also providing a showing of contumacy is to vitiate the second finding that has been required for excommunication from our Communion since at least 1879, that being that "the offender shows himself incorrigible and contumacious." (For the history of this requirement see the material on *BCO* 30-4 on the PCA Historical Center's web site.)

Finally, Session's responsibility to make sure that there is clear evidence of contumacy in the record prior to the imposition of the censure of excommunication should be especially acute given that this action by Session will put the guilty party out of the visible church and will declare that person's testimony to be incredible. Indeed, without a requirement of an evidentiary base for a finding of contumacy it could fairly be concluded that a Session could excommunicate anyone deemed to have a deficient view of the Trinity and who could not, in whatever time limit Session set, be persuaded to see the asserted error.

In sum, given the lack of evidence in the trial record to support a finding of contumacy, we conclude Presbytery was within its rights in concluding that the censure of excommunication was too severe in this case, and that, in so doing, Presbytery did not violate its *BCO* 39-3(2,3) responsibility to give great deference to the findings and actions of Session.

### Judgment 3

*BCO* 27-5, 30-1, and 36-1,2 all make it clear that when one is found guilty of an offense (see *BCO* 29-1) a proper censure must be imposed. The Doughertys were found guilty of heresy in holding views contrary to the Word of God and the *Westminster Confession of Faith and Catechisms* that are “accepted by the Presbyterian Church in America as standard expositions of the teaching of Scripture in relation to both faith and practice.” (*BCO* 29-1) As such, it was required that they receive some appropriate censure.

When Presbytery acted to remove the censure of excommunication it left the unrepentant, guilty parties with no censure whatsoever. This is particularly egregious in that the Doughertys did not appeal their conviction, only the censure. As such, once Presbytery determined that the censure of excommunication was too severe it was obligated either to “render the decision that should have been rendered” with regard to the censure to be imposed or to remand the matter back to the Session of Grace PC with instructions that it impose a new, appropriate, censure. (see *BCO* 42-9) In failing to do this Presbytery committed a clear Constitutional error. Indeed, it would seem that the *de facto* effect of Presbytery’s action was either to declare the Doughertys not to be guilty or to find that they were penitent. Neither of these determinations was within the purview of Presbytery, the former because there was no appeal from the guilty verdict and the latter because it would violate *BCO* 39-3(2,3) (cf., 11-4). Further, by eliminating any censure, Presbytery removed the requirement that the Doughertys demonstrate their repentance, if or when they come to that understanding, to the court that censured them. (*BCO* 36-5,6; 37-2,3,4; cf., 11-4)

In addition, Presbytery erred by “instructing” (mandating) that Session transfer the Doughertys to Heritage Reformed Baptist Church. Nothing in the powers of Presbytery (*BCO* 13-9) gives any evidence that Presbytery has any right to mandate that a Session transfer members to any particular church. In fact, *BCO* 46-1, 2, 3 make it clear that the responsibility to issue letters of transfer for members of a particular Congregation rests with the Session of that Church. As such, Presbytery could involve itself in a decision of whether or not a member of a particular church should be transferred only if such a question were clearly raised in a successful appeal or a complaint. That was not the case here.

Presbytery argued that its decision was “irregular,” but would best honor Christ and advance the spiritual welfare of the Dougherty family. Presbytery may or may not have been right in this assessment, and we appreciate their

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concern for the family and the honor of Christ, but their action clearly exceeded their authority and their *BCO* 39-3 responsibility to defer to the lower court, particularly given that the question of transfer was not raised in the appeal. Had Presbytery desired to urge the Session to transfer the Doughertys it had every right to offer that advice. To mandate it, however, was clear error.

Thus, in failing to ensure that an appropriate censure was imposed on the Doughertys and in exceeding its authority by instructing the Session to transfer the Doughertys the Ohio Presbytery was in error.

At the Panel hearing the Complainant and Respondent asserted that it was “common knowledge” that the Doughertys were received by the Heritage Reformed Baptist Church “by reaffirmation.” Since the Doughertys have left the PCA and are members of another church, any further proceedings in this matter are moot.

The Panel's Proposed Decision was drafted by RE Neikirk based on input from all members of the Panel, and it was edited and approved by all members of the Panel. The Reasoning was further revised by the SJC, and then the SJC approved the Decision by a vote of 20-0, with two absent and two disqualified.

Bankson, <i>Disqualified</i>	Duncan, M., <i>Concur</i>	Neikirk, <i>Concur</i>
Bise, <i>Concur</i>	Duncan, S., <i>Concur</i>	Nusbaum, <i>Concur</i>
Cannata, <i>Concur</i>	Ellis, <i>Concur</i>	Pickering, <i>Concur</i>
Carrell, <i>Concur</i>	Greco, <i>Concur</i>	Ross, <i>Concur</i>
Chapell, <i>Absent</i>	Kooistra, <i>Absent</i>	Terrell, <i>Concur</i>
Coffin, <i>Concur</i>	Lee, <i>Concur</i>	Waters, <i>Disqualified</i>
Donahoe, <i>Concur</i>	Lucas, <i>Concur</i>	White, <i>Concur</i>
Dowling, <i>Concur</i>	McGowan, <i>Concur</i>	Wilson, <i>Concur</i>

TE Bankson disqualified himself, stating he is familiar with the issues and a friend of the Complainant. TE Waters disqualified himself, stating he has an employment-related professional relationship with the Complainant. *OMSJC* 2.10(d).

**Concurring Opinion**

**Case 2019-01: Complaint of TE Rhett Dodson et al. v. Ohio Presbytery**  
RE Howie Donahoe

I concurred with the Decision in this Case, but believe clarification is needed on two paragraphs in the Reasoning, as well as some comment on the indictment itself.

**Personal v. General Offenses**

[Excerpt from Decision's Reasoning] In other words, what is front and center in *BCO* 27-5 is the flow of process when individuals find themselves aggrieved. This cannot be determinative for cases involving “general offenses.” *BCO* 31-7 is explicit that “if the prosecution is instituted by the court, the previous steps required by our Lord in the case of personal offenses are not necessary.” Thus, the requirement of the flow of steps for discipline involving “personal offenses,” including any order in which censures must be imposed, *cannot be taken as mandatory for cases involving “general offenses,”* such as the heresy charge that is at the heart of 2019-01 (see *BCO* 29-3). [Emphasis added]

Just to clarify, the list of censures in *BCO* 27-5.d is not a mandatory sequence for *any* offenses - general, *or* personal.

**Judging Contumacy**

[Excerpt from Decision's Reasoning] The finding of contumacy as a basis for excommunication requires separate evidence in the Record at or before the point at which the decision is made to excommunicate the individual. Such evidence could take the form of a showing of the individual’s unwillingness to participate in the disciplinary process as set forth in *BCO* 32-6. It could take the form of a separate charge, that would have to be voted on separately, filed either with the charge of heresy or at a later date (as, for example, in *BCO* 30-3, paragraph 4). Conceivably, it could even take the form of evidence introduced in the Record during the trial on the heresy charge, so long as it was clear that the point of the particular evidence was to demonstrate a pattern of contumacious behavior.

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While I agree the *finding* of contumacy is a separate matter from the finding of guilt on the original charge, this paragraph in the Decision seems to assert a finding of contumacy must be reached through judicial process. I don't find the *BCO* supports that assertion. Granted, such a finding requires a separate action, but in some instances, that could simply be in the form of a motion to increase the censure that was imposed after the original conviction, based on conduct that now "manifestly" warrants the increase.

*BCO* 30-3, §4: Indefinite suspension is administered to the impenitent offender until he exhibits signs of repentance, or until by his conduct, the necessity of the greatest censure be made manifest. ...

After someone is convicted and censured, the burden shifts to them to *demonstrate* repentance. While the court should be patient for repentance, the court is not required to judicially *prove* lack of repentance in order to increase the censure. Below is an excerpt regarding excommunication (with emphasis added).

*BCO* 36-6. ... The [moderator] shall then administer the censure in the words following:

Whereas, \_\_\_\_\_, a member of this church has been by sufficient proof convicted of the sin of \_\_\_\_\_, and after much admonition and prayer, obstinately refuses to hear the Church, and *has manifested no evidence of repentance*: Therefore, in the name and by the authority of the Lord Jesus Christ, we, the Session of \_\_\_\_\_ Church do pronounce him to be excluded from the Sacraments, and cut off from the fellowship of the Church.<sup>2</sup>

If a separate charge is always required, then many excommunications would require *two trials*, because a convicted person will likely also plead "not guilty" to a subsequent contumacy charge. And it might be difficult to convict a defendant of contumacy as a separate charge at the original trial because (1) he appeared at the arraignment and the trial, and (2) he has not yet exhausted his appeal rights. In other words, if he appeals, he isn't obliged to "submit" to the verdict or censure of the trial court until the highest court has rendered a decision. Trial court judgments and censures are suspended during the course of an appeal.

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<sup>2</sup> See also *BCO* 16-1, 19-16.c, 37-3, 37-4, 37-5 and 42-12.

But if there is no appeal of the censure or indefinite suspension on an impenitent offender, the original censuring court can, after a reasonable amount of time, render a non-trial judgment on whether the suspended person has repented, and if he has not, that court can increase the censure by motion and vote.

### **Indictments for Theology of Lay Members**

I'm not persuaded the Session exhibited sound judgment in indicting and conducting a trial. The Record doesn't indicate the defendants were "industriously spreading" their view. Witness testimony demonstrates otherwise in the trial transcript. Furthermore, there's a significant difference between a court's oversight of the views of a lay person vs. the views of an elder, teacher, or preacher. And even with regard to ministers, *BCO* 34-5 stipulates:

Heresy and schism may be of such a nature as to warrant deposition; but errors ought to be carefully considered, whether they strike at the vitals of religion and are industriously spread, or whether they arise from the weakness of the human understanding and are not likely to do much injury." [*BCO* Chapter 34: "Special Rules Pertaining to Process Against a Minister"]

For example, there are often member parents in PCA churches who decline to have their babies baptized. And this is known to many others in the congregation, most notably, the Session.<sup>3</sup> Thus, it's not a *private* offense. And yet, even though WCF 28:5 teaches: "... it is a *great sin* to contemn or neglect this ordinance" of baptism,<sup>4</sup> I don't recall ever hearing of a judicial case where a formal judicial indictment was brought against such parents. Those situations are usually best addressed by patient and clear teaching (*BCO* 27.5.a) - especially during public infant baptisms (*BCO* 56-4). Teaching parents and the congregation on this topic will often require book referrals, pastoral counsel, gentle admonition (*BCO* 27-5.b), regular

<sup>3</sup> *BCO* 12-5: "The church Session is charged with maintaining the spiritual government of the church, for which purpose it has power: (a) to see that parents do not neglect to present their children for Baptism;"

<sup>4</sup> See article by Jonathan D. Moore, (Ph.D., Cambridge) - "*The Westminster Confession of Faith and the Sin of Neglecting Baptism,*" *Westminster Theological Journal*, (WTJ 69:1, Spring 2007, pp. 63-86).

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encouragements to consider the promises of the covenant, etc.<sup>5</sup> All parents should be reminded, as the *BCO* states, that covenant children "are federally holy *before* Baptism, and *therefore* are they baptized." (*BCO* 56-4.h. Emphasis added).<sup>6</sup>

/s/ RE Howie Donahoe

**CASE 2019-02**  
**TE DANIEL SCHROCK, ET AL.**  
**vs.**  
**PHILADELPHIA PRESBYTERY**

**DECISION ON COMPLAINT**  
**October 18, 2019**

**I. SUMMARY OF THE FACTS**

- 06/24/18 On June 24, 2018, the congregation of New Life Philadelphia (PCA) voted to call TE Larry Smith as senior pastor.
- 08/29/18 TE Smith was examined by the Credentials Committee of Philadelphia Presbytery. The Committee voted not to recommend that TE Smith be examined on the floor of Presbytery because it judged that TE Smith's views regarding the continuation of the spiritual gifts of prophecy and tongues beyond the Apostolic era and the closing of the canon amounted to exception of substance to WCF 1.1 which is out of accord with the fundamentals of the system because it is hostile to the system.
- 09/05/18 The Presbytery Coordinating Committee requested that Mr. Smith provide a written statement outlining his views of the continuation of the gifts of prophecy and tongues.

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<sup>5</sup> *BCO* 27-4 ... In this it acts the part of a tender mother, correcting her children for their good, that every one of them may be presented faultless in the day of the Lord Jesus.

<sup>6</sup> I remember Dr. Will Barker relaying a story: "I was always impressed at Covenant Church St. Louis when I was a seminary student. I was in the choir loft behind the pulpit area. And when there would be an infant baptized, professor R. Laird Harris, a former moderator of our Assembly, would sit about the second pew and my line of vision was right across the baptismal font to where Dr. Harris was seated. And I was always interested to see how intently he watched what was happening in that - - that ceremony. And I was realizing Laird Harris believes God is doing something right at that moment with that child. And it struck me."