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## Canada: BC Supreme Court Declines To Defer To Baptist Church

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### Churches and other employers must be cautious when relying on internal procedures to dismiss individuals

The B.C. Supreme Court recently decided an application to hear a pastor's wrongful dismissal claim, which may impact employers both inside and outside of ecclesiastical contexts.

In *Kong v Vancouver Chinese Baptist Church*, the Vancouver Chinese Baptist Church ("VCBC") applied to have a claim for wrongful dismissal filed by its former Senior Pastor, the Reverend Alfred Yiu Chuen Kong ("Rev. Kong"), dismissed. Rev. Kong filed the underlying claim after he was dismissed by the VCBC following a long series of VCBC committee meetings and discussions to resolve internal strife involving Rev. Kong.

The VCBC applied to court to have Rev. Kong's claim dismissed on the following basis:

[32] The VCBC submits that a church's removal of its spiritual leader is intrinsically ecclesiastical in nature. It follows, the church argues, that this is an ecclesiastical issue over which the court has no jurisdiction other than to ensure that the church has proceeded in accordance with the principles of natural justice.

VCBC relied on a [decision](#) involving the Catholic Church from the Ontario Court of Appeal, which held:

[18] A second exception [to the jurisdiction of courts to hear wrongful dismissal claims] is where the rules of a self-governing organization, especially a religious organization, provide an internal dispute resolution process. A person who voluntarily chooses to be a member of a self-governing organization and who has been aggrieved by a decision of that organization must seek redress in the internal procedures of the organization: see *Levitts Kosher Foods v. Levin*(1999), 45 O.R. (3d) 486 (S.C.).

The B.C. Supreme Court denied the VCBC's application, holding that the question of whether internal church procedures or common law applies to the dispute is governed by the facts giving rise to the dispute. Although the court did not cite the Supreme Court of Canada's recent decision in *McCormick v Fasken Martineau DuMoulin LLP*, which we commented on [here](#), it determined that the facts giving rise to Rev. Kong's wrongful dismissal claim were, in their nature, that of "employment". Because the VCBC had the power to select, control, and dismiss Rev. Kong as Senior Pastor, the court found he was a common law employee, notwithstanding he was a "a clergyman claiming against a church".

Although this ruling concerns religious organizations in particular, it is another decision after *McCormick* in which the court ignores appearances and internal structures and opts to decide for itself whether entities are in a common law employment relationship. In light of recent judicial decisions in this vein, employers that have in the past relied on internal dispute resolution mechanisms with respect to "employees" should pause and consider potentially unforeseen legal consequences prior to making any substantial changes to the roles, terms, remuneration or obligations of individuals they are engaged with.

We will keep a close eye on Rev. Kong's wrongful dismissal claim and keep you posted on developments.

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*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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