

Contractual Rights as the Basis of the Court's Jurisdiction to Review the Treatment by Voluntary Associations of Their Members

January 14, 2020

While voluntary associations usually deal with their members in an informal and non-legalistic manner, a recent decision of the Court of Appeal for Ontario is a good reminder that members of voluntary associations can have enforceable legal rights based on the association's constitution and by-laws, which create binding contractual obligations for the association. In *Aga v Ethiopian Orthodox Tewahedo Church of Canada*, 2020 ONCA 10, the Court of Appeal discusses the contractual rights of members of voluntary associations, including the expectation of procedural fairness that may arise in the context of the enforcement of the terms of the contract.

Background

The appellants in *Aga v Ethiopian Orthodox Tewahedo Church of Canada* were five former members of the congregation of the Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral ("the **Congregation**"). In order to become members of the Congregation, the appellants had completed and submitted membership application forms, and committed to pay a monthly contribution to the parish.

The Congregation was governed by a constitution and by-laws. The constitution included the following provisions, among others:

When any follower is found in violation of the provision under Article 61, section 2 of the Ecclesiastical Constitution (Qale Awadee):

- A. First, advice and education will be given by spiritual father or church representative;
- B. Secondly, consultation and canon will be given;
- C. On the third time, temporary suspension from membership with warning;

The decision on cancellation of membership of faithful shall be effective only upon examination by special council and approval by the diocese archbishop.

The appellants were expelled from the Congregation in May 2017, after they expressed dissatisfaction with the decision of the archbishop not to implement the recommendations of a committee. The appellants were not given any particulars of the allegations against them leading to their expulsion. Further, they were not given an opportunity to respond to the allegations or to make representations with respect to their expulsion. As a result, they sued the Church and members of its leadership, alleging that the decision to expel them was null and void as a result of the failure to follow internal procedures in deciding to expel them from the

Congregation.

The respondents pleaded that: (a) the Church was a voluntary association; (b) the members of the Church acquired no civil or property rights by virtue of becoming members; (c) the appellants had no free-standing right to procedural fairness with respect to the manner in which they were expelled; and (d) the decisions to expel were not subject to the review of a court of law. They brought a motion for summary judgment claiming that there was no genuine issue requiring a trial because there was no underlying contract or other civil right to be enforced.

The motion judge found that there was no underlying contract or other right between the parties and that, as a result, the appellants could not obtain a remedy for alleged breaches of procedural fairness. She granted the motion for summary judgment. However, the Court of Appeal granted the appeal, set aside the order granting summary judgment and returned the matter to the Superior Court.

Jurisdiction to Address the Affairs of a Voluntary Association

The Court of Appeal started its analysis with a review of the law applicable to voluntary associations. It pointed out that adherence to a religious organization alone is not enough to create a contract. It stated:

Jurisdiction to address a voluntary association's adherence to its own procedures and, in some cases, the fairness of those procedures depends on the presence of an underlying legal right to be adjudicated, such as a property or a civil right in contract or tort.

The Court of Appeal summarized the principles applicable to voluntary associations and their members as follows:

- When voluntary associations have written constitutions and by-laws, such documents constitute a contract setting out the rights and obligations of members and the organizations.
- Becoming a member of a voluntary association entails agreement to the terms of the constitution and by-laws, whether or not a member has specific knowledge of or expressly consents to the terms in these documents.
- Members of the voluntary association and the organization itself are bound by the terms in the constitution and by-laws and there is an obligation on the part of an organization to observe its constitution and by-laws.
- Once it is established that a contract exists, an expectation of procedural fairness may attach as a way of enforcing the terms of a contract.
- The requirements of procedural fairness depend on the circumstances, including the nature of the organization and the seriousness of the consequences of discipline.
- The basic requirements include notice, opportunity to make representations, and an unbiased tribunal.
- Where there is an underlying contract, the court has jurisdiction to determine whether the rules of the voluntary association have been observed.

Application to the Case

The Court of Appeal held that the appellants were not simply adherents of the faith and that they had a contractual relationship with the Congregation. The appellants had applied to be members of the Congregation and offered consideration in the form of monthly payments. Upon approval of their applications, they became members of the Congregation. According to the Court of Appeal, they entered into a mutual agreement to be part of the Congregation and abide by the governing rules, whether or not they were specifically aware of the terms. The Court also noted that the Congregation's constitution and by-laws contained rules governing the treatment and discipline of members. In light of the foregoing, the Court of Appeal concluded that the motion judge had erred in finding that there was no evidence of an underlying contract between the parties.

However, the Court of Appeal held that, based on the record that was before the Court, it was not possible to determine whether there had been a breach of contract on the basis of failure to comply with the rules. The Court expressed the view that it was not clear whether the respondents had followed the provisions of the constitution and by-laws. The Court found that the respondents had failed to adduce the necessary evidence in respect of the rules of expulsion and the steps taken by the respondents leading to the expulsion. As a result, it concluded that there were genuine issues to be determined.

Conclusion

While informality and lack of adherence to by-laws and other rules may not have any consequences when things go well, the situation often changes when this is no longer the case and people start insisting on strict compliance with rights and obligations. Voluntary associations should regularly review their constitutions and by-laws to ensure that they are up-to-date and that their practice conform to the terms of these documents. For their part, members of voluntary associations should consult the association’s constitution and by-laws to know their rights and obligations, and to find possible avenues of protection should they feel that they are not being treated fairly by the association.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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