

# Not So Fast: Contractual Rights *May* Be the Basis of the Court's Jurisdiction to Review the Treatment by Voluntary Associations of Their Members

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***For insights into the Court of Appeal's decision, check out our post ["Contractual Rights as the Basis of the Court's Jurisdiction to Review the Treatment by Voluntary Associations of Their Members"](#).***

In [Ethiopian Orthodox Tewahedo Church of Canada St Mary Cathedral v Aga, 2021 SCC 22](#) ("Aga"), the Supreme Court of Canada revisited a court's jurisdiction to intervene in the affairs of voluntary associations, including religious organizations.

The Supreme Court previously held that jurisdiction in matters of procedural fairness related to the decisions of voluntary associations should only be granted when a legal right is present: [Highwood Congregation of Jehovah's Witnesses \(Judicial Committee\) v Wall, 2018 SCC 26](#) ("Wall"). In *Aga*, the Ontario Court of Appeal held that the existence of an association's constitution and bylaws establishes a contract, thereby creating a legal right. On appeal, the Supreme Court reversed the Court of Appeal's decision. Rowe J., writing for a unanimous Court, held that the mere presence of a voluntary association's governing written rules does not automatically constitute a contract. A contract *may* be present, but this is to be determined based on general contract law principles and an intention to create legal relations.

## Background

In *Aga*, the Plaintiffs were former members of the congregation of the Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral (the "Church"). While the Church is a corporation, the congregation is an unincorporated association governed by a constitution and bylaws that set rules for its members and the organization.

In 2016, the Plaintiffs were part of a committee created to investigate a movement within the Church. After its investigation, the committee submitted a report with its findings to the archbishop. He disagreed with the committee's findings. The Plaintiffs were dissatisfied with the archbishop's decision and, as a result, they were removed from the congregation.

The Plaintiffs sued the Church and members of its senior leadership, claiming that their expulsion from the congregation is null and void since it violated the principles of natural justice. For example, they did not receive any details or opportunity to respond to the claims against them. They also alleged that the procedure used did not comply with the constitution and bylaws.

## Decisions of the Lower Courts

The Defendants moved for summary judgment on the basis that the court has no jurisdiction to interfere in their decisions since they are a religious organization. The motion judge agreed, granted the summary judgment, and dismissed the action. The motion judge

held that since there is no underlying legal right, the court cannot intervene, and the constitution and bylaws are not considered a contract since there was no intention to be bound by its terms.

The decision was reversed on appeal. It set aside the order granting summary judgment and returned the matter to the Superior Court. The Court of Appeal held that there was a contract between the parties:

Voluntary associations do not always have written constitutions and by-laws. But when they do exist, they constitute a contract setting out the rights and obligations of members and the organization... whether or not a member has specific knowledge of or expressly consents to the specific terms in the by-laws, becoming a member of a voluntary association entails agreement to the terms of the constitution and bylaws ([Aga v Ethiopian Orthodox Tewahedo Church of Canada, 2020 ONCA 10](#) at paras 40, 43.)

(Check out our previous blog post about the ONCA decision [here](#).)

The Defendants appealed, arguing that the Court of Appeal erred by finding that there was a contract and, consequently, a genuine issue requiring a trial.

### **Decision of the Supreme Court of Canada**

Writing for the Court, Rowe J. – who also wrote the decision in *Wall* – allowed the appeal and dismissed the action against the Church and members of its senior leadership. He reiterated the longstanding principle of contract law that an agreement is not enough to form a contract. There must be an objective intention to create contractual relations. Without more, constitutions and bylaws are simply practical measures put in place to help an association further their common goals.

Where a claim has a religious component to it, it does not necessarily make the dispute non-justiciable and therefore appropriate for summary judgment. Yet, generally, courts do not have jurisdiction to intervene in the decisions of voluntary associations unless some legal right is affected. Private rights and statutory causes of action are considered legal and can ground jurisdiction. Natural justice may be relevant to establish that one's legal right has been violated, but it alone cannot grant a party standing. Thus, the court must consider whether the relief sought against the voluntary association is the vindication of a legal right.

Rowe J. held that a plaintiff could sue a voluntary organization in contract law, but they must first prove that a contract exists. In other words, the plaintiff is required to establish that there was “an offer by one party accepted by the other with the intention of creating a legal relationship, and supported by consideration” (para 35). The intention is to be determined on a reasonable person standard and whether the parties objectively intended to be legally bound by the contract. In their analysis, the courts may consider the relationship between the parties and the interests at stake.

An objective intention to create legal relations in voluntary associations is more likely to be present in matters related to property and employment. In religious contexts, it is a little more difficult to demonstrate this intention because obligations can be construed as religious ones rather than legal ones. As such, the finding of an objective intention is dependent on the facts of a case. Also, membership in a voluntary organization with written rules, such as constitutions or bylaws, does not automatically create a legal right, and this alone will not guarantee court intervention. When dealing with contracts or the existence of a web of contracts, there must be an objective intention to create legal relations.

Turning to the facts of *Aga*, the Court concluded that the Plaintiffs failed to adduce evidence that there was an objective intention to be bound by the Church's constitution and bylaws. The members of the congregation were not aware of the bylaws when they became members. Even if the members committed to pay membership fees and referred to the rules and regulations while they were on a committee, there was no indication of an objective intention to be contractually bound by their rules. Therefore, the motion judge was correct in deciding there was no contract, and the court has no jurisdiction.

## Key Takeaways

The decision in *Wall* stands for the proposition that voluntary associations' decisions are immune from judicial review, absent an underlying legal right. *Aga* clarifies that even when an association is governed by written rules, courts still cannot intervene in their decisions unless the parties objectively intended to be bound by these terms by way of creating contractual rights.

*Aga* is a reminder for members of voluntary organizations to consider the constitutions and bylaws that govern them. If they wish to be legally bound by the right and obligations of an organization, then they must agree to the terms with the intention to create a legal relationship. However, when you are a member of a religious organization, obligations will likely be considered religious ones that are non-legally binding. While a voluntary organization's written constitution and bylaws are generally unenforceable, these organizations should still review their practices and obligations to determine if any support an intention to create contractual rights with their members.

***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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