

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)**

B E T W E E N

**ETHIOPIAN ORTHODOX TEWAHEDO
CHURCH OF CANADA ST. MARY CATHEDRAL, MESSALE ENGEDA, ABUNE
DIMETROS and HIWOT BEKELE**

APPLICANTS
Respondents

and

**TESHOME AGA, YOSEPH BEYENE, DEREJE GOSHU,
TSEDUKE GEZAW and BELAY HEBEST**

RESPONDENTS
Appellants

**REPLY TO RESPONSE TO THE APPLICATION FOR LEAVE TO APPEAL
(ETHIOPIAN ORTHODOX TEWAHEDRO CHURCH OF CANADA also known as ST.
MARY CATHEDRAL and MESSALE ENGEDA and ABUNE DIMETROS and HIWOT
BEKELE, APPLICANTS)**

(Pursuant to Rule 28 of the *Rules of the Supreme Court of Canada*)

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A. THE PROPOSED APPEAL IS A MATTER OF NATIONAL AND PUBLIC IMPORTANCE

1. The Applicants re-assert that the proposed appeal is a matter of national and public importance.

2. Paragraph 21 of the Response argues that the Court of Appeal for Ontario found the Bylaw and Constitution of Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral (the “Church”) to be a contract, or to engage contractual remedies, because the Bylaw included procedures for discipline of members, and was referred to by the Church in expulsion letters sent to the Respondents. The Response does not address the core issues of the absence of consideration and intent to form contractual relations.

3. It is that very flaw in the Court of Appeal’s reasoning which makes this case a matter of national and public importance. *Wall* held that there was no freestanding right to procedural fairness, without some underlying legal right.¹ This would be meaningless if procedural stipulations could in themselves create a contract giving rise to an underlying legal right.

4. If the Respondents are correct, the Court of Appeal allowed their lawsuit to proceed because they seek to challenge unfair procedure, not because of any separate legal right. Its decision therefore resurrected freestanding rights to procedural fairness, undermining *Wall* and creating conflicting precedents which only this Court can reconcile.

B. THIS CASE IS NOT DISTINGUISHABLE FROM *WALL* ON THE FACTS

5. At paragraph 26 of the Response, the Respondents argue that this case is distinguishable from *Wall*² because the “Church “has a statutory foundation, owns property, and members receive salary and pecuniary benefit”.

6. The Court of Appeal for Ontario held that the Respondents were not members of the not-for-profit corporation which owns the St. Mary Cathedral property. The court granted the

¹ *Highwood Congregation of Jehovah’s Witnesses (Judicial Committee) v Wall*, 2018 SCC 26 at 12.

² *Id.*

Respondents' appeal on the basis of the law of voluntary associations, not the rights of members of not-for-profit corporations under the Ontario *Corporations Act*.³

7. The allegation that members of the Church as such receive salary and pecuniary benefits was not made in either court below, and is not supported by any evidence. The Respondents were not Church employees. A charitable receipt does not constitute remuneration.

8. The Respondents may be seeking to reject the Court of Appeal's finding that they were only members of the voluntary association, not the corporation which owned the property. The Respondents also make a new allegation, not previously argued, that members of the Church as such received salary and pecuniary benefit. This Court should not accept such new factual arguments, in support of which no new evidence is proposed.

9. If, on the other hand, the Respondents are merely pointing out that the church corporation owns property and is incorporated under a statute, and that the Church has paid employees, their arguments are irrelevant. If the Respondents were not themselves members of the corporation or Church employees, they cannot distinguish *Wall* on these grounds.

10. It is precisely because there was no finding of financial benefits enjoyed by Church members, or of property interests or statutory rights under the *Corporations Act*, that this case is of national and public importance. If there had been such findings, the Court of Appeal decision would not have undermined *Wall*, churches and religious organizations would not have been threatened with unconstitutional state intrusion into their internal affairs, and the proposed intervenors would not have sought to intervene on behalf of their membership.

C. ECCLESIASTICAL LAW IS NOT ENFORCEABLE BY CIVIL COURTS

11. At paragraphs 31-32 of the Response, the Respondents argue that it would be "more than strange" if an Ontario court could not enforce the Church's Constitution and Bylaw. At paragraphs 41-42, they "submit that there must be some mechanism to ensure adherence and enforcement of

³ Application for Leave to Appeal, Tab 2. C., p. 15, paras. 9-11. See also Tab 4. C., p. 76, paras. 6-8.

the By-Laws and Constitution”, and that there would be no reason for the Constitution and Bylaw if they were not enforceable by the civil courts.

12. The Constitution and Bylaw provide that the Holy Synod of the global church is the final arbiter in religious matters, and that appeals from hearings within a diocese are directed to it.⁴ The Respondents have not pursued an appeal to the Holy Synod, likely in part because the Patriarch of the global church, its “spiritual father”,⁵ supported the Church’s decision.

13. The argument that the only reason to have bylaws is to allow for civil enforcement is simply an assertion, made without regard either to policy implications or to Canadian jurisprudence (cf. *Hart*⁶ and *Ukrainian Greek Orthodox*,⁷ as cited in the Application for Leave). It does not address the substance of the Applicants’ argument: that rights, duties, and processes created by canon law, or other internal regulations of religious bodies, are not in themselves civil rights, are not reviewable by courts unless they affect an underlying civil or property right, and that it is a matter of public and national importance to clarify this.

14. The Constitution and Bylaw are based on the spiritual authority which Orthodox Christians believe their churches have inherited from Jesus Christ’s apostles.⁸ They bind only those who wish to accept such spiritual authority, which is a matter of faith. The intention of articulating faith-based rights or duties is not to create contractual relationships; such rights and duties need not be enforceable by the state to be meaningful to religious people and organizations.

D. RELEVANCE OF INFLAMMATORY LETTERS

15. The Response asserts that the Applicants were not certain which individuals wrote inflammatory letters which were circulated prior to the Respondents’ expulsion. While one letter was included in the application record as context, the issue of authorship is not relevant to the

⁴ Application for Leave to Appeal Tab 4. E., p. 96 and Tab 4. J., p. 132.

⁵ Application for Leave to Appeal Tab 4. J., p. 133.

⁶ *Hart v Roman Catholic Episcopal Corporation of the Diocese of Kingston, in Canada*, 2011 ONCA 728.

⁷ *Ukrainian Greek Orthodox Church v. Ukrainian Greek Orthodox Cathedral of St. Mary the Protectress*, [1940] SCR 586.

⁸ Application for Leave to Appeal Tabs 4. E. and 4. J. In particular, pp. 92 and 129 refer to apostolic authority.

argument raised: that it is a matter of national and public importance to clarify that the expulsion process was not reviewable by the courts in the first place.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of April, 2020.



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TABLE OF AUTHORITIES

<u>Cases</u>	<u>at paragraph(s)</u>
<i>Hart v Roman Catholic Episcopal Corporation of the Diocese of Kingston, in Canada</i> , 2011 ONCA 728	13
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<i>Ukrainian Greek Orthodox Church v. Ukrainian Greek Orthodox Cathedral of St. Mary the Protectress</i> , [1940] SCR 586	13