In the future, the court would require thorough, informed consideration of alternatives in petitions seeking permission to install a heating system that generates substantial carbon emissions. Knowledge of this future requirement would give support to the DAC and the diocesan environmental advisers working with parishes to consider carbon-neutral options at an early stage of any proposals. [DW]

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Re St Paul, Covent Garden
London Consistory Court: Etherington Ch, 15 May 2021
[2021] ECC Lon 2
Removal of pews – status of objectors and parties opponent

In granting a petition for the removal of pews, the court noted that it had received objections from Historic England and the Victorian Society, neither of whom elected to become parties opponent (the latter because of the lack of necessary resources). The court observed that it did not distinguish objectors based on why they had chosen not to become parties opponent. All objectors with a sufficient interest would always have their views taken into account in all cases if they wished to maintain their objections but did not wish to oppose a petition formally. The degree to which their objections would affect the court's decision was dependent only on the merit of the objections. [DW]

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Ethiopian Orthodox Tewahedo Church of Canada St Mary Cathedral v Aga
2021 SCC 22, 21 May 2021
Voluntary religious organisation – jurisdiction to review expulsions of members

The five respondents and six others had been appointed in 2016 to an ad hoc committee to investigate a movement some considered to be heretical. The committee was to be 'guided by the rules and regulations of the Ethiopian Orthodox Tewahedo Church synod in the Diaspora', with the final decision to be made by the archbishop. But the archbishop did not accept the committee's findings, the committee was extremely displeased and its members were expelled from the congregation after expressing their dissatisfaction with his decisions. They sought a declaration, inter alia, that their expulsion had been contrary to the principles of natural justice and therefore null and void. At first instance, the

cathedral sought to have the action dismissed on the basis that the court had no jurisdiction to review or set aside the expulsion decision, arguing that there was no free-standing right to procedural fairness absent an underlying legal right, which the expelled members did not have. The judge at first instance dismissed the action but was overturned by the Court of Appeal for Ontario.

The Supreme Court of Canada held unanimously that the appeal should be allowed and the order of the judge at first instance restored. Delivering the judgment of the court, Rowe J said that voluntary associations were 'vehicles to pursue shared goals': they might have rules, a constitution and a governing body as practical measures by which to pursue shared goal, but those did not necessarily 'in and of themselves give rise to contractual relations among the individuals who join'. Further, 'much of what we agree to in our day-to-day lives does not result in a contract. Where there is no contract, or other obligation known to law, there is no justiciable interest and no cause of action.' Courts had jurisdiction to intervene in decisions of voluntary associations only where a legal right was affected. While purely theological issues were not justiciable, where a legal right was at issue the courts might need to consider questions that had a religious aspect in vindicating that right; the rights that could ground jurisdiction included private rights in such matters as property, contract, tort or unjust enrichment and statutory causes of action. However, 'In the present case, the only viable candidate for a legal right – and the only one referred to by the Court of Appeal or argued by the parties – is contract.' On the facts, there was no evidence of an objective intention to enter into legal relations. There was therefore 'no contract, no jurisdiction, and no genuine issue requiring a trial'. The appeal was allowed.

Comment: in *Shergill & Ors v Khaira & Ors* [2014] UKSC 33, the UK Supreme Court held that the constitution of a voluntary religious association was 'a civil contract … by which members agree to be bound on joining an association' which set out 'the rights and duties of both the members and its governing organs.' In disciplinary and membership matters,

> The jurisdiction of the courts is not excluded because the cause of the disciplinary procedure is a dispute about theology or ecclesiology. The civil court does not resolve the religious dispute. Nor does it decide the merits of disciplinary action if that action is within the contractual powers of the relevant organ of the association … Its role is more modest: *it keeps the parties to their contract*. (emphasis added)

Cases such as this turn on their facts but, on the face of it, the Supreme Court of Canada has taken a rather different view of the status of the rules of voluntary associations from that of the UKSC in *Shergill*. [Frank Cranmer]

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