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CHURCH LAW BULLETIN NO. 41

APRIL 26, 2012

EDITOR: TERRANCE S. CARTER

"MINISTERIAL EXCEPTION" PRECLUDES APPLICATION OF U.S. DISCRIMINATION LAW

By Esther S.J. Oh[*]

A. INTRODUCTION

On January 11, 2012, the Supreme Court of the United States (the "Supreme Court") released its precedent setting decision in *Hossana-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission et Al*.[1] The Hossana-Tabor decision marks a turning point in the application of U.S. anti-discrimination employment laws to religious organizations. This decision will be of particular interest to those Canadian religious organizations that have operations or affiliates in the U.S.

B. CASE FACTS

Hosanna-Tabor Evangelical Lutheran Church and School ("Hosanna-Tabor"), the petitioner, was a member congregation of the Lutheran Church –Missouri Synod ("Synod"). The Synod classified teachers into one of two categories: "called" or "lay". A "called" teacher is a teacher who was called to his or her vocation by God through a congregation after completing the necessary religious educational requirements. A lay teacher is a contract teacher who is not required to obtain religious training and is appointed by the school board without a vote of the congregation.

The respondent, Cheryl Perich, was a former called teacher at Hosanna-Tabor. Upon the onset of symptoms that was eventually diagnosed as narcolepsy, Perich took a disability leave from her position. When she later advised Hosanna-Tabor that she would able to return to work, the school informed her that a lay

[*] Esther S.J. Oh, B.A., LL.B., is a partner with Carters and practices charity and not-for-profit law from the Mississauga office.
[1] 565 U.S. (2012). Available online at http://www.supremecourt.gov/opinions/11pdf/10-553.pdf.

teacher had already been hired for the remainder of the school year and further advised that it did not consider Perich to be ready to return to work. At a meeting of the congregation, the congregation ultimately decided not to rehire Perich and offered to give her a "peaceful release" from her call in exchange for partial payment of her health insurance premiums. Perich declined the offer. Instead, Perich presented herself at the school on the day that she was medically cleared to return to work, and refused to leave until she received documentation showing that she had reported to work. In response, Hosanna-Tabor terminated Perich's employment for her "insubordination and disruptive behavior", as well as the damage she had inflicted on her "working relationship" with the school by "threatening to take legal action."

Perich filed a charged with the Equal Employment Opportunity Commission ("EEOC"), alleging that she had been terminated in contravention of §12112(a) of the *Americans with Disabilities Act*[2] ("ADA"), which prohibits discrimination against a qualified individual on the basis of disability. Perich also alleged that Hosanna-Tabor contravened §12203(a), which prohibits an employer from retaliating against an "individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [the ADA]."

In response to Perich's claims, Hosanna-Tabor moved for summary judgment on the basis of the "ministerial exception" which it argued exempted Hosanna-Tabor from the application of the ADA. In this regard, it was argued that the "ministerial exception" served to bar the suit due to the application of the First Amendment because Perich's claims related to the employment relationship between a religious institution and one of its ministers. The "ministerial exemption" is premised on the First Amendment, which provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."[3]

C. THE DECISION

The District Court agreed with Hosanna-Tabor that the ministerial exception applied, although the Court of Appeals of the Six Circuit vacated the lower court's decision and directed it to proceed with Perich's claims

[2] 42 U.S.C. §1201(a) (1990).
[3] U.S. *Const*. amend I.

on the basis that Perich did not qualify as a "minister" because Perich's duties as a called teacher were identical to her duties when she was still a lay teacher.

Writing the unanimous opinion for the Court, Roberts C.J. first determined that the ministerial exception did apply to the ADA on the basis that requiring a church to accept or retain an unwanted minister or punish a church for failing to do so would interfere with the internal governance of the church and remove the church's control over the selection of those who will personify its beliefs.[4] The Supreme Court also stated that the imposition of the unwanted minister would be in contravention the First Amendment, namely the establishment and free exercise of religion.[5]

In Canada, there is no constitutional requirement for the "separation of church and state" as there is in the U.S. context and as such, the Hosanna-Tabor case has no precedent setting value in Canada. However, Canadian religious charities operating or having affiliates in the U.S. will want to carefully determine how this decision will apply to their US operations.

[4] *Supra* note 1 at 13.
[5] *Ibid*., at 13-14.