

BREAKING CASE LAW

*Wall v Judicial
Committee of the
Highwood
Congregation of
Jehovah's Witnesses*
2016 ABCA 255



This Issue

Judicial Review from Decisions of Religious Organizations

Wall v Judicial Committee of the Highwood Congregation of Jehovah's Witnesses
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Judicial review is traditionally seen as the legal procedure through which Courts oversee decisions of the executive branch of government taken by administrative tribunals created or operating under the authority of legislation enacted by Parliament or a Legislature. An entire body of public law, administrative law, has built up in relation to this legal procedure.

In *Wall v. Judicial Committee of the Highwood Congregation of Jehovah's Witnesses* a majority of the Alberta Court of Appeal recognized jurisdiction to bring judicial review from decisions of religious organizations. The case immediately attracted academic comment. In his case comment, *Does Judicial Review Apply to Decisions Made by Religious Groups?* <http://ablawg.ca/2016/09/15/does-judicial-review-apply-to-religious-groups/>, Professor Shawn Fluker of the University of Calgary Faculty of Law observed: "By ruling the Court has jurisdiction to review the decision of a non-statutory entity, exercising powers not sourced in legislation, and which do not implicate legal rights, the Court notably expanded the list of decision-makers potentially subject to judicial review."

The case came before the Courts when Mr. Wall brought judicial review in the Court of Queen's Bench of Alberta challenging a decision to expel him from the Highwood Congregation of Jehovah's Witnesses. The grounds of the judicial review were that the expulsion resulted in shunning, and that the shunning resulted in the loss of business for Mr. Wall in his capacity as a realtor. Mr. Wall had been expelled by a decision of the Judicial Committee of the Highwood Congregation of Jehovah's Witnesses, a four-person committee of elders; and he had appealed to an Appeal Committee comprised of three elders chosen by the supervising minister of the Highwood Congregation from neighbouring congregations. Both the Judicial Committee and the Appeal Committee gave oral reasons expelling Mr. Wall from membership in the Highwood Congregation. There were no further routes of internal appeal.

The Court of Queen's Bench of Alberta, in an unreported decision, considered whether it had jurisdiction over the matter; and answered this question before deciding the merits of the case. The Court of Queen's Bench held that it did have jurisdiction because the religious practice of shunning could be said to infringe civil and property rights. The Highwood Congregation of Jehovah's Witnesses appealed to the Alberta Court of Appeal on the issue of jurisdiction, before the merits of the judicial review in the Court of Queen's Bench of Alberta were determined.

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A majority of the Court of Appeal upheld the jurisdiction of the Court of Queen's Bench. In doing so, the Court of Appeal gave reasons which expanded the grounds on which judicial review of religious tribunals could be brought. The Appellant had argued that courts may only interfere in the affairs of religious groups if property or civil rights were at stake. But the majority of the Court of Appeal identified, and applied, a line of judicial authority for the proposition that "courts also have jurisdiction when there has been a breach of the rules of natural justice or the complainant has exhausted the organization's internal processes."

The strict *ratio decedendi* of the majority decision is stated in paragraph 22, and is that "a court has jurisdiction to review the decision of a religious organization when a breach of the rules of natural justice is alleged." Mr. Wall's appeal involved "numerous complaints regarding the process used by the appellants."

It follows from this that, in Alberta, the capacity to bring judicial review from decisions of religious tribunals is not limited to cases in which property or civil rights are at stake, but now extends at least to situations in which it is alleged that the decision of the religious organization breached the rules of natural justice.

The Court of Appeal decision had a dissenting opinion. The dissent held that judicial review could lay from decisions of non-governmental tribunals provided that there was "a sufficient public aspect either on account of its statutory foundation or the consequences of its contested decision is a public actor and subject to judicial review." The dissenting opinion reasoned that these criteria were not present in Mr. Wall's case. The dissent would have allowed the appeal, reasoning that the Highwood Congregation was not created by statute, that its decision to expel Mr. Wall had no consequences for members of the public; and, alternatively, its decision to expel Mr. Wall was not justiciable because "Fundamental constitutional principles give the members of the Highwood Congregation the right to determine their coreligionists."

The *Highwood Congregation of Jehovah's Witnesses* sought leave to appeal to the Supreme Court of Canada. Leave to appeal is only given where a Panel of three Justices of the Supreme Court of Canada is satisfied that the provisions of section 40 of the *Supreme Court Act* (R.S.C., 1985, c. S-26) <http://laws-lois.justice.gc.ca/eng/acts/S-26/FullText.html> are met i.e. whether any question involved is, by reason of its public importance or the importance of any issue of law or any issue of mixed law and fact involved in that question, one that ought to be decided by the Supreme Court or is, for any other reason, of such a nature or significance as to warrant decision by the Supreme Court.

On April 13, 2017, the Supreme Court of Canada announced that it would grant leave to appeal in this case. The grant of an application for leave to appeal means only that the Court will sit to hear the merits of the appeal from the decision of the Alberta Court of Appeal. This does not mean that the appeal itself will be allowed or disallowed. That remains to be determined after the Court hears arguments on the merits of the appeal. The argument of the appeal will be scheduled, and webcast. Those interested in monitoring the procedural status of the appeal can go to the Case Information on the Supreme Court of Canada website: for docket 37273: <http://www.scc-csc.ca/case-dossier/info/dock-regi-eng.aspx?cas=37273>

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