

BREAKING CASE LAW

*Highwood Congregation
of Jehovah's Witnesses
(Judicial Committee) v.
Wall, 2018 SCC 26*

Suite 2250
10104 – 103 Avenue
Edmonton, Alberta
T5J 0H8

Tel 780.448.9275
Fax 780.423.0163
shoresjardine.com



This Issue

No Right of Judicial
Review from Decisions of
Religious Organizations

Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall
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The Supreme Court of Canada Rules that there is No Right of Judicial Review from Decisions of Religious Organizations

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.

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.

This 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.

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. 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

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could be brought. 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 dissenting opinion in the Court of Appeal 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 Highwood Congregation of Jehovah's Witnesses sought leave to appeal to the Supreme Court of Canada. On April 13, 2017, the Supreme Court of Canada announced that it would grant leave to appeal in this case. Many parties intervened in the appeal before the Supreme Court of Canada, including the Canadian Council of Christian Charities, the Association for Reformed Political Action Canada, the Canadian Constitution Foundation, the Evangelical Fellowship of Canada and the Catholic Civil Rights League, the Christian Legal Fellowship, the World Sikh Organization of Canada, the Seventh day Adventist Church in Canada and the Church of Jesus Christ of Latter day Saints in Canada, the Justice Centre for Constitutional Freedoms, the British Columbia Civil Liberties Association and the Canadian Muslim Lawyers Association. The appeal was heard on November 2, 2017.

The Court’s Decision was rendered on May 31, 2018. In a unanimous Judgment the Court held that Courts do not have jurisdiction to review the decisions of religious organizations where there are concerns about procedural fairness. The holding had three foundations. First, judicial review is reserved for state action and the Congregation’s Judicial Committee was not exercising statutory authority. Second, Courts may only interfere to address the procedural fairness concerns related to the decisions of religious groups or other voluntary associations if legal rights are at stake. Third, even if legal rights are at stake and review is available, Courts will consider only those issues that are justiciable and issues of theology are not justiciable.

In its reasons on the first ground, the Court overruled some Canadian courts which had found that judicial review is available with respect to decisions by churches and other voluntary associations.

In its reasons on the second ground, the Court held that membership in a religious organization, where no civil or property right is formally granted by virtue of membership, did not give rise to legal rights. With respect to the submission that the practice of shunning resulted in the loss of business for Mr. Wall in his capacity as a realtor, the Supreme Court held that Mr. Wall had no property right in maintaining his client base. The Court was prepared to accept that the Congregation’s actions had an impact on Mr. Wall, but emphasized that this negative impact does not give rise to an actionable claim and that the matters in issue fell outside the courts’ jurisdiction. Had Mr. Wall suffered some detriment or prejudice to his legal rights arising from the Congregation’s membership decision, he could have sought redress under appropriate private law remedies.

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In its reasons on the third ground, which may be viewed as obiter dicta since the first two grounds were dispositive of the appeal, the Court held that the merits of a religious tenet are not justiciable; but that flexibility must be adopted in relation to justiciability, and that Courts may still review procedural rules where they are based on a contract between two parties -- even where the contract is meant to give effect to doctrinal religious principles.

The fundamental proposition in this case was stated by the Court in the penultimate paragraph of the Judgment: “religious groups are free to determine their own membership and rules; courts will not intervene in such matters save where it is necessary to resolve an underlying legal dispute.”

Summary by:
Kirk N. Lambrecht, Q.C.

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