

Most Negative Treatment: Check subsequent history and related treatments.

2018 SCC 26, 2018 CSC 26

Supreme Court of Canada

Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall

2018 CarswellAlta 1044, 2018 CarswellAlta 1045, 2018 SCC 26, 2018 CSC 26, [2018] 1 S.C.R.

750, [2018] 6 W.W.R. 427, [2018] A.W.L.D. 2281, [2018] A.W.L.D. 2375, 16 C.P.C. (8th) 223,

291 A.C.W.S. (3d) 685, 33 Admin. L.R. (6th) 175, 421 D.L.R. (4th) 381, 68 Alta. L.R. (6th) 1

Judicial Committee of the Highwood Congregation of Jehovah's Witnesses (Vaughn Lee - Chairman and Elders James Scott Lang and Joe Gurney) and Highwood Congregation of Jehovah's Witnesses (Appellants) and Randy Wall (Respondent) and Canadian Council of Christian Charities, Association for Reformed Political Action Canada, Canadian Constitution Foundation, Evangelical Fellowship of Canada, Catholic Civil Rights League, Christian Legal Fellowship, World Sikh Organization of Canada, Seventh-day Adventist Church in Canada, Justice Centre for Constitutional Freedoms, Church of Jesus Christ of Latter-day Saints in Canada, British Columbia Civil Liberties Association and Canadian Muslim Lawyers Association (Interveners)

McLachlin C.J.C., Abella, Moldaver, Karakatsanis, Wagner, Gascon, Côté, Brown, Rowe JJ.

Heard: November 2, 2017

Judgment: May 31, 2018

Docket: 37273

Proceedings: reversing *Wall v. Highwood Congregation of Jehovah's Witnesses (Judicial Committee)* (2016), 365 C.R.R. (2d) 40, 2016 CarswellAlta 1669, 12 Admin. L.R. (6th) 302, 2016 ABCA 255, [2017] 2 W.W.R. 641, 404 D.L.R. (4th) 48, 43 Alta. L.R. (6th) 33, Marina Paperny J.A., Patricia Rowbotham J.A., Thomas W. Wakeling J.A. (Alta. C.A.)

Counsel: David M. Gnam, Jayden MacEwan, for Appellants

Michael A. Feder, Robyn Gifford, for Respondent

Barry W. Bussey, Philip A.S. Milley, for Intervener, Canadian Council of Christian Charities

John Sikkema, André Schutten, for Intervener, Association, for Reformed Political Action Canada

Mark Gelowitz, Karin Sachar, for Intervener, Canadian Constitution Foundation

Albertos Polizogopoulos, for Interveners, Evangelical Fellowship of Canada and the Catholic Civil Rights League

Derek Ross, Deina Warren, for Intervener, Christian Legal Fellowship

Balpreet Singh Boparai, Avnish Nanda, for Intervener, World Sikh Organization of Canada

Gerald Chipeur, Q.C., Jonathan Martin, for Interveners, Seventh-day Adventist Church in Canada and the Church of Jesus Christ of Latter-day Saints in Canada

Jay Cameron, for Intervener, Justice Centre, for Constitutional Freedoms

Roy Millen, Ariel Solose, for Intervener, British Columbia Civil Liberties Association

Shahzad Siddiqui, Yavar Hameed, for Intervener, Canadian Muslim Lawyers Association

Subject: Churches and Religious Institutions; Civil Practice and Procedure; Public

Headnote

Religious institutions --- Jurisdiction of civil and criminal courts — Miscellaneous

Applicant, member of Jehovah's Witness congregation, was disfellowshipped by congregation's Judicial Committee —

Applicant filed originating application for judicial review pursuant to [R. 3.15 of Alberta Rules of Court](#), seeking order of

30 Before the chambers judge, Mr. Wall also argued his rights are at stake because the Judicial Committee's decision damaged his economic interests in interfering with his client base. On this point, I would again part ways with the courts below. Mr. Wall had no property right in maintaining his client base. As Justice Wakeling held in dissent in the court below, Mr. Wall does not have a right to the business of the members of the Congregation: Court of Appeal reasons, at para. 139. For an illustration of this, see *Mott-Trille v. Steed*, [1998] O.J. No. 3583 (Ont. Gen. Div.), at paras. 14 and 45, rev'd on other grounds, 1999 CanLII 2618 [1999 CarswellOnt 4143 (Ont. C.A.)].

31 Had Mr. Wall been able to show that he 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. This is not to say that the Congregation's actions had no impact on Mr. Wall; I accept his testimony that it did. Rather, the point is that in the circumstances of this case, the negative impact does not give rise to an actionable claim. As such there is no basis for the courts to intervene in the Congregation's decision-making process; in other words, the matters in issue fall outside the courts' jurisdiction.

C. **Justiciability**

32 This appeal may be allowed for the reasons given above. However, I also offer some supplementary comments on justiciability, given that it was an issue raised by the parties and dealt with at the Court of Appeal. In addition to questions of jurisdiction, justiciability limits the extent to which courts may engage with decisions by voluntary associations even when the intervention is sought only on the basis of procedural fairness. Justiciability relates to the subject matter of a dispute. The general question is this: Is the issue one that is appropriate for a court to decide?

33 Lorne M. Sossin defines justiciability as

a set of judge-made rules, norms and principles delineating the scope of judicial intervention in social, political and economic life. In short, if a subject-matter is held to be suitable for judicial determination, it is said to be justiciable; if a subject-matter is held not to be suitable for judicial determination, it is said to be non-justiciable.

(*Boundaries of Judicial Review: The Law of Justiciability in Canada* (2nd ed. 2012), at p. 7)

Put more simply, "[j]usticiability is about deciding whether to decide a matter in the courts": *ibid.*, at p. 1.

34 There is no single set of rules delineating the scope of justiciability. Indeed, justiciability depends to some degree on context, and the proper approach to determining justiciability must be flexible. The court should ask whether it has the institutional capacity and legitimacy to adjudicate the matter: see Sossin, at p. 294. In determining this, courts should consider "that the matter before the court would be an economical and efficient investment of judicial resources to resolve, that there is a sufficient factual and evidentiary basis for the claim, that there would be an adequate adversarial presentation of the parties' positions and that no other administrative or political body has been given prior jurisdiction of the matter by statute" (*ibid.*).

35 By way of example, the courts may not have the legitimacy to assist in resolving a dispute about the greatest hockey player of all time, about a bridge player who is left out of his regular weekly game night, or about a cousin who thinks she should have been invited to a wedding: Court of Appeal reasons, at paras. 82-84, per Wakeling J.A.

36 This Court has considered the relevance of religion to the question of justiciability. In *Marcovitz v. Bruker*, 2007 SCC 54, [2007] 3 S.C.R. 607 (S.C.C.), at para. 41, Justice Abella stated: "The fact that a dispute has a religious aspect does not by itself make it non-justiciable." That being said, courts should not decide matters of religious dogma. As this Court noted in *Syndicat Northcrest c. Amselem*, 2004 SCC 47, [2004] 2 S.C.R. 551 (S.C.C.), at para. 50: "Secular judicial determinations of theological or religious disputes, or of contentious matters of religious doctrine, unjustifiably entangle the court in the affairs of religion." The courts have neither legitimacy nor institutional capacity to deal with such issues, and have repeatedly declined to consider them: see *Demiris v. Hellenic Community of Vancouver*, 2000 BCSC 733 (B.C. S.C. [In Chambers]), at para. 33; *Amselem*, at paras. 49-51.

37 In *Lakeside Colony*, this Court held (at p. 175 (emphasis added)):