

CHURCHES CAN DECIDE WHO THEY CAN SHUN

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A new Supreme Court ruling that Jehovah's Witnesses are free to banish and shun any member they wish, regardless how they decide to do it, offers a powerful precedent for religious independence in Canada.

It follows years of uncertainty of just how deeply into the waters of faith and doctrine Canada's judges are willing or able to wade.

Now the limits are clear, thanks to the case of Randy Wall, a Calgary real estate agent and long-time Jehovah's Witness whose "disfellowship" destroyed his client base and led him to seek redress in the courts. He did not dispute the right of the Highwood Congregation to banish him, but claimed they did so unfairly, without telling him detailed allegations, or whether he could have counsel or a record of proceedings.

The top court's decision rejects that view, bluntly refers to his "sinful" behaviour, and says it has no business making legal decisions about it.

At issue were two episodes of drunkenness, one in which Wall "verbally abused" his wife, for which he was not "sufficiently repentant," according to court records. The family was under great stress, stemming from the emotional troubles of their teenage daughter, who had similarly been disfellowshipped, leaving the parents in the strange position of being required by their religion to shun their own daughter. Wall said he was even pressured to evict her from their home.

He convinced a lower court it had the jurisdiction to hear his complaint, because it engaged his civil and property rights. The Alberta Court of Appeal agreed. But the Supreme Court has now said once and for all that the courts ought not to interfere in religious discipline.

To borrow an analogy used by a lower court judge in his case, a church is less like a public company that has to act fairly and more

like a "bridge club" that can pick and choose its members — or boot them out — at its own discretion.

Supreme Court Justice Malcolm Rowe borrowed this analogy in his reasons on behalf of the unanimous nine-judge court, one of the last cases under former chief justice Beverley McLachlin: "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."

The discipline panels of voluntary religious groups do not exercise state authority like, for example, a professional regulatory tribunal for doctors or dentists. They are not "public decision-makers" whose actions must

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be subject to judicial review, the court decided.

In this case, Wall has no fundamental right to be a member of the Highwood Congregation, so he does not have a right to procedural fairness in the decision whether to shun him. The group has no constitution or bylaws it must obey. The "disfellowship" may have spoiled his real estate business when other Jehovah's Witnesses refused to do business with him, but that is likewise not a matter for the courts.

Lastly, and most crucially, this was a dispute over ecclesiastical

issues, the court ruled. These cannot be decided by judges. How, for example, could a court of law evaluate the Highwood Congregation's finding that Wall was not repentant enough for his sins? There is no common law on this, and rightly so, the court found.

"Even the procedural rules of a particular religious group may involve the interpretation of religious doctrine, such as in this case. The courts have neither legitimacy nor institutional capacity to deal with contentious matters of religious doctrine," Rowe's decision reads.

The limits of court intervention in religious affairs have not always been so clear.

In 1992, the Supreme Court said churches must show procedural fairness, like any tribunal, and not just issue edicts from on high. That precedent, in which the top court sided with a man expelled from a Hutterite colony, is part of the reason, for example, why the United Church of Canada last year gave up its push to defrock the popular atheist minister Greta Vesper.

Courts are always reluctant to tread on religious freedoms, and have typically intervened in church disputes only after the complainant has exhausted all internal processes.

But once they have, the courts have often heard the appeals, sometimes finding that the internal processes are unfair. Courts have intervened, for example, over the unfair discipline of United Church ministers.

But now the bar is very much higher.

"The Supreme Court's ruling provides clarity to Canadians that neither courts nor governments can legally compel citizens to associate together unwillingly," said John Carpay, president of the Justice Centre for Constitutional Freedoms.

Wall could not be reached for comment. The case attracted many interveners, representing Muslims, Sikhs, various Christian groups, and civil liberties advocates.

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