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Alberta appeal court rules judges can overturn 'unfair' church edicts after man shunned by Jehovah's Witnesses



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The Court of Appeal building in Calgary, Alberta.

Stuart Gradon / Postmedia News file

Courts can overturn religious edicts when churches act unfairly, according to the Alberta Court of Appeal, which has allowed a Calgary real estate agent to challenge his shunning, or “disfellowship,” from a community of Jehovah’s Witnesses.

But the court’s decision was split, 2-1, as the dissenting judge decided the church is less like a public company and more like a private “bridge club,” which may choose whomever it pleases as a member. That means the case may now be appealed to the Supreme Court, which last addressed this issue 25 years ago when it sided with a man expelled from a Hutterite colony.

The case was brought by Randy Wall, a Jehovah’s Witness from 1980 until his expulsion in 2014, who claims the case against him was procedurally unfair.

Wall said he was not given details of the allegations against him or told how the discipline process works, nor was he told whether he could have counsel or whether there would be a record of the process.

Even though the daughter was a dependent child living at home, it was a mandatory church edict that the entire family shun aspects of their relationship with her

About half his client base in and around Calgary were Jehovah’s Witnesses, and after he was shunned, potential clients decided en masse to follow the ruling by refusing to do business with him.

He argued before a lower court judge that, because his civil and property rights were affected by the edict, the court could hear his application. The judge agreed, and the church’s appeal of that ruling has now failed, meaning his case will proceed.

The allegations against him were of two episodes of drunkenness, one in which he “verbally abused” his wife. The family was under significant stress at the time, 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.

“Even though the daughter was a dependent child living at home, it was a mandatory church edict that the entire family shun aspects of their relationship with her,” the majority decision reads. Wall said the family was even pressured to evict their daughter from their

home, which caused great distress in his family.

After a meeting with elders, Wall was told he was disfellowshipped because he was not “sufficiently repentant.”

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He appealed, and an appeal committee was formed of three elders from nearby congregations. He asked the court to reverse the decision and the emotional stress brought on by his daughter’s expulsion, but this appeal failed. Once again, he was judged to be insufficiently repentant.

Then he wrote to the Watch Tower and Bible Tract Society of Canada, the organizing body for Jehovah’s Witnesses, and got a reply in the form of a phone call from an elder who sat on both the first hearing and the appeal. This elder told him the decision would stand.

That led to his application for judicial review. Wall could not be reached for comment.

The new ruling in his favour will be relevant to other religious groups, which often deal with controversial expulsions of members or ministers. The United Church of Canada, for example, is seeking to defrock Greta Vosper because she is an atheist. And many Catholics are not in communion with their Church after, for example, divorce and secular remarriage.

But the idea of appealing religious edicts to a secular court is troublesome, and courts have been reluctant to intervene. Since the 1992 Supreme Court decision, they have done so only if the aggrieved party has exhausted all internal processes, or if those processes are unfair.

Courts have intervened against the United Church, for example, over ministers who were unfairly disciplined.

And in the 1992 case, over a man’s expulsion from a Hutterite colony and his refusal to return communal property, the Supreme Court of Canada ruled that members of religious groups must be given notice of the cause for their expulsion.

“It is insufficient merely to give notice that the conduct of a member is to be considered at a meeting,” the decision reads. “The member who is to be expelled must also be given an opportunity to respond to the allegations made against him.”

In his dissent, Justice Thomas Wakeling decided Wall “does not have a right to belong to the Highwood Congregation if its members do not want to associate with him.”

He found the congregation to be a private actor, with no statutory foundation or bylaws. It “makes no decisions that have any consequences for members of the public,” and so its decisions should not be subject to judicial review.

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