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## **ALBERTA APPEAL COURT AFFIRMS JURISDICTION TO REVIEW UNFAIR CHURCH DISCIPLINE**

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*By Esther S.J. Oh\**

### **A. INTRODUCTION**

In the decision of [\*Wall v Judicial Committee for the Highwood Congregation of Jehovah's Witnesses\*](#), released on September 8, 2016, a majority on the Alberta Court of Appeal followed a line of case law which affirm that courts have the legal jurisdiction to review decisions made by a religious organization where discipline or expulsion was carried out in a manner that does not reflect principles of natural justice. The Wall case involved expulsion of an individual from the membership of the Highwood Congregation of Jehovah's Witnesses in Alberta ("Congregation"), using procedures that the court found did not reflect principles of natural justice.

### **B. BACKGROUND FACTS**

In March 2014, Mr. Wall was provided with a brief letter from the Congregation requesting that he attend a meeting with the Judicial Committee of the Congregation. The letter only stated that his "alleged wrongdoing involves drunkenness" and the letter also stated "[w]e look forward to providing you whatever spiritual assistance we can", together with the logistical details for the meeting. At the meeting with the Judicial Committee, Mr. Wall admitted to having engaged in two incidents of drunkenness. After the meeting Mr. Wall was advised that he was "disfellowshipped" from the Congregation because the committee determined that he was not sufficiently repentant of his alleged wrongdoing. Mr. Wall appealed the decision and an Appeal Committee formed by the Congregation upheld the disfellowshipping of Mr.

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Wall for the same reasons provided by the Judicial Committee (i.e. that he was not sufficiently repentant). The decisions of the Judicial Committee and the Appeal Committee were brief and were communicated orally. Mr. Wall then sent a further letter of appeal to the Watch Tower and Bible Tract Society of Canada and was later advised by phone that the “Canadian Branch” of the church would not be overturning the decision of the Appeal Committee.

Mr. Wall had been a Jehovah’s Witness from 1980 until his expulsion in April 2014. He was also a realtor. Since Jehovah’s Witnesses are required to shun disfellowshipped members, Mr. Wall’s family and other Jehovah’s Witnesses were compelled to shun him. This resulted in alienation from his family and significant loss of clientele from his real estate business, many of whom were Jehovah’s Witnesses.

### **C. COURT FINDINGS**

After receiving the response from the national Jehovah’s Witness organization, Mr. Wall then commenced an application for judicial review over the decision to disfellowship him. A chambers judge concluded that the Alberta Court of Queen’s Bench had jurisdiction to hear the application. This decision was then appealed by the Congregation. A majority on the Court of Appeal affirmed that the Court of Queen’s Bench has the jurisdiction to carry out the judicial review. However, the appeal court decision was confined only to the issue of jurisdiction and no comments were made on the merits of Mr. Wall’s allegations of the breach of the rules of natural justice, which were to be addressed in a separate hearing.

In finding that Mr. Wall’s expulsion did not reflect principles of natural justice and thereby invoking the court’s jurisdiction to review the decision, the Court of Appeal noted that prior to Mr. Wall’s expulsion, he was not provided with the details of the allegations against him or an explanation of the discipline process that he would face. Mr. Wall was not advised whether he could retain counsel for purposes of the meeting with the Judicial Committee or whether there would be a record of the proceedings, nor did he receive a written reasons of both the Judicial Committee and the Appeal Committee. The Court of Appeal also noted that Mr. Wall appeared to have exhausted all avenues of appeal within the church prior to commencing legal action, so court jurisdiction to review the expulsion could also be found on that basis in accordance with applicable case law. Other elements of natural justice that were not specifically mentioned in the case, include providing an individual with an opportunity to speak to the allegations

being made against him or her within an impartial arena and providing a written summary of the allegations, with sufficient notice being provided before any hearing that may be scheduled.

## D. CONCLUDING COMMENTS

The Wall case serves as a reminder for charitable and non-profit organizations to carefully address any proposed disciplinary actions to be carried out on members, to ensure that the principles of natural justice and procedural fairness are complied with in any such proceedings.