

ARPA Canada applauds Supreme Court for recognizing limits of judicial authority

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Dear John,

With thanksgiving to God, ARPA Canada is pleased to share the news of a good judgement by the Supreme Court in the *Wall* case. We sent out this press release to our media contacts this morning. Take a look!

For immediate release from the Association for Reformed Political Action (ARPA) Canada

May 31, 2018

ARPA Canada applauds Supreme Court for recognizing limits of judicial authority

Can the decision of a church or religious body to expel a member be appealed to a civil court?

This question made its way up to the Supreme Court of Canada in [Wall v Judicial Committee of the Highwood Congregation of Jehovah's Witnesses](#). The Court's

decision was released today.

The lower court judge, Justice Wilson, and a majority at the Alberta Court of Appeal, answered the above question in the affirmative. However, the Supreme Court of Canada (SCC) unanimously reversed the lower courts' decisions.

The SCC reversed the lower courts for three reasons: 1) judicial review applies to public decision makers, which the Congregation is not, 2) there is no free-standing right to be treated fairly absent an underlying legal right, and 3) the ecclesiastical issues involved in this case are not justiciable – that is, they involve subject matter that is not appropriate for a court to decide.

The Association for Reformed Political Action (ARPA) Canada applauds the Supreme Court for clearly articulating the proper scope and limits of judicial review and the jurisdictional limits of civil courts. This case will stand as a clear precedent protecting the independence of religious bodies. It will also stand as a reminder to all judges of the virtue of judicial humility.

ARPA Canada's intervention at the Supreme Court

ARPA Canada was unique among interveners in this case in providing the Court with a deep historical and distinct theological perspective on the matter before it.

ARPA Canada also stood out among interveners in arguing that the Court did not need to apply section 2(a) of the *Charter* (religious freedom) or section 2(d) (freedom of association) to resolve the case, but could and should simply rely on longstanding principles that limit the jurisdiction of civil courts. The Supreme Court of Canada agreed (see especially paragraph 39 of the judgment).

In its judgment, the Supreme Court was unanimous in reaffirming that judicial review applies to state actors, not religious bodies or other non-state actors. Judicial review allows courts to surveil “lower tribunals” in order to ensure that those tribunals respect the rule of law, the Court writes in paragraph 13 of the judgment, but religious bodies are not lower tribunals vis-à-vis the courts, but outside their jurisdiction.

The applicant in this case, Randy Wall, made no legal claim against the church and listed no cause of action. Rather, he asked only for a court to reverse the Congregation's decision to disfellowship him. Mr. Wall's lawyers, however, argued that it shouldn't matter whether he had any discrete legal right at stake, because he had obviously been impacted emotionally and economically by the Congregation's decision.

ARPA Canada's Legal Counsel, John Sikkema, answered this argument in its oral submissions:

The Respondent argues ... that it would be strange for a court to review a decision that has a small impact on a property right but not to review a decision that has a major impact on one's familial or social life. But it is not strange at all. The property right is a legal right. The other interests consequentially affected by a church's decision may be emotional, social, or spiritual – and more important than property – but not legal.

ARPA Canada argued, in its written argument (factum):

A church membership or discipline decision is not subject to judicial review. Fundamental principles of Canadian government long preceding but affirmed by the *Canadian Bill of Rights* and the *Canadian Charter of Rights and Freedoms*, namely the supremacy of God and the rule of law, should be understood as limiting the judiciary's jurisdiction in such matters. The former principle signifies that the state is neither the highest authority nor the ultimate source of rights and freedoms. The latter means the state, including the judiciary, must have intelligible sources for and limits on its authority. The rule of law and church autonomy are not opposed here, as the Respondent argues, but in agreement.

In its oral arguments, ARPA Canada framed the main issue of the case this way:

Does the judiciary have the authority to decide who gets to become or remain a church member? Does the judiciary have authority to dictate how church discipline ought to be done or to supervise it? *Are these matters of civil or spiritual jurisdiction?*

And answered it this way:

We submit that both the civil government and churches have limited and distinct jurisdictions or spheres of authority. This basic distinction between civil and spiritual jurisdiction is a source of freedom and religious pluralism and a guard against civic totalitarianism. We submit that Church discipline is a spiritual matter falling within spiritual jurisdiction, not a legal matter falling within courts' civil jurisdiction.

ARPA Canada also brought the Court's attention to the confessional statements held to by many Reformed churches in Canada and across the world, namely the Belgic Confession and the Heidelberg Catechism. Both documents indicate that church discipline is the responsibility of the Church, which answers to Christ alone and is guided by the Word of God alone. Consequently, ARPA Canada explained

to the Court,

These documents raise questions about the church's ability to submit to any order of any civil court with respect to church discipline and exclusion from or inclusion in the sacraments.

In its written submissions, ARPA Canada referred the Court to leading scholars, such as the late Harold Berman, who wrote,

Perhaps the most distinctive characteristic of the Western Legal tradition is the coexistence and competition within the same community of diverse jurisdictions and diverse legal systems. [...] Legal pluralism originated in the differentiation of the ecclesiastical polity from secular polities.

And M.H. Ogilvie, who observed:

Although Canadian courts have [...] been required to come to grips with the implications of these changes, especially in Charter litigation, the fundamental assumptions on which the law relating to religious institutions has, for reasons of history, been based, remain Christian understandings of the relationship of civil and spiritual authority.

"We are pleased to see these foundational principles so directly applied and strongly reinforced by the Supreme Court of Canada's judgment in *Wall*," said John Sikkema, on behalf of ARPA.

ARPA Canada's written submissions are available [here](#) and its oral submissions are available [here](#).

Wall was ARPA Canada's fifth intervention in the Supreme Court of Canada.

The Association for Reformed Political Action (ARPA) Canada is a Christian advocacy organization, rooted in the Reformed theological tradition, with a mission to present a Christian perspective on legal and public policy issues to the government, including the courts.

For commentary on the lower courts' decisions, click [here](#).

Interview requests:

ARPA Canada legal counsel John Sikkema is available for comment via phone/email. To arrange an interview contact him directly at 416-992-9877 or John@ARPACanada.ca.

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