

The Confidentiality of Confessions to Officials of a Church

In April 2006, a warrant was issued allowing a police constable to search the Kingdom Hall of a Jehovah's Witnesses congregation in Courtenay, British Columbia. The constable was informed by one member of the Kingdom Hall that J.D. (also a member of that church and her step-father) had confessed to sexually abusing her. She reported to the constable that there was written documentation at the Church to support her complaint. The constable used the search warrant to obtain documents that had come out of the discussion sessions between J.D., the complainant and some Jehovah's Witness Elders, which are part of the Jehovah's Witness religious tradition. The question arose as to what extent the confidentiality of religious communications akin to those between confessor and priest are protected by law? In other words, what is the scope of religious privilege, and how is it determined?

When communications are privileged, it means that they enjoy a degree of confidentiality whereby individuals cannot be compelled to reveal their contents in court. The Court in this case held that to determine whether religious communications are privileged, the following criteria must be met:

1. The communications must originate in a confidence that they will not be disclosed.
2. This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties.
3. The relation must be one which the opinion of the community ought to be [carefully protected].
4. The injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.[1]

The first three criteria are usually easy to establish in religious privilege cases, and indeed were established in this case. But in the forth criteria is more problematic. In this case, the Court held that the "injury would inure to the relation by the disclosure of the communications is not greater than the benefit gained for the correct disposal of litigation for the alleged sexual abuse." [2] The judge felt that exposing sexual abuse had more importance to society's needs than did religious privilege. Therefore religious privilege did not attach to the confessions of sexual abuse in a confessional / church setting.

Sources:

- [*Jones v. British Columbia \(Attorney General\)*, \(2007\) BCSC 1455 \(CanLII\)](#).

[1] *Jones* at para 67.

[2] *Ibid* at para 69.