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Zoning bylaw clashes with Charter rights

Which law should take priority?

Cottages used for religious purposes

A judge of the Quebec Superior Court has ordered a congregation of orthodox Jews in the Laurentian village of Val-Morin to stop using two summer cottages as a communal house of prayer and religious school for their children.

The decision, which was released last month, is a classic contest over whether a municipal zoning bylaw can take priority over rights guaranteed in the Canadian Charter of Rights and Freedoms.

Val-Morin is a peaceful riverside village, where about 200 people in 40 families from an Outremont Jewish congregation spend their summers. Since the early 1980s, one of the riverside cottages has been used for the daily prayers of the group, and a second as a summer school for teaching religion to the children.

Most members of the congregation live in about 16 cottages scattered along wooded land beside the Riviere du Nord. Another half-dozen families live about 600 metres away, across the road in cottages in the community campground.

The group has never disputed that the two cottages being used for its religious purposes are located in an area zoned for residential purposes only.

Over the past 23 years, relations between the municipal leaders and the Congregation of the Followers of the Rabbis of Belz to Strengthen Torah have been strained, and marked with a history of complaints, warning letters, visits from building inspectors, a temporary injunction and other court proceedings.

Finally, in April 2003, the municipality started legal proceedings to force the congregation to stop using the cottages to pray and to educate their children. The allegation was that one cottage had been used for two hours a day in the summer as a synagogue and the other house as a place of religious learning and a playground for five hours daily.

At the trial last May, the Belz congregation was supported by the Canadian Jewish Congress, which acted as an intervenor in the proceedings. An inspector testified that the properties were not being used for residential purposes, and the congregation took no issue with that evidence.

Instead, the cottagers argued that the zoning bylaw was discriminatory and a violation of their fundamental rights under the Charter.

By law, every Canadian is guaranteed freedom of conscience and religion, peaceful assembly and association, but those rights are not absolute. According to the Charter, those rights are subject only to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

The village had repeatedly tried to get the congregation to convert the two cottages back to exclusive residential use and relocate their religious activities to a nearby campground it owns about a seven-minute walk away from the existing structures. The campground zoning permits non-residential, religious uses.

In court, the congregation argued it did not have the money to construct a synagogue and school on the campground. In addition, it said that much of the land was already in use as a baseball diamond and the rest was swampy and unsuitable for any other use.

In a nutshell, the case centred on the question of which law takes priority: the village zoning bylaw or the fundamental freedom of religion guaranteed in the Charter.

Were the restrictions in the zoning bylaw "reasonable limits" on the freedom of religion that were "demonstrably justified" in a free and democratic society?

The congregation argued that the small synagogue and school were only a "minor inconvenience" to the few residents of the area who are not part of the religious group.

Judge Benoit Emery rejected all the arguments of the Belz congregation and ruled in favour of the municipality on every point.

He stressed that the synagogue building could not fall under the definition of a residence since there are no sleeping accommodations or cooking facilities in it.

It's tempting to wonder what his decision would have been if there had been a bedroom and kitchen somewhere in the building.

This case is not the first dispute between a religious group and a Quebec municipality.

In 2004, the Supreme Court of Canada was faced with a dispute between the Jehovah's Witnesses and the village of Lafontaine. Two other church groups intervened in the case, along with the Canadian Civil Liberties Association.

In that case, the Supreme Court of Canada ruled that the municipality had not fairly considered the Witnesses' three requests to amend the zoning bylaw to allow it to build a new church in the village.

The court sent the request to change the bylaw back to the village, with instructions to consider it properly, based on the evidence and legal principles.

After the Val-Morin and Belz decision was released, congregation president Yankel Binet told *La Presse* that the municipality's actions amounted to "religious

bigotry," and said that if it was necessary to go to the Supreme Court of Canada, "we will go."

Does a house cease to be a residence because no one sleeps there? If prayers are held in a house, does that automatically make it a church, temple or synagogue?

Does the state have any place in the country's houses of worship?

Send your comments to me by fax at 416-364-3818, email to bob@aaron.ca, or mail to 1400 10 King St. E., Toronto, M5C 1C3.

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