

**IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA)**

BETWEEN:

**JUDICIAL COMMITTEE OF THE HIGHWOOD CONGREGATION OF JEHOVAH'S  
WITNESSES (VAUGHN LEE – CHAIRMAN AND ELDERS JAMES SCOTT LANG  
AND JOE GURNEY) AND HIGHWOOD CONGREGATION OF JEHOVAH'S  
WITNESSES**

**APPELLANTS  
(Appellants)**

– and –

**RANDY WALL**

**RESPONDENT  
(Respondent)**

– and –

**SEVENTH-DAY ADVENTIST CHURCH IN CANADA, CHURCH OF JESUS CHRIST  
OF LATTER-DAY SAINTS IN CANADA, CANADIAN COUNCIL OF CHRISTIAN  
CHARITIES, ASSOCIATION FOR REFORMED POLITICAL ACTION CANADA,  
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, CANADIAN  
CONSTITUTION FOUNDATION, CHRISTIAN LEGAL FELLOWSHIP,  
EVANGELICAL FELLOWSHIP OF CANADA, CATHOLIC CIVIL RIGHTS LEAGUE,  
WORLD SIKH ORGANIZATION OF CANADA AND JUSTICE CENTRE FOR  
CONSTITUTIONAL FREEDOMS, CANADIAN MUSLIM LAWYERS ASSOCIATION**

**INTERVENERS**

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**FACTUM OF THE INTERVENER  
CHRISTIAN LEGAL FELLOWSHIP**

*(Pursuant to Rule 42 of the Rules of the Supreme Court of Canada)*

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COUR SUPRÊME DU CANADA

## PARTS I AND II — OVERVIEW AND POSITION

1. Freedom of religious association is a cornerstone of democracy: “the autonomous existence of religious communities is indispensable for pluralism in a democratic society.”<sup>1</sup> Autonomous self-regulation of membership is, in turn, a cornerstone of religious association; it is a “group’s foremost freedom.”<sup>2</sup> The pre-eminence of church autonomy is affirmed in the first article of the *Magna Carta*, one of only three clauses which remains in force today.<sup>3</sup>
2. Courts in liberal democracies worldwide generally refuse to interfere with internal membership decisions of religious communities.<sup>4</sup> Canada is no exception. Common law jurisprudence limits court jurisdiction in such instances to matters engaging civil or property law rights, and even then, only to ensure that organizations follow their internal rules, with regard to the principles of natural justice.<sup>5</sup>
3. To go beyond this - for example, by reconsidering the merits of a decision or questioning the propriety of certain spiritual procedural requirements<sup>6</sup> - would be to unjustifiably interfere with the autonomy of religious communities and violate the principle of state neutrality.<sup>7</sup>
4. The decisions under appeal seem to represent a departure from this traditional common law approach.<sup>8</sup> The present appeal raises questions about the scope of a secular court’s

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<sup>1</sup> [\*Metropolitan Church of Bessarabia and Others v Moldova\*](#), No 45701/99, [2001] XII ECHR 81 at para 118 [*Bessarabia*].

<sup>2</sup> Jane Calderwood Norton, *The Freedom of Religious Organizations* (Oxford: Oxford University Press, 2016) at 29 [Norton] [Appellants’ BOA, Tab 11].

<sup>3</sup> [\*Magna Carta\*](#), 1297 (25 Edw 1 cc 1 9 29): “the Church of England shall be free, and have her whole Rights and Liberties inviolable.”

<sup>4</sup> See Wakeling J in [\*Wall v Judicial Committee of the Highwood Congregation of Jehovah’s Witnesses\*](#), 2016 ABCA 255 [“ABCA Reasons”], and discussion below.

<sup>5</sup> [\*Lakeside Colony of Hutterian Brethren v Hofer\*](#) [1992] 3 SCR 165 at 173-176; [\*Bruker v Marcovitz\*](#), 2007 SCC 54 at paras 130-131; [\*Pankerichan v Djokic\*](#), 2014 ONCA 709 at 54–55.

<sup>6</sup> See Appellants’ Record Tab 1, where the chambers judge framed the case as one in which he was asked to “direct that [Mr. Wall] become a member of the church” (71) and expressed bewilderment about the Appellant’s procedures, describing them as “mak[ing] no sense” (8), having “no logic” (68), and as a “crazy way to run a railroad” (68).

<sup>7</sup> See [ABCA Reasons](#), *supra* note 4 at para 122 (Wakeling J).

<sup>8</sup> See note 6, *supra* and the reasons of Wakeling J.

jurisdiction over the internal decisions of a voluntary religious organization, and particularly, the extent to which the *Charter* guarantees of freedom of religion and freedom of association protect against State interference with a religious community’s membership decisions.<sup>9</sup> This issue has not been definitively answered by this Court.<sup>10</sup>

5. A court tasked with the resolution of an issue it has not resolved before “must turn to first principles for guidance.”<sup>11</sup> Christian Legal Fellowship<sup>12</sup> submits that, in determining “first principles” in the instant matter, it is helpful to look to international law and jurisprudence.

6. As this Court has repeatedly affirmed, the *Charter*: (i) must be interpreted consistently with Canada’s international obligations and the relevant principles of international law;<sup>13</sup> and (ii) “should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified.”<sup>14</sup>

7. This Court’s interpretation of religious freedom and freedom of association, and of common law rules relating to internal religious disputes, ought to align with Canada’s international obligations and commitments. International jurisprudence rooted in these and other similarly worded instruments has consistently granted religious organizations a significant scope of autonomy, free of judicial interference, particularly in the context of membership decisions and self-definition. The instant appeal presents no reason to depart from these principles.

### **PART III — ARGUMENT**

#### **A. Canada’s international human rights obligations protect the autonomy of religious communities**

<sup>9</sup> [ABCA Reasons](#), *supra* note 4 at para 110–119 (Wakeling J); Appellants’ Factum at paras 37–38, 68–69.

<sup>10</sup> [ABCA Reasons](#), *supra* note 4 at para 110 (Wakeling J).

<sup>11</sup> [Valard Construction Ltd v Bird Construction Co](#), 2016 ABCA 249 at para 159.

<sup>12</sup> CLF is a national association comprised of over 700 legal professionals, academics, and judges, has Special Consultative Status with the Economic and Social Council of the United Nations, and has participated in numerous proceedings before Canadian and international courts.

<sup>13</sup> [Ontario \(Attorney General\) v Fraser](#), 2011 SCC 20 at para 92. See also [R v Hape](#), 2007 SCC 26 at para 55 [*Hape*]; [Saskatchewan Federation of Labour v Saskatchewan](#), 2015 SCC 4 at para 64.

<sup>14</sup> [Reference Re Public Service Employee Relations Act \(Alta\)](#), [1987] 1 SCR 313 at para 59 [*Public Employees Reference*]; see also [Health Services and Support – Facilities Subsector Bargaining Assn v British Columbia](#), 2007 SCC 27 at para 70 [*Health Services*].

8. As McLachlin CJ, Moldaver J, and Rothstein J affirmed in *Loyola*, “international human rights instruments recognize the communal character of religion and support the extension of constitutional protection to the organizations through which congregants worship and teach their faith.”<sup>15</sup> These instruments include:

a. the *Universal Declaration of Human Rights (UDHR)*, Article 18: “Everyone has the right to freedom of thought, conscience and religion”, and this freedom can be expressed “either alone or in community with others in public or private”;<sup>16</sup>

b. the *International Covenant on Civil and Political Rights (1966) (ICCPR)*, to which Canada is a signatory, Article 18: everyone has the “freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching;” Article 22: everyone has “the right to freedom of association with others”;<sup>17</sup>

c. the *European Convention on Human Rights (European Convention)*, which contains virtually identical provisions to the ICCPR’s Article 18 and Article 22.<sup>18</sup>

9. In addition, Canada is a member of the Organization of American States (OAS) and a party to the *American Declaration on the Rights and Duties of Man* which provides that everyone “has the right freely to profess a religious faith” and “has the right to associate with others to promote, exercise and protect his legitimate interests” including religious interests.<sup>19</sup>

10. Canada is also a participating member of the Organization of Security and Co-operation in Europe (OSCE) and has committed itself to following the *Vienna Concluding Document* (1989), which guarantees the right of religious communities to “organize themselves according to their own hierarchical and institutional structure” and “select, appoint and replace their personnel in accordance with their respective requirements and standards...”<sup>20</sup>

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<sup>15</sup> [Loyola High School v Quebec \(Attorney General\)](#), 2015 SCC 12 at para 96.

<sup>16</sup> [Universal Declaration of Human Rights](#), GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71.

<sup>17</sup> [International Covenant on Civil and Political Rights](#), GA Res 2200A (XXI), UNGAOR, 1966, Supp No 16, UN Doc A/6316 52.

<sup>18</sup> Council of Europe, [European Convention for the Protection of Human Rights and Fundamental Freedoms](#), as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, Article 9 (freedom of religion) and Article 11 (freedom of association).

<sup>19</sup> OAS, Inter-American Commission on Human Rights, [American Declaration of the Rights and Duties of Man](#), Res XXX, OAS/Ser.L/V/I.4, rev 9 (2003), Article III and Article XXII.

<sup>20</sup> OSCE, [Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-Operation in Europe](#) (1989) at para 16.4.

11. These instruments - which reflect not only international consensus but principles that Canada has itself committed to uphold<sup>21</sup> - and their interpretation by international tribunals provide important considerations to inform the interpretation of the *Charter*,<sup>22</sup> as well as in considering any developments to the common law.<sup>23</sup>

**B. International law affirms the communal/group aspects of religious freedom, which requires a wide scope of freedom to determine internal governance**

12. The European Court of Human Rights (ECtHR) has developed rich jurisprudence on religious group autonomy which is pertinent to the present appeal. While Canada is not a party to the *European Convention*, this Court has held that international law jurisprudence is a “relevant and persuasive” source for “the interpretation of the *Charter*’s provisions,”<sup>24</sup> and has referred to ECtHR decisions in considering the content and scope of *Charter* rights,<sup>25</sup> describing its case law as a “very valuable guide.”<sup>26</sup> Further, the ECtHR is a “scrupulous judicial body interpreting often-similar human rights protections”;<sup>27</sup> in this case, the relevant provisions of the *European Convention* are virtually identical to those in the *ICCPR* (to which Canada has acceded).<sup>28</sup>

13. The ECtHR has repeatedly affirmed that freedom of religion is exercised not just individually, but “in community with others, in public and within the circle of those whose faith one shares.”<sup>29</sup> Religious communities are therefore a necessary means by which individuals effectively exercise their rights to religious freedom: “participation in the life of the community is thus a manifestation of one’s religion, protected by Article 9 of the Convention.”<sup>30</sup>

<sup>21</sup> See [Health Services](#), *supra* note 14 at para 71.

<sup>22</sup> [Hape](#), *supra* note 13 at para 55; [Public Employees Reference](#), *supra* note 14 at para 59.

<sup>23</sup> See discussion in [Hape](#), *supra* note 13 at paras 35–39. See also [RWDSU v. Dolphin Delivery Ltd.](#), [1986] 2 SCR 573 at para 39 and [Baker v Canada \(Minister of Citizenship and Immigration\)](#), [1999] 2 SCR 817 at paras 69–70.

<sup>24</sup> [Public Employees Reference](#), *supra* note 14 at para 57.

<sup>25</sup> See, for example, [United States v Burns](#), 2001 SCC 7 at paras 52–53; [India v Badesha](#), 2017 SCC 44 at paras 47–51; [Alberta v. Hutterian Brethren of Wilson Colony](#), 2009 SCC 37 at 182 [[Hutterian Brethren](#)] (in dissent).

<sup>26</sup> [R v Pharmaceutical Society \(Nova Scotia\)](#), [1992] 2 SCR 606 at 636–67.

<sup>27</sup> Benjamin J. Oliphant, “[Interpreting the Charter with International Law: Pitfalls and Principles](#)” (2014) 19 APPEAL 105 at 126.

<sup>28</sup> See notes 17–18, *supra*.

<sup>29</sup> [Moscow Branch of the Salvation Army v. Russia](#), No 72881/01, [2006] XI ECHR 1 at para 58 [[Salvation Army](#)].

<sup>30</sup> [Hasan & Chaush v Bulgaria](#), No 30985/96 [2000] XI ECHR 117 [GC] at para 62 [[Hasan](#)].

Accordingly, the right to religious freedom must safeguard religious communities against unjustified State interference in their internal affairs:<sup>31</sup>

Where the organisation of the religious community is at issue, Article 9 [freedom of religion] of the *Convention* must be interpreted in the light of Article 11 [freedom of association], which safeguards associative life against unjustified State interference. Seen in this perspective, the believers' right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention. **Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is an issue at the very heart of the protection which Article 9 affords.**<sup>32</sup>

14. Protection of the religious community's organizational life requires the State to generally avoid interfering with decisions related to membership and its attendant qualifications and procedures. According to the ECtHR, the principles of state neutrality and church autonomy prohibit State actors "from obliging a religious community to admit new members or to exclude existing ones."<sup>33</sup> Interference with such decisions "would run counter to the freedom of religious associations to regulate their conduct and to administer their affairs freely."<sup>34</sup>

15. Similarly, the "right to freedom of association with others" guaranteed by Article 22 of the *ICCPR* includes the "collective negative freedom of an association to expel a member who has breached the terms of association."<sup>35</sup> It imposes an obligation on States *not* to interfere with associations, and to allow their members to "determine their statutes, structure and activities and make decisions without State interference."<sup>36</sup> In its definitive interpretation of the *ICCPR*, the UN's Human Rights Committee explains that "the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers."<sup>37</sup>

<sup>31</sup> *Ibid.* See also *Salvation Army*, *supra* note 29 at para 58.

<sup>32</sup> *Hasan*, *supra* note 30 at para 62 [emphasis added]; *Bessarabia*, *supra* note 1 at para 118.

<sup>33</sup> *Sindicatul "Păstorul cel Bun" v. Romania*, No 2330/09 [2013] V ECHR 41 [GC] at para 137 [*Sindicatul*].

<sup>34</sup> *Svyato-Mykhaylivska Parafiya v Ukraine*, No 77703/01 (14 June 2007) at para 146.

<sup>35</sup> Julian Rivers, *The Law of Organized Religions* (Oxford: Oxford University Press, 2010) at 39 [Appellants' BOA, Tab 12].

<sup>36</sup> *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, HR Council, 20<sup>th</sup> Sess, UN Doc A/HRC/20/27 at para 64.

<sup>37</sup> Human Rights Committee, General Comment 22, Article 18 (Forty-eighth session, 1993). *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc HRI/GEN/1/Rev.1 at 36 (1994).

16. The ECtHR has also held that, within religious organizations, individuals are not entitled to a “right to dissent.”<sup>38</sup> Respect for the autonomy of religious communities requires State actors to accept the right of such communities to respond in accordance with their own rules and interests to any internal disagreement that “might pose a threat to their cohesion, image or unity.”<sup>39</sup> It is therefore “not the task of the national authorities to act as the arbiter between religious communities and the various dissident factions that exist or may emerge within them.”<sup>40</sup>

17. Most “church autonomy” cases considered by the ECtHR involve discipline of members in leadership or ecclesiastical positions, rather than lay members such as the Respondent, and there is arguably an even greater case for judicial non-interference in the latter context, where members agree to submit to the spiritual authority and decision-making of religious leadership. Regardless, the principles espoused in the jurisprudence are relevant to, and provide compelling reasons for non-interference in, both contexts: “The ECtHR’s clearly stated position, and the absence of case law concerning membership admissions, indicate the vast freedom that religious organizations typically have to determine their own membership under the Convention.”<sup>41</sup>

### **C. Autonomous religious communities are a necessary social good**

18. International jurisprudence also provides helpful insight as to *why* this “vast freedom” is necessary. International thought on human rights provides a persuasive source for interpreting the scope of the *Charter*,<sup>42</sup> and within that body of thought there is growing consensus that the autonomous existence of religious communities is an important social good for at least three reasons: (i) it is necessary for the realization of individual freedom and personal autonomy; (ii) it facilitates the development and transmitting of religious beliefs between generations; and (iii) it is an indispensable element for genuine pluralism in a free and democratic society.

#### **i. Individual freedom and personal autonomy**

19. It may be tempting to frame disputes such as the present one as a contest between the vitality of a religious organization and individual autonomy. But this is conceptually wrong. The

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<sup>38</sup> *Sindicatul*, *supra* note 33 at para 137.

<sup>39</sup> *Ibid.* at para. 165.

<sup>40</sup> *Ibid.*

<sup>41</sup> Norton, *supra* note 2 at 32.

<sup>42</sup> *Health Services*, *supra* note 14 at para 78.

vitality of religious organizations is itself a necessary precondition to the realization of individual autonomy - the two social goods are symbiotic, not antithetical:

Without the infrastructure provided by religious organizations, a person cannot pursue a religious way of life. If a person does not have the option of a religious way of life then they do not have an adequate range of options from which to live an autonomous life. **Harm to religious organizations therefore results in harm to personal autonomy.**<sup>43</sup>

20. When a member is asked to leave a community, theirs is not the only autonomy consideration engaged. The autonomy of the group's existing members to live out their religious way of life in community together is undermined if the State dictates how they can determine their membership.<sup>44</sup> To harm group autonomy is to harm individual autonomy.

21. This is reflected in the ECtHR's repeated affirmation that autonomy for religious communities "directly concerns not only the organisation of the community as such but also the effective enjoyment of the right to freedom of religion by all its active members" and that "were the organisational life of the community not protected by Article 9 of the Convention, all other aspects of the individual's freedom of religion would become vulnerable."<sup>45</sup>

22. Membership decisions lie at the core of group autonomy, since the very character of the organization is determined by its composition. Discipline or expulsion of members is essential to the group's self-definition - it enables the group to ensure that all members are acting in mutual interest and with shared goals, ideals, and commitments. As the ECtHR has held, the ability to "act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning."<sup>46</sup>

23. State interference in a religious community's decisions related to membership composition therefore harms the *individual's* religious freedom - and ultimately individual autonomy - by "altering the character of the organization by which they pursue a religious life. Without a religious group's ability to self-define, the option of a religious life is meaningless."<sup>47</sup>

## ii. Developing and transmitting religion between generations

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<sup>43</sup> Norton, *supra* note 2 at 38 [emphasis added].

<sup>44</sup> *Ibid* at 45.

<sup>45</sup> *Hasan*, *supra* note 30 at para 62.

<sup>46</sup> *Salvation Army*, *supra* note 29 at para 59.

<sup>47</sup> Norton, *supra* note 2 at 39.



24. Religious communities are not merely “aggregations of like-minded individuals who come together to exercise pre-existing beliefs with those who share their view”; rather, they “play an essential role in shaping the beliefs that individuals hold as they teach and transmit ideas from one generation to the next, and they are also the vehicles for the formation and development of religious doctrine.”<sup>48</sup> In this regard, the autonomous existence of religious communities is necessary not only to protect the individual religious freedom of their members, but to ensure the continuation of the religion itself.

25. The right to transmit religious beliefs from one generation to the next is expressly protected under Canada’s international human rights obligations. As this Court recognized in *Loyola*, the *ICCPR* protects the liberty of parents and legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.<sup>49</sup> Nearly identical wording is contained in the *International Covenant on Economic, Social and Cultural Rights*, to which Canada acceded in 1972.<sup>50</sup> This Court has included both of these documents in its list of “the sources most important to the understanding of s. 2(d) of the *Charter*.”<sup>51</sup>

26. This Court has also affirmed that the *Charter* protects “the right of parents to bring up their children in their faith.”<sup>52</sup> In order to do so, believers require religious communities. As LeBel J. observed, “Religion is about religious beliefs, but also about **religious relationships**.”<sup>53</sup> This necessitates “a community that shares a common faith and a way of life that is viewed by its members as a way of living that faith and of **passing it on to future generations**.”<sup>54</sup>

27. Religion is developed by “persons in community as group members work together to interpret, refine and reform inherited beliefs and formulate new ones.”<sup>55</sup> When the State interferes with the autonomy of these communities, particularly as it relates to the composition of

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<sup>48</sup> Kathleen Brady, “Religious Group Autonomy: Further Reflections about What Is at Stake” (2006) 22 J L & Religion 153 at 156 [BOA Tab 1].

<sup>49</sup> *Loyola*, *supra* note 15 at para 65.

<sup>50</sup> *International Economic Covenant on Economic, Social and Cultural Rights*, GA Res 2200A (XXI), UNGAOR, 1966, Supp No 16, UN Doc A/6316 49.

<sup>51</sup> *Health Services*, *supra* note 14 at para 71.

<sup>52</sup> *SL v Commission scolaire des Chênes*, 2012 SCC 7 at para 50, citing *B(R) v Children’s Aid Society of Metropolitan Toronto*, [1995] 1 SCR 315, at para 105, *per* La Forest J).

<sup>53</sup> *Hutterian Brethren*, *supra* note 25 at 182 (in dissent, but not on this point) [emphasis added].

<sup>54</sup> *Ibid* [emphasis added].

<sup>55</sup> Brady, *supra* note 48 at 156.

the group, it meddles with the “very process of forming the religion as it will exist in the future.”<sup>56</sup> This interference not only disrupts “the free development of religious doctrine”<sup>57</sup> in violation of state neutrality, but undermines one’s freedom to live a religious way of life and the ability to pass it on to future generations. Respecting a religious community’s autonomy, conversely, “preserves this option of a religious way of life by enabling a group to self-define according to religion.”<sup>58</sup>

28. The importance of religious association for preserving religious culture and identity has been stressed by the ECtHR, particularly in the context of minority faiths:

[F]reedom of association is particularly important for persons belonging to minorities [...] “a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity”. Indeed, forming an association in order to express and promote its identity may be instrumental in helping a minority to preserve and uphold its rights.<sup>59</sup>

### iii. Pluralism in a democratic society

29. Religious communities are not only essential elements for the realization of individual autonomy; they are themselves intrinsic social goods that produce benefits for the larger community.<sup>60</sup> Their existence is necessary to the proper functioning of democracy itself.<sup>61</sup>

30. Religious communities play an indispensable role in creating and maintaining the social conditions necessary for the free development of citizens’ diverse beliefs and opinions,<sup>62</sup> without which “freedom of thought” guaranteed by the *UDHR*, *ICCPR*, and s. 2(b) of the *Charter* would

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<sup>56</sup> Douglas Laycock, “Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy” (1981) 81 Colum L Rev 1373 at 1391 [BOA Tab 2].

<sup>57</sup> *Ibid* at 1392, citing *Presbyterian Church v Mary Elizabeth Blue Hull Presybyterian Church* (1969), 393 US 440 at 449

<sup>58</sup> Norton, *supra* note 2 at 39.

<sup>59</sup> *Gorzelik and Others v Poland*, No 44158/98 [2004] I ECHR 219 [GC] at para 93 [*Gorzelik*].

<sup>60</sup> See discussion in Brady, *supra* note 46 at 157–159.

<sup>61</sup> *Bessarabia*, *supra* note 1 at paras 115–116; See also *Views under article 5, paragraph 4, of the Optional Protocol*, UNHRC, 90<sup>th</sup> Sess, Annex, UN Doc CCPR/C/90/D/1296/2004 (2007) at para 7.3.

<sup>62</sup> Brady, *supra* note 48 at 163–166

be meaningless. These freedoms are, in turn, “essential for the development of new and valuable ideas, including for social and political life.”<sup>63</sup>

31. The ECtHR has repeatedly held that “the autonomous existence of religious communities is indispensable for pluralism in a democratic society” and that interfering with religious associations *harms* rather than promotes a democratic society.<sup>64</sup> This is consistent with the jurisprudence of this Court, and s. 27 of the *Charter*, which affirm Canada’s commitment to preserve a pluralistic society “in which the diversity and richness of various cultural groups is a value to be protected and enhanced.”<sup>65</sup> As the ECtHR has held:

For pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs [...] The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. [...] **[W]here a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively.**<sup>66</sup>

32. International law overwhelmingly affirms the fundamental freedom of religious groups to determine their own membership, free of State interference.<sup>67</sup> This freedom is necessary to protect the autonomy of believers, the proper functioning of religious institutions, and even democracy itself.<sup>68</sup> It should be not be undermined by expanding courts’ jurisdiction beyond their limited role currently permitted by Canadian law, as delineated by Wakeling J.

#### **PARTS IV AND V: SUBMISSIONS CONCERNING COSTS AND ORDER SOUGHT**

33. CLF requests that no costs be awarded either for it or against it. CLF takes no position on the disposition of the appeals.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 4th day of October, 2017

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**Counsel for the Christian Legal Fellowship**

<sup>63</sup> *Ibid* at 155.

<sup>64</sup> *Hasan*, *supra* note 30 at paras 62, 78; *Leyla Sahin v Turkey*, No 44774/98, [2005] XI ECHR 173 [GC] at para 107.

<sup>65</sup> *R v Keegstra*, [1990] 3 SCR 697 at 757

<sup>66</sup> *Gorzelik*, *supra* note 59 at para 92 [emphasis added]; *Salvation Army*, *supra* note 29 at para 61

<sup>67</sup> See also *Károly Nagy v Hungary*, No 56665/09 (14 September 2017) [GC].

<sup>68</sup> *Holy Synod of the Bulgarian Orthodox Church and Others (Metropolitan Inokentiy) v Bulgaria*, Nos 412/03 and 35677/04 (16 September 2010)

**PART VI — TABLE OF AUTHORITIES**

<b><u>Source</u></b>	<b><u>Paragraph(s) in Factum</u></b>
<b><u>Case Law</u></b>	
<b><i>Canada</i></b>	
1. <a href="#"><i>Alberta v. Hutterian Brethren of Wilson Colony</i></a> , 2009 SCC 37	12, 26
2. <a href="#"><i>Baker v Canada (Minister of Citizenship and Immigration)</i></a> , [1999] 2 SCR 817	11
3. <a href="#"><i>Bruker v Marcovitz</i></a> , 2007 SCC 54	2
4. <a href="#"><i>Health Services and Support – Facilities Subsector Bargaining Assn v British Columbia</i></a> , 2007 SCC 27	6, 11, 18, 25
5. <a href="#"><i>India v Badesha</i></a> , 2017 SCC 44	12
6. <a href="#"><i>Loyola High School v Quebec (Attorney General)</i></a> , 2015 SCC 12	8, 25
7. <a href="#"><i>Ontario (Attorney General) v Fraser</i></a> , 2011 SCC 20	6
8. <a href="#"><i>Pankerichan v Djokic</i></a> , 2014 ONCA 709	2
9. <a href="#"><i>R v Hape</i></a> , 2007 SCC 26	6, 11
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