Court of Appeal File No. C63149

COURT OF APPEAL FOR ONTARIO

BETWEEN:

E.T.

Applicant
Appellant in the Appeal

and

HAMILTON-WENTWORTH DISTRICT SCHOOL BOARD

Respondent
Respondent in the Appeal

and

ATTORNEY GENERAL OF ONTARIO, ELEMENTARY TEACHERS' FEDERATION OF ONTARIO, and CHRISTIAN LEGAL FELLOWSHIP
(Appeal to be heard June 26, 2017)

Interveners

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PART I: OVERVIEW

1. Can the state force children to participate in classroom activities that violate their religious beliefs so that other students will not be discomforted by their absence?

2. That is a central question raised by this appeal, which requires a careful examination of how, and to what extent, religious minorities can participate in public life: in this case, within a public elementary school. The outcome of this appeal will impact how decision makers accommodate religious freedom in the context of the public education system.

3. If public schools are truly open, accepting, and inclusive of all pupils, this must include the Appellant E.T. and his children, regardless of their religious beliefs. Yet E.T. has been told by the Respondent School Board ("the Board") and the court below that he ought to accommodate himself and his children by homeschooling or enrolling them in private religious schools. Thus, the message of diversity and inclusion, which, according to the Board, is woven throughout the Ontario curriculum, extends only so far as there is full agreement on the content of that curriculum.

4. A proper resolution of the issues raised in this appeal requires an examination of the scope and weight to be afforded to *Charter* values in the administrative decision making process. Particularly, it is necessary to examine the extent to which new *Charter* values can be identified by a reviewing court and employed as a counterweight to a claimant's *Charter* rights in a balancing analysis. The Board's violation of E.T.'s *Charter* rights was upheld in part by the Application Judge in the name of the *Charter* values of "inclusivity, multiculturalism, and equality". The result is inconsistent and unfair: religious minorities such as the respondent E.T. and his children are forced to participate in activities that conflict with their sincerely-held religious beliefs while students who align with

majoritarian views are shielded from even the inference of a dissenting viewpoint so that they are not made to feel uncomfortable.

5. Christian Legal Fellowship ("CLF") submits that it is inappropriate to subordinate constitutionally entrenched and carefully defined *Charter* rights to subjective and uncertain *Charter* values as occurred in the decision under appeal. The role of *Charter* values in judicial reasoning has rightly been, and should continue to be, carefully circumscribed.

PART II: FACTS

6. E.T. is a member of the Greek Orthodox Church and believes that his children's participation in certain elementary school classes would be contrary to the teachings of their faith, including classes that promote certain conceptions of marriage and human sexuality. The Application Judge affirmed that compelling E.T.'s children to attend such classes would infringe freedom of religion under section 2(a) of the *Charter*.

E.T. v Hamilton-Wentworth District School Board, 2016 ONSC 7313,
Respondent's Book of Authorities (RBA), Tab 1 at paras 5-8, 59-63, 77-82 [*E.T.*]

7. E.T. asked the Board for religious accommodation whereby the Board would notify him in advance when certain subjects were to be taught so that he could remove his children from classes should they contradict their sincerely held religious beliefs. The Board refused this request. It maintains that logistical challenges associated with accommodation are too burdensome, but even if it were practically feasible, the Board would still refuse to accommodate. The Board maintains that the absence of E.T.'s children from certain classes would in itself create a risk of discrimination for other students to the extent that it would send a message that "there is something wrong" with what is being taught;

according to the Board, compelling E.T.'s children to participate in the classes is necessary to "encourage a positive school climate".

E.T., RBA, Tab 1, at paras 3, 9, 64-67, 70, 74-75
Respondent Board's Factum at paras 4-6; 86, 88

8. The Application Judge agreed that allowing parents to isolate their children from certain aspects of the curriculum, even those that violate their religious beliefs, would be "antithetical to the competing legislative mandate and *Charter* values favouring inclusivity, equality and multiculturalism". Thus, the issues raised in this appeal transcend the specific facts of this case. The question is not just whether E.T.'s particular request can be accommodated but whether compelled participation in classes which endorse and celebrate a particular state-approved conception of topics such as sexuality, marriage, and gender can be justified in a free and democratic society and, specifically, in the name of *Charter* values.

E.T., RBA, Tab 1 at para 100

PART III: ISSUES, LAW, AND ARGUMENT

9. As explained by Justices Lauwers and Miller of the Ontario Court of Appeal in *Gehl v Canada*, the role that *Charter* values can play in judicial reasoning has been, and should continue to be, carefully circumscribed for many reasons. A party who raises a *Charter* argument is entitled to a judicial determination as to whether that *Charter* right has been violated. While the state actor must have the opportunity to argue that limitations on that right are justified, an appeal by it to *Charter* values must not pre-empt a robust *Charter* rights analysis necessary to that judicial determination.

Gehl v Canada (Attorney General) 2017 ONCA 319, Christian Legal Fellowship's Book of Authorities (CLFA), Tab 1 at para 78 [*Gehl*]

10. Whether the analytical framework comes from *Oakes* or from *Doré*, the basic

constitutional requirement to justify a *Charter* infringement is the same: the infringement must minimally impair the *Charter* right(s). The decision below did not engage in a minimal impairment analysis but substituted it with an appeal to "competing" legislative and *Charter* values.

Loyola High School v Quebec (Attorney General) 2015 SCC 12, Appellant's Book of Authorities (ABA), Tab 2 at para 113 [*Loyola*]
E.T., RBA, Tab 1 at paras 88, 90, 92, 93, 99, 100, 103, 104

11. In this appeal, both parties have adopted a *Doré* framework for analysis. The *Doré* test obligates the Board to act in a manner that best protects the *Charter* right(s) at issue in view of its statutory objectives, taking into account the severity of the *Charter* interference, an analysis akin to the *Oakes* test. Indeed, the *Doré* proportionality analysis is "a robust one and 'works the same justificatory muscles' as the *Oakes* test". Proportionate balancing is not a guessing game or an approximation; it must give effect "as fully as possible to the *Charter* protections at stake".

Loyola, ABA, Tab 2 at paras 39-40
Doré v Barreau du Québec, [2012] 1 SCR 395, ABA, Tab 1 at paras 5, 57 [*Doré*]

12. It is submitted that this proportionality analysis was not properly conducted by the Board. E.T's and his children's *Charter* rights were severely impacted, and wrongly brushed aside in the name of allegedly competing legislative and *Charter* "values". The nature of the *Charter* right to religious freedom is explored below, followed by an examination of the problematic nature of "balancing *Charter* values" as a proportionality analysis. Finally, a proposed analytical framework that avoids the pitfalls of a "*Charter* values" analysis is set out and applied, demonstrating the unreasonableness of the Board's decision.

A. The impact on Freedom of Religion is severe

13. In this case, while the Respondent and its supporting interveners dispute whether religious

freedom is infringed, the Application Judge was satisfied that the interference with E.T.'s religious freedom was not trivial or insubstantial, noting that "it is not the role of the court to go behind [E.T.'s] assertion that it is sinful for him to allow his children to be exposed to 'false teachings'". The judgment goes on to explain that E.T. "demonstrated that his religious tenets are significantly at odds with numerous aspects of the Board's Equity Policy, including, but not solely, as regards sexual orientation."

E.T., RBA, Tab 1 at paras 80-81

14. Religion is "comprehensive" in that it permeates an individual in such a way as to mould and define the moral framework that guides conduct and shapes the way in which people think, perceive, and explain questions of fundamental importance.

Syndicat Northcrest v Amselem, 2004 SCC 47, Attorney General's Authorities (AGA), Tab 3 at para 39 [*Amselem*]
Mouvement laique québécois v Saguenay (City), 2015 SCC 16, RBA, Tab 8 at para 73 [*Saguenay*]

15. The purpose of protecting religious freedom is to "ensure that society does not interfere with profoundly personal beliefs that govern one's perception of oneself, humankind, nature, and, in some cases, a higher or different order of being. These beliefs, in turn, govern one's conduct and practices". The right to hold beliefs about humankind and nature include beliefs about the nature of human sexuality, morality in general, and sexual morality specifically. To define religious freedom as the right to hold beliefs but not form a moral framework based on those beliefs is nonsensical.

R v Edwards Books and Art Ltd, [1986] 2 SCR 71, Elementary Teachers' Federation of Ontario Book of Authorities (FBA), Tab 2 at para 97 [*Edwards Books*]

16. Another important component of freedom of religion is the ability of parents to pass on their beliefs to their children, a principle which has been recognized by the Supreme Court of Canada and in international human rights instruments.

Loyola, ABA, Tab 2 at paras 64-65
International Covenant on Civil and Political Rights, GE Res 2200A (XXI), UNGAOR, 23 March 1976, No 14668

17. E.T. has demonstrated that failure to accommodate will substantially interfere with his and his children's ability to "engender a personal, subjective connection to the divine". As the Supreme Court explained, "freedom of religion protects against the compulsory celebration of same-sex marriages"; similarly, freedom of religion also protects against the compulsory celebration of same-sex relationships.

Amselem, AGA, Tab 2 at para 69
Reference re Same-Sex Marriage, 2004 3 SCR 698, CLFA, Tab 2 at para 59 [*Marriage Reference*]

18. By refusing accommodation, the Board is compelling participation in the affirmation and celebration of a particular view of humankind and nature that directly conflicts with E.T.'s and his children's religious beliefs. Compelling students of minority religious communities to participate in exercises which violate their sincerely held beliefs is an attempt to indoctrinate them towards, or at the very least, to pressure them to conform to, the majority's norms. Neither approach is constitutionally acceptable.

Zylberberg v Sudbury Board of Education (Director), 1988 CanLII 189 (ONCA), FBA, Tab 6 at para 39 [*Zylberberg*]
Canadian Civil Liberties Assn v Ontario (Minister of Education), [1990] OJ No 104 (ONCA), CLFA, Tab 3 at para 130

19. The violation of E.T.'s *Charter* right to freedom of religion was upheld by the Application Judge on the basis that the Board's decision not to accommodate was reasonable in light of its "legislative mandate and *Charter* values favoring inclusivity, equality and multiculturalism". CLF submits that for the reasons discussed below, this employment of "values" language is problematic, and must be replaced with a more rigorous analytical framework as demanded by section 1 of the *Charter*.

E.T., RBA, Tab 1 at para 100

B. Problems with a "*Charter* values" analysis: it inappropriately requires courts to engage primarily in moral prioritizing rather than rights adjudication

20. A secular state safeguards religious minorities by remaining neutral with respect to religious issues and by encouraging "everyone to participate freely in public life regardless of their beliefs". This principle of state neutrality has developed alongside a growing sensitivity toward religious diversity and the need to *protect* religious minorities. Pursuing diversity means "respecting the right to hold and manifest different religious beliefs". A secular state respects religious differences; it does not seek to extinguish them. Neutrality therefore does not mean the purging of "religiously informed moral consciences from the public sphere" nor does it mean that the state has a "secularizing mission".

Saguenay, RBA, Tab 8 at para 75
Loyola, ABA, Tab 2 at para 43

21. State neutrality ensures that the state does not use the *Charter* as "a blueprint for moral conformity". The purpose of the *Charter* "is to protect the citizen from the power of the state, not to enforce compliance by citizens or private institutions with the moral judgments of the state".

Trinity Western University v Nova Scotia Barristers' Society, 2015 NSSC 25, CLFA, Tab 4 at para 10

22. The Attorney General argues that it would be "harmful to the right of other students to feel accepted and welcomed if they, as would be likely, learned the reasons why the Applicant's children were not attending school" and that this would "undermine the Board's message that it is important to accept, welcome, and celebrate diversity". Similarly, the Board argues that accommodating E.T.'s request would "directly impact the ability of Ontario public schools to provide students with a positive, inclusive, and

supportive educational environment". These two statements characterize E.T.'s constitutionally protected religious beliefs as inherently negative, harmful, and antithetical to the educational environment.

Attorney General of Ontario's Factum at paras 53, 59
Respondent Board's Factum at para 6

23. These statements by the Attorney General and the Board are not neutral. There is clearly a prioritizing of certain moral judgments in this instance. As discussed in the Appellant's factum and further below, there is no evidence to show the existence of any harm in this case, let alone harm to the point that it overrides a *Charter* protected freedom. But when a test is framed in terms of "balancing values" it allows decision makers to weigh moral priorities in the abstract rather than make legal determinations based on evidence.

C. Problems with a "*Charter* values" analysis: it undermines a robust legal analysis, removing evidentiary requirements and introducing uncertainty

24. As Justices Lauwers and Miller recently explained, there are a number of reasons why a "*Charter* values analysis should be avoided where possible":

> *Charter* values lend themselves to subjective application because there is no doctrinal structure to guide their identification or application […] [I]t must be noted that they are not a discrete set, like *Charter* rights, which were the product of a constitutional settlement and are easily ascertained by consulting a constitutional text […] With respect to their operation in judicial reasoning, problems can arise from a lack of clarity about the subordinate relationship of *Charter* values to *Charter* rights, the plurality of *Charter* values, and their uncertain relationship to each other and to constitutional and common law principles. Unlike *Charter* rights, which are largely negative and will thus rarely conflict, multiple *Charter* values can simultaneously apply in a given dispute, and can easily be in conflict.
>
> *Gehl*, CLFA, Tab 1 at paras 79-83

25. In the case at hand, there is one claimant, E.T., who has met the evidentiary and legal thresholds by demonstrating that he holds a sincere belief that has a nexus with religion, and that his belief is violated in a manner that is more than trivial or insubstantial. There is

no other party with a competing constitutional right. While the Application Judge referenced other students who might feel uncomfortable if E.T.'s children were permitted to opt-out, there was no evidence that this was the case.

Appellant's Factum at paras 41, 92, 105

26. *Charter* values were invoked to prioritize these hypothetically competing interests, but courts should not make a determination based on *Charter* values where to do so effectively short-circuits a thorough constitutional analysis based on a proper evidentiary record. The Supreme Court has emphasized that *Charter* decisions must not be made in an evidentiary vacuum, especially those that have the potential to profoundly affect the lives of Canadians (including religious freedom cases):

> *Charter* cases will frequently be concerned with concepts and principles that are of fundamental importance to Canadian society […] Decisions on these issues must be carefully considered as they will profoundly affect the lives of Canadians and all residents of Canada. In light of the importance and the impact that these decisions may have in the future, the courts have every right to expect and indeed to insist upon the careful preparation and presentation of a factual basis in most *Charter* cases […] *Charter* decisions should not and must not be made in a factual vacuum. To attempt to do so would trivialize the *Charter* and inevitably result in ill-considered opinions. The presentation of facts is not, as stated by the respondent, a mere technicality; rather, it is essential to a proper consideration of *Charter* issues.
>
> *MacKay v Manitoba*, [1989] 2 SCR 357, CLFA, Tab 5 at paras 8-9

27. Prioritizing hypothetical third-party interests such as a sense of inclusion, comfort, and innocuousness (which are not *Charter* rights and have no foundation in evidence) above real and significant *Charter* rights violations (which are clearly grounded in the evidence) is an improper application of *Charter* values. As Justice Abella emphasized in her concurring reasons in *R v. Gomboc*:

> [*Charter* values] cannot be used as a freewheeling *deus ex machina* to subvert clear statutory language, or to circumvent the need for direct *Charter* scrutiny with its attendant calibrated evidentiary and justificatory requirements.

R v Gomboc, 2010 SCC 55, CLFA, Tab 6 at para 87

The incoherence of pitting Charter "values" against Charter "rights"

28. The *Charter* is not an inherently inconsistent instrument. The concept of a *Charter* value – whatever the context – must recognize *Charter* rights and freedoms as inherent components. It is conceptually incongruent to recognize that a *Charter* right requires one thing but the values underlying the *Charter* could somehow be read to require the exact opposite. Yet that is the outcome of the decision under review, which recognizes that compelled attendance in classes violates section 2(a), but religious accommodation is "antithetical to the competing legislative mandate and *Charter* values favoring inclusivity, equality and multiculturalism". Such reasoning suggests that the *Charter* right of religious freedom is inherently in conflict with other *Charter* values. This is simply illogical.

E.T., RBA, Tab 1 at para 100

29. Rather than pitting *Charter* rights against *Charter* values, as if they are competing counter-weights on a scale, they should be understood as conceptually harmonious. It is in *keeping* with the values underlying the *Charter* to protect *Charter* rights and freedoms, particularly freedom of religion for religious minorities. *Charter* values operate to assist in understanding *Charter* rights, not to limit them. As Justice Bastarache wrote: "*Charter* values are an important concept that may help to form a *Charter* right, but they cannot be invoked to modify the wording of the *Charter* itself." In the same way, *Charter* values should not be invoked to "override" *Charter* rights, which, unlike values such as "inclusivity", are explicitly enumerated in the text of the Constitution.

Gosselin v Quebec (Attorney General), 2002 SCC 84, CLFA, Tab 7 at para 203

Charter values inject indeterminacy and undermine legal certainty

30. As Justices Lauwers and Miller observed in *Gehl*:

> [The use of *Charter* values] injects a measure of indeterminacy into judicial reasoning because of the irremediably subjective – and value laden – nature of selecting some Charter values from among others, and of assigning relative priority among Charter values and competing constitutional and common law principles. The problem of subjectivity is particularly acute when Charter values are understood as competing with Charter rights.
>
> *Gehl*, CLFA, Tab 1 at para 79

31. In the present case, the "right" of hypothetical individuals to feel comfortable and affirmed in class was first elevated to the status of a *Charter* value and then balanced on equal footing with the *Charter* right to not be compelled to participate in activities that violate sincerely held religious beliefs. The former was found to outweigh the latter. The court could just as easily, however, prioritized as a *Charter* value the parental right to "make the decisions they deem necessary to ensure the well-being and moral education of their children", as did the minority decision of the Supreme Court in *Chamberlain*.

Chamberlain v Surrey School District No. 36, 2002 SCC 86, AGA, Tab 7 at para 79

32. This demonstrates the problematic and uncertain nature of "values balancing": it is inherently subjective, and means that any outcome which could be linked to the expression of a "*Charter* value" could almost always be justified. Indeed, "the amorphous character of *Charter* values is in fact more likely to result in policy decisions that reflect the subjective values of decision makers, whatever those decisions may be."

Matthew Horner, "Charter Values: The Uncanny Valley of Canadian Constitutionalism" (2014) 67: 2 SCLR 361, CLFA, Tab 10 at para 80 [Horner]

D. Applying a Proper, More Rigorous Analytical Framework

33. It is submitted that a more helpful, coherent approach would be for a reviewing court to first consider whether, based on the facts, a decision maker's exercise of discretion violates a claimant's *Charter* rights, as was done in the decision below. But then, instead of asking whether there are other "competing *Charter* values" that might be served by – and

arguably justify – the *Charter* rights violation, the focus should be on the violation itself, and whether it is reasonable and proportionate in the circumstances. This moves the analysis away from resolving conflicts in the abstract to one that is properly grounded in the fact-specific context of the claim,

34. Specifically, before "*Charter* values" should even be considered, decision makers must examine whether a claimant's *Charter* rights have been minimally impaired. The "minimal impairment" criterion was not removed by *Doré,* which, as Justice Abella affirmed, "works the same justificatory muscles as the *Oakes* test". Chief Justice McLachlin synthesized the various analytical approaches under section 1 with this summary in her concurring reasons in *Loyola*:

> The *Charter* requirement that limits on rights be reasonable and demonstrably justified may be expressed in different ways in different contexts, but the basic constitutional requirement remains the same […] However one describes the precise analytic approach taken, the essential question is this: did the Minister's decision limit Loyola's right to freedom of religion proportionately — *that is, no more than was reasonably necessary*?
>
> *Loyola*, ABA, Tab 2 at paras 113-114 [emphasis added]

35. As articulated above, and affirmed by the Application Judge, E.T.'s religious freedom was violated by the Board's decision. The core issue, then, is whether the Board's insistence on E.T.'s children's participation in all classroom activities violated their right to religious freedom no more than reasonably necessary to achieve the Board's goals. The Board bears the burden of proof, not based on conjecture, but on evidence. If it fails to discharge its burden, the Board's decision is unconstitutional and must be set aside.

Loyola, ABA, Tab 2 at para 146

36. It is submitted that the following inquiries should be made in determining whether the Board has met this burden:

    i. Has a genuine (i.e. based on evidence beyond mere speculation and inference)

conflict been established between the protection of E.T.'s *Charter* right and the attainment of a valid objective?

ii. Does the specific rights infringement demonstrably advance the attainment of the objective in relation to this case?

iii. Can the objective be advanced without violating E.T.'s *Charter* right, or by a less severe intrusion of the right?

iv. Can a reasonable compromise in the attainment of the objective be reached, which can minimize or avoid a rights violation?

See Audrey Macklin, "Charter Right or Charter-Lite? Administrative Discretion and the Charter" (2014) 67: 2 SCLR 561, CLFA, Tab 11 at para 58

37. The first of these two inquiries will be the focus of the discussion below; the latter two are effectively canvassed in E.T.'s submissions regarding alternative accommodation measures which appear to be available and which less severely infringe his rights.

Appellant's Factum, paras 30, 80-87

38. The objective the Board seeks to advance is to "encourage a positive school climate". But does this require that all students participate in the celebration of views that contradict their religious beliefs? If so, how far does the school board's authority to promote a "positive school environment" extend? Can the Board compel students to suppress personal beliefs which are deemed inconsistent with the Board's vision of "inclusivity"? If a student were to respectfully express religiously-informed views on an issue such as marriage, sexuality, or gender identity that might be contrary to the 'state-approved' view, must the Board take action to silence, correct, or discipline them in the name of "promoting a positive school climate"?

39. It is difficult to see how subjecting students to the celebration of conceptions about family, sexuality, gender, and marriage that violate their religious beliefs could be permitted, let alone required, by values underlying the *Charter,* an instrument which protects the freedom to express and manifest beliefs however "contrary to the mainstream", and guarantees freedom from conformity to majoritarian beliefs.

Zylberberg, FBA, Tab 6 at paras 29-30
Saskatchewan (Human Rights Commission) v Whatcott, 2013 SCC 11, CLFA, Tab 8 at para 50

40. To accept the Board's interpretation of its objective means the Board has not only a mandate to encourage respect for difference, but it effectively has a proselytizing mission through which it obliges students to take part in the affirmation of views that contradict their religious beliefs. Surely this is not just an unreasonable outcome, but an unconstitutional one, in light of Supreme Court jurisprudence regarding state neutrality and freedom of religion as highlighted above. Further, as Justices Gonthier and Bastarache wrote (in dissent) in *Chamberlain*:

> [I]t is a feeble notion of pluralism that transforms "tolerance" into "mandated approval or acceptance" […] Language appealing to "respect", "tolerance", "recognition" or "dignity" [must] reflect a two-way street in the context of conflicting beliefs, as to do otherwise fails to appreciate and respect the dignity of each person involved in any disagreement, and runs the risk of escaping the collision of dignities by saying "pick one". But this cannot be the answer.

Chamberlain, AGA, Tab 7 at paras 132, 134

41. A school board must "[m]aintain an environment that is free of pressure or compulsion in matters of religion and belief." The Board is obligated to remain a neutral state actor that respects and accommodates religious differences; it must not assume the role of an indoctrinator of moral norms, matters which are inherently of deeply personal and spiritual conviction.

Ontario Human Rights Commission, *Policy statement on religious accommodation in schools*, Toronto: OHRC, 2017, CLFA, Tab 12 online: http://www.ohrc.on.ca/en/policy-statement-religious-accommodation-schools

42. For these reasons, the notion that accommodating non-attendance for religious minorities is in conflict with and antithetical to the values underlying the *Charter* is an unreasonable interpretation and disproportionate balancing of E.T.'s *Charter* rights and the Board's objective. The infringement does not advance the attainment of the objective when it is

framed with a proper understanding of the nature and role of "*Charter* values" and state neutrality. The Board's approach ignores the reality that the *Charter* has consistently been interpreted to protect respectful religious dissension from prevailing majoritarian norms. As the British Columbia Court of Appeal recently affirmed:

> A society that does not admit of and accommodate differences cannot be a free and democratic society — one in which its citizens are free to think, to disagree, to debate and to challenge the accepted view without fear of reprisal. This case demonstrates that a well-intentioned majority acting in the name of tolerance and liberalism, can, if unchecked, impose its views on the minority in a manner that is in itself intolerant and illiberal.

Trinity Western University v Law Society of British Columbia, BCCA 423, CLFA, Tab 9 at para 193

43. Ultimately, the rule of law is only served if decision makers are required to rigorously justify rights infringements as being no more than reasonably necessary, and not by merely asserting that other values and objectives will be advanced in their breach. Freedom of religion is to be "jealously guarded": violations of this *Charter* right must not be accepted as collateral casualties in the advancement of other nebulous, ill-defined "values" that state actors deem more salutary.

Marriage Reference at para 53

PART IV: ORDER REQUESTED

44. Pursuant to the Order issued by the Registrar of the Court of Appeal on May 12, 2017, CLF requests that it be allowed 15 minutes to provide oral submissions at the hearing of this appeal, and CLF neither seeks nor is subject to costs.

ALL OF WHICH IS RESPECTFULLY SUMBITTED this 17th day of May, 2017.

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Lawyers for the Christian Legal Fellowship
Derek B.M. Ross (LSUC #55093B)
Deina Warren (LSUC #57603R)

INTERVENER'S CERTIFICATE

1. An order under subrule 61.02(2) is not required.

2. The Intervener, Christian Legal Fellowship, estimates that fifteen minutes will be required for its oral argument.

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Derek B.M. Ross / Deina Warren

SCHEDULE A: AUTHORITIES CITED

Description	Location
E.T. v Hamilton-Wentworth District School Board, 2016 ONSC 7313	RBA, Tab 1
Gehl v Canada (Attorney General), 2017 ONCA 319	CLFA, Tab 1
Loyola High School v Quebec (Attorney General), 2015 SCC 12	ABA, Tab 2
Doré v Barreau du Québec, 2012 SCC 12	ABA, Tab 1
Syndicat Northcrest v Amselem, 2004 SCC 47	AGA, Tab 3
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Trinity Western University v Nova Scotia Barristers' Society, 2015 NSSC 25	CLFA, Tab 4
Martin v. Alberta (Workers' Compensation Board), 2014 SCC 25,	CLFA, Tab 5
MacKay v Manitoba, [1989] 2 SCR 357	CLFA, Tab 6
R v Gomboc, 2010 SCC 55	CLFA, Tab 7
Gosselin v Quebec (Attorney General), 2002 SCC 84	CLFA, Tab 8
Chamberlain v Surrey School District No. 36, 2002 SCC 86	RBA, Tab 7
Matthew Horner, "Charter Values: The Uncanny Valley of Canadian Constitutionalism" (2014) 67: 2 SCLR 361	CLFA, Tab 10
Audrey Macklin, "Charter Right or Charter-Lite? Administrative Discretion and the Charter" (2014) 67: 2 SCLR 561	CLFA, Tab 11
Saskatchewan (Human Rights Commission) v Whatcott, 2013 SCC 11	CLFA, Tab 9
Ontario Human Rights Commission, *Policy statement on religious accommodation in schools*, Toronto: OHRC, 2017, online: http://www.ohrc.on.ca/en/policy-statement-religious-accommodationschools	CLFA, Tab 12

Trinity Western University v Law Society of British Columbia, 2016 BCCA 423 CLFA, Tab 10

SCHEDULE B: STATUTES CITED

International Covenant on Civil and Political Rights, GE Res 2200A (XXI), UNGAOR, 23 March 1976, No 14668.

Article 18

…

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

E.T. (Appellant)

and

HAMILTON-WENTWORTH DISTRICT SCHOOL BOARD
(Respondent)

Court of Appeal File No. C63149

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Hamilton

FACTUM OF THE INTERVENER CHRISTIAN LEGAL FELLOWSHIP
(Appeal to be heard June 26, 2017)

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