

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

B E T W E E N

**ETHIOPIAN ORTHODOX TEWAHEDO  
CHURCH OF CANADA ST. MARY CATHEDRAL, MESSALE ENGEDA, ABUNE  
DIMETROS and HIWOT BEKELE**

**APPLICANTS**  
Respondents

and

**TESHOME AGA, YOSEPH BEYENE, DEREJE GOSHU,  
TSEDUKE GEZAW and BELAY HEBEST**

**RESPONDENTS**  
Appellants

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**MOTION RECORD OF THE PROPOSED INTERVENERS  
(ASSOCIATION FOR REFORMED POLITICAL ACTION, CANADIAN COUNCIL OF  
CHRISTIAN CHARITIES, CHRISTIAN LEGAL FELLOWSHIP)**  
(Pursuant to Rules 47 and 55-59 of the *Rules of the Supreme Court of Canada*, S.O.R./2002-156)

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**NOTICE OF MOTION OF THE PROPOSED INTERVENERS**  
(ASSOCIATION FOR REFORMED POLITICAL ACTION, CANADIAN COUNCIL OF  
CHRISTIAN CHARITIES, and CHRISTIAN LEGAL FELLOWSHIP)  
(Pursuant to Rules 47 and 55-59 of the *Rules of the Supreme Court of Canada*, S.O.R./2002-156)

**TAKE NOTICE** that the Proposed Interveners hereby apply to a Judge of the Court, pursuant to Rules 47 and 55-59 of the *Rules of the Supreme Court of Canada*, as amended, for an Order:

1. Granting the Proposed Interveners leave to intervene on the application for leave to appeal on the following terms:
  - a. Allowing the Proposed Interveners to serve and file a single factum in this application for leave to appeal not exceeding 10 pages (or such other length as this Honourable Court may deem appropriate);
  - b. Ordering that no costs will be ordered for or against the Proposed Interveners on this motion or on the application for leave to appeal;
  - c. Any further or other Order that this Honourable Court may deem appropriate.

**AND FURTHER, TAKE NOTICE** that the motion shall be made on the following grounds:

1. The Proposed Intervener Coalition consists of three organizations – the Association for Reformed Political Action, the Canadian Council of Christian Charities, and the Christian Legal Fellowship – all of whom were granted leave by this Honourable Court to intervene in *Wall v. Highwood Congregation*, which specifically dealt with similar issues raised in the present case.
2. The Proposed Interveners have unique expertise and are well-situated to intervene and present submissions highlighting the need for this Honourable Court’s guidance concerning a number of legal issues which appeared to have been resolved in *Wall* but which the decision under appeal, due to its apparent divergence from the principles enunciated in *Wall*, renders uncertain.
3. Specifically, the Proposed Interveners seek to articulate the following issues of national and public importance raised by this application, each of which transcends the interests of the immediate parties and impacts Canada’s broader voluntary sector and civil society as a whole:
  - a. the proper scope of the civil law and its application to religious and other voluntary associations and relationships;
  - b. the nature of the relationship between a member and a voluntary association to which he or she belongs, and whether such a relationship, in itself, can be construed as a legally enforceable contract;
  - c. whether religious obligations embodied in ecclesiastical law can be construed as legal obligations enforceable in civil court;
  - d. whether a financial contribution to a voluntary association constitutes a gift or contractual consideration;
  - e. the limits of a civil court’s competence to assess and adjudicate the decisions, disputes, processes, and standards of religious and other voluntary associations; and
  - f. rule of law considerations related to certainty, consistency, and equal application of the law as it relates to voluntary associations, and the need for clarity from this Honourable Court on matters of fundamental legal importance and broad societal impact.
4. All of these issues concern a broad array of individuals and organizations across Canada, including those represented by these Proposed Interveners. By virtue of their intervention in *Wall*

and numerous other proceedings before this Honourable Court, as well as other Canadian and international courts, these Interveners have demonstrated an interest and expertise in these matters.

5. Given the Proposed Interveners' respective roles as organizations representing thousands of religious institutions and individuals, they are well placed to assist this Honourable Court in understanding the need for legal clarity in the voluntary sector on these legal questions, and the negative impact of any renewed confusion in the law should no further guidance be provided.

6. As set out in the affidavits listed below, the Proposed Interveners represent a broad segment of the voluntary and religious sector. The Proposed Interveners therefore offer a perspective distinct from that of the parties, as they represent: (i) churches and other organizations from diverse religious traditions; (ii) a broad spectrum of voluntary and charitable organizations distinct from the parties; and (iii) lawyers, law students, professors, and retired jurists from faith communities who have particular interests and expertise in a number of the issues raised in this case.

7. Together, this coalition of Proposed Interveners represents the interests and perspectives of a broad spectrum of Canada's religious organizations and charitable communities which will be directly impacted by this decision and the legal uncertainty that will follow should leave be refused, particularly in provinces where courts have interpreted and applied *Wall* differently than the decision under consideration, and where a number of organizations and individuals represented by the Proposed Interveners operate and reside.

8. Although these Proposed Interveners and their constituents have distinct perspectives and unique concerns, they share a common interest in having this Honourable Court resolve the issues and uncertainties raised in this application for leave to appeal.

9. These Proposed Interveners recognize that applications to intervene at the leave to appeal stage are rare, but share the belief that this is an exceptional case in which this Honourable Court should have the benefit of the broader voluntary sector's perspective of how its recent decision in *Wall* provided much-needed clarity in the law, and why the decision under review generates uncertainty, specifically for those groups with a direct interest in *Wall*. Accordingly, the Proposed

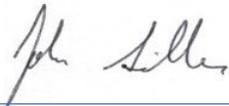
Interveners are applying jointly at this stage to stress the need for clarity that only a full hearing from this Honourable Court can provide.

10. This proposed intervention will not cause any delay in the hearing of this matter nor injustice to the parties.

11. The Proposed Interveners do not seek costs and ask that costs not be awarded against them.

12. Such further and other grounds as the Proposed Interveners may advise and this Honourable Court may permit.

DATED at the City of Ottawa, in the Province of Ontario this 8<sup>th</sup> day of April 2020.




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**Counsel for the Association for Reformed Political Action**

DATED at the Township of Trent Hills, in the Province of Ontario this 8<sup>th</sup> day of April 2020.




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**Counsel for the Canadian Council of Christian Charities**

DATED at the City of London, in the Province of Ontario this 8<sup>th</sup> day of April 2020.




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**NOTICE TO THE RESPONDENTS TO THE MOTION:** A respondent to the motion may serve and file a response to this motion within 10 days after service of the motion. If no response is filed within that time, the motion will be submitted for consideration to a judge or the Registrar, as the case may be.

**\*DRAFT MEMORANDUM OF ARGUMENT  
SHOULD LEAVE BE GRANTED TO INTERVENE  
ON THE MATTER OF THE LEAVE APPLICATION\***

**PARTS I & II – OVERVIEW, STATEMENT OF FACTS,  
AND POSITION ON QUESTIONS IN ISSUE**

*“[A] religious incident reverberates from one end of this country to the other, and there is nothing to which the ‘body politic of the Dominion’ is more sensitive.” – Justice Ivan Rand<sup>1</sup>*

1. The Court below interpreted *religious* obligations embodied in *ecclesiastical* law as civil legal obligations enforceable in civil court. The Respondents identified no proprietary or other legal right, but only their status as church members and their desire to see internal church matters dealt with in a particular way.<sup>2</sup> This case therefore raises the question: when does membership in a religious community take on legal status or form the basis for legal rights? Do written rules, guidelines, or ecclesiastical law governing religious membership give rise to legal rights?
2. Many presumed that this Honourable Court settled such questions in deciding *Wall v. Highwood Congregation*.<sup>3</sup> However, the interpretation and application of that decision, as proffered in the decision of the Court of Appeal, risks displacing the much-needed clarity this Court provided in *Wall*.
3. This Honourable Court’s guidance is therefore needed to re-establish certainty in the law, especially as it pertains to the ability of voluntary communities to freely determine membership in accordance with their own culture, beliefs, and practices. Without clarity on these fundamental legal principles, the decision under review creates significant confusion in Canada’s voluntary and religious sectors, effectively limiting *Wall*’s application to a small minority of religious and other voluntary associations with no written constitution or by-laws.

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<sup>1</sup> [\*Saumur v. City of Quebec\*](#), [1953] 2 S.C.R. 299, at 329.

<sup>2</sup> Typescript of the Reasons for Judgment of Justice S. Nishikawa (26 February 2019), CV-18-589955 (Ontario Superior Court of Justice), Applicant’s Application Record, at Tab 2A, at 3: “The Plaintiffs have failed to allege or provide evidence of an underlying legal right, that is a civil or property right of the kind that were found in the cases that they rely upon.” [“Typescript of the Reasons for Judgment of Justice S. Nishikawa”].

<sup>3</sup> [\*Highwood Congregation of Jehovah’s Witnesses \(Judicial Committee\) v. Wall\*](#), 2018 SCC 26, [2018] 1 S.C.R. 750 [“*Wall*”].

### PART III – STATEMENT OF ARGUMENT

#### A. The decision below creates uncertainties for voluntary associations

4. This Honourable Court’s decision in *Wall* resolved a number of ambiguities in the law as it applies to voluntary organizations and the decisions and relationships formed within them. Many in Canada’s religious and voluntary sector, including the communities represented by this Coalition, welcomed this clarity, especially the coherence in the following principles:

- a. “[T]here is no free-standing right to procedural fairness with respect to decisions taken by voluntary associations”; “Courts may only interfere to address the procedural fairness concerns related to the decisions of religious groups or other voluntary associations if legal rights are at stake” and even then, “the courts will consider only those issues that are justiciable” [*Wall*, at paras. 24, 12];
- b. “Issues of theology are not justiciable” [*Wall*, at para. 12];
- c. A private dispute between a voluntary organization and a member “must be founded on a valid cause of action, for example, contract, tort or restitution”; mere membership in a religious or voluntary organization — where “no civil or property right is granted by virtue of such membership” — does not meet this test, and “should remain free from court intervention” [*Wall*, at paras. 13, 24]; and
- d. While in some cases, a legally enforceable contract may exist between a member and a voluntary association, such a contract is not automatically created by virtue of membership itself – there must be both (i) a separate “civil or property right [that] is formally granted by virtue of membership” and (ii) evidence “that there was an intention to form contractual relations” [*Wall*, at para. 29].

5. These principles have been relied upon within the religious and voluntary sector pursuant to *Wall*. However, the Ontario Court of Appeal’s decision in *Aga* may, without clarity from this

Honourable Court, create significant confusion and uncertainty in relation to *Wall*'s scope and application.<sup>4</sup> Specifically, *Aga* suggests that (in apparent contrast to the above):

- a. Courts *can* interfere within private voluntary associations to address procedural fairness concerns, even where no underlying legal rights are at stake, simply on the basis that written constitutions and/or by-laws exist which may create an “expectation of procedural fairness” [*Aga*, at para. 41];
- b. Mere membership in an association *can* form, in itself, a legally enforceable contract [*Aga*, at paras. 40-41] — even where, in the parlance of *Wall*, “no civil or property right is granted by virtue of such membership”; and
- c. There need not be evidence of a mutual intention to form or be bound by such a contract – where written constitutions and by-laws exist, they automatically “constitute a contract setting out the rights and obligations of members and the organization”, regardless of whether the member has “specific knowledge of or expressly consents to the specific terms in the by-laws” [*Aga*, at paras. 40, 43].

6. On its face, the decision in *Aga* is difficult to reconcile with *Wall*. Even if *Aga* is not inconsistent with *Wall*, however, its apparent effect is to distinguish *Wall* in such a way that *Wall*'s principles may now be largely inapplicable to many voluntary organizations which have adopted written constitutions or by-laws (representing the majority of the voluntary sector).

7. Without clarity from the Supreme Court on these apparent discrepancies, the principles espoused in *Aga* could therefore become the general rule (applicable to all associations with any form of written by-laws), and the helpful clarifications in *Wall* applied only as a rare exception.

## **B. Uncertainty about charitable donations and “consideration”**

8. Guidance from this Court is needed not only to clarify *Wall*'s scope and application, but to resolve new potential uncertainties for the broader voluntary sector. For example, *Aga* suggests that a monetary contribution (in this case, a payment to a church) constitutes sufficient

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<sup>4</sup> [\*Aga v. Ethiopian Orthodox Tewahedo Church of Canada\*](#), 2020 ONCA 10 [“*Aga*”].

legal consideration to create an enforceable contractual relationship.<sup>5</sup> This may have been a finding unique to the specific facts, but it is unclear why these payments were characterized by the lower court as contractual consideration, rather than a gift. Clarification is needed on this point. If a monetary contribution to a charity can, by itself, create a legally enforceable contract, this would fundamentally redefine both the law surrounding gifts, and the very nature of the donor-recipient relationship.

9. The common law has long defined a gift as “a voluntary transfer of property owned by a donor to a donee, *in return for which no benefit or consideration flows to the donor.*”<sup>6</sup> This, by definition, precludes a gift from constituting consideration for the purposes of contract law, and *vice versa*. This common law definition also forms the basis for the Canada Revenue Agency’s interpretation of the *Income Tax Act*, which applies to all Canadian registered charities.<sup>7</sup>

10. Many adherents make regular payments to their religious communities, which, while potentially motivated by a sense of *religious* obligation, are widely understood to represent (and are legally recognized as) voluntary charitable gifts, not contractual payments. Without clarity, there will be significant confusion in Canada’s charitable sector as to the proper treatment of donations and the nature of any legal relationships they may create.

### C. Guidance from this Honourable Court is needed to resolve rule of law concerns

11. The rule of law requires consistency and clarity in the law; this is especially so in the context of defining the parameters of the doctrine of justiciability.

12. When is it appropriate for the judiciary to intervene in the internal workings of religious and other voluntary communities? This is not just a procedural question limited to the immediate

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<sup>5</sup> “In this case, the appellants were not simply adherents of the faith. They applied to be members of the Congregation and **offered consideration in the form of monthly payments.**” [*Aga, supra*, at para. 46 (emphasis added)].

<sup>6</sup> *Friedberg v. Canada* (F.C.A.), [1991] F.C.J. No. 1255, citing *Canada v. Zandstra* [1974] 2 F.C. 254, at 261 (emphasis added).

<sup>7</sup> See, for example, Canada Revenue Agency, *Income Tax Folio S7-F1-C1, Split Receipting and Deemed Fair Market Value*, at 1.1-1.2, online: <<https://www.canada.ca/en/revenue-agency/services/tax/technical-information/income-tax/income-tax-folios-index/series-7-charities-non-profit-organizations/series/income-tax-folio-s7-f1-c1-split-receipting-deemed-fair-market-value.html>>.

parties but a matter which engages “the comprehensive claims of the rule of law” and its relationship with the “space in which individual and community adherence to religious authority can flourish”.<sup>8</sup>

***Ensuring equal application of the law***

13. Without clarity from this Court with respect to the decision under review, the law of justiciability could be interpreted and applied unequally as between voluntary organizations which have adopted written by-laws and constitutions, and those which have not.

14. This potential disparity needs to be carefully examined, since on its face it does not appear to be connected to any of the underlying policy reasons articulated in *Wall* urging judicial restraint in internal religious/voluntary associational disputes. The importance of respecting the autonomy of voluntary associations, including the freedom of religious groups to “determine their own membership and rules [...] save where it is necessary to resolve an underlying legal dispute”<sup>9</sup> is just as great where an association adopts written rules or forms a corporation to hold its property.

***Clarifying the relevance, if any, of incorporation or the adoption of written ecclesiastical/associational rules***

15. The decision below is unclear about *when* and *why* incorporation and/or the adoption of written rules should distinguish a case from the *Wall* analysis. The applicant Tewahedo Church formed a corporation to hold its property, but Church members are not corporate members and therefore have no property interest in the Church.<sup>10</sup> If the Congregation in *Wall* had formed a corporation to hold property, would this Honourable Court have assumed jurisdiction to review the decision to expel Mr. Wall from membership?

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<sup>8</sup> The Right Honourable Beverley McLachlin, PC, “Freedom of Religion and the Rule of Law: A Canadian Perspective,” in Douglas Farrow, ed., *Recognizing Religion in a Secular Society: Essays in Pluralism, Religion, and Public Policy* (Montreal & Kingston: McGill-Queen’s University Press, 2004), at 20.

<sup>9</sup> *Wall*, *supra*, at para. 39.

<sup>10</sup> *Aga*, *supra*, at paras. 10, 33.

16. Confusion about the relevance of incorporation arises in another way: the decision below did not rely on any corporate statute, nor did it grant a corporate remedy, such as the possible recourse available to an aggrieved member under the incorporating statute.<sup>11</sup> Rather, the dispute was framed and resolved primarily as a matter of *contract*.

17. If corporate law principles are generally inapplicable in this context (presumably because church members are not members of any corporation<sup>12</sup>), the lower court's basis for distinguishing *Wall* is even less clear. Was it the Church's adoption of written membership policies? While labelled a "constitution" and "by-law", it does not appear that these documents were constating documents governed or prescribed by corporate statutes. What then distinguishes these documents from the "detailed organizational handbook" which outlined membership procedures in *Wall* (but did not constitute a contract),<sup>13</sup> or, in future cases, from a church's ecclesiastical order which sets out rules of membership, or a voluntary association's membership guidelines? On what basis can a court infer that a church intended its membership rules or procedures to be *legally* binding (i.e. in *civil* law and in *civil* court, rather than in *ecclesiastical* law) rather than only *religiously* or *morally* binding?

18. These are not presented as rhetorical questions – whatever the principles justifying any such distinction(s), they must be more clearly articulated to provide guidance to the many religious and other voluntary associations who rely on written rules *other* than incorporating documents to guide their internal decisions and procedures (which often integrate, and are inextricably fused with, theological and spiritual considerations). Alternatively, if the "constitution" and "by-laws" in *Aga* are essentially indistinguishable from the written guidelines which existed in *Wall* and ought not to have been deemed an enforceable contract, correction is needed so that courts do not misconstrue religious and ecclesiastical rules, or conflate them with formal by-laws adopted under an incorporating statute. Either way, guidance is needed from this Honourable Court.

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<sup>11</sup> See, for example, s. 332 of the *Corporations Act*, R.S.O. 1990, c. C.38.

<sup>12</sup> *Aga*, *supra*, at paras. 10, 33.

<sup>13</sup> See Factum of the Respondent Randy Wall, at para. 9, in *Wall*, *supra*, online: [https://www.scc-csc.ca/WebDocuments-DocumentsWeb/37273/FM020\\_Respondent\\_Randy-Wall.pdf](https://www.scc-csc.ca/WebDocuments-DocumentsWeb/37273/FM020_Respondent_Randy-Wall.pdf).



*The need for consistent rules across Canada*

19. In a similar context, *Wall* clearly stated that membership decisions of voluntary organizations are not justiciable, and that membership itself does not form an enforceable contract. Indeed, the trial judge in this matter understood and applied *Wall* to state exactly that.<sup>14</sup>

20. *Wall* has been interpreted and applied this way also by courts in other provinces. See, for example, *Bell v. Civil Air Search and Rescue Association et. al.*,<sup>15</sup> *McCargar v. Métis Nation of Alberta Association*,<sup>16</sup> *Mathai v. George*,<sup>17</sup> and *Warren v. Football Canada*.<sup>18</sup>

21. The Ontario Court of Appeal, however, reached a different conclusion: that membership decisions *are* justiciable, and mere membership, in itself, *can* create an enforceable contract, at least where written rules exist.

22. This creates potential for confusion and inconsistent interpretation of the law across Canada, especially in provinces other than Ontario, that will cause uncertainty especially for trans-provincial organizations (many charities are national in scope and membership, including those represented by these Interveners).

23. Clarity from the Supreme Court is needed to ensure national coherence in the law, so that voluntary organizations and their members can structure their affairs with a measure of certainty: “at its most basic level, the rule of law vouchsafes to the citizens and residents of the country a stable, predictable and ordered society in which to conduct their affairs.”<sup>19</sup>

**D. Conclusion**

24. In *Wall*, this Honourable Court observed that “members of a congregation may not think of themselves as entering into a legally enforceable contract by merely adhering to a religious

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<sup>14</sup> Typescript of the Reasons for Judgment of Justice S. Nishikawa, *supra*.

<sup>15</sup> [2018 MBCA 96](#).

<sup>16</sup> [2018 ABQB 553](#), aff’d [2019 ABCA 172](#).

<sup>17</sup> [2019 ABQB 116](#).

<sup>18</sup> [2020 NSSC 29](#).

<sup>19</sup> [Reference re Secession of Quebec](#), [1998] 2 SCR 217, at para. 70.

organization” [at para. 29]. These Interveners, which represent thousands of such congregations and congregants, as well as numerous voluntary associations and charities, agree.

25. Without further guidance from this Honourable Court, however, the decision of the Court of Appeal suggests the opposite: that a legally enforceable contract *is* entered into (automatically) whenever a congregation has written by-laws, and a member makes a payment (even in the form of a gift or tithe). This scenario would apply to a significant percentage, if not vast majority, of church-congregant/association-member relationships within the communities represented by these Interveners.

26. For all the above reasons, the decision below could, without clarity, fundamentally alter the nature of relationships within the voluntary sector. A number of questions with far-reaching implications are now shrouded in uncertainty. Is there a “freestanding right to procedural fairness” within voluntary organizations? Can “mere membership” create a legally enforceable contract? Is a church member viewed by the law as a voluntary co-religionist or more akin to a corporate shareholder? Is a monetary contribution from a member a voluntary gift or contractual transaction?

27. These questions go to the very core of relationships within Canada’s voluntary sector, and how they are answered directly impacts the day-to-day operations and interactions of thousands of organizations. Uncertainty surrounding these questions will only lead to more litigation within voluntary associations – an undesirable burden on both the charitable sector and judicial system – which the Interveners submit may be averted should leave in this matter be granted.

#### **PARTS IV & V – COSTS AND ORDER SOUGHT**

28. The Interveners request that no costs be awarded for or against them.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 8th day of April 2020.

SIGNED BY:

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Counsel for the Association for  
Reformed Political Action

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Counsel for the Canadian  
Council of Christian Charities

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Counsel for  
Christian Legal Fellowship

## PART VI – TABLE OF AUTHORITIES

<b><u>Case law</u></b>	<b>Paragraph(s) in factum</b>
1. <a href="#"><i>Aga v. Ethiopian Orthodox Tewahedo Church of Canada</i></a> , 2020 ONCA 10	5, 8, 15, 17
2. <a href="#"><i>Bell v. Civil Air Search and Rescue Association et. al.</i></a> , 2018 MBCA 96	20
3. <i>Friedberg v. Canada</i> (F.C.A.), [1991] F.C.J. No. 1255, citing <i>Canada v. Zandstra</i> [1974] 2 F.C. 254	9
4. <a href="#"><i>Highwood Congregation of Jehovah’s Witnesses (Judicial Committee) v. Wall</i></a> , 2018 SCC 26, [2018] 1 S.C.R. 750	2, 4, 5, 14, 24
5. <a href="#"><i>Mathai v. George</i></a> , 2019 ABQB 116	20
6. <a href="#"><i>McCargar v. Métis Nation of Alberta Association</i></a> , 2018 ABQB 553, <a href="#">aff’d 2019 ABCA 172</a>	20
7. <a href="#"><i>Reference re Secession of Quebec</i></a> , [1998] 2 SCR 217	23
8. <a href="#"><i>Saumur v. City of Quebec</i></a> , [1953] 2 S.C.R. 299	
9. <a href="#"><i>Warren v. Football Canada</i></a> , 2020 NSSC 29	20
<b><u>Legislation</u></b>	
10. <a href="#"><i>Corporations Act</i></a> , R.S.O. 1990, c. C.38	16
<b><u>Secondary sources</u></b>	
11. Canada Revenue Agency, Income Tax Folio S7-F1-C1, Split Receipting and Deemed Fair Market Value, at 1.1-1.2, online: < <a href="https://www.canada.ca/en/revenue-agency/services/tax/technical-information/income-tax/income-tax-folios-index/series-7-charities-non-profit-organizations/series/income-tax-folio-s7-f1-c1-split-receipting-deemed-fair-market-value.html">https://www.canada.ca/en/revenue-agency/services/tax/technical-information/income-tax/income-tax-folios-index/series-7-charities-non-profit-organizations/series/income-tax-folio-s7-f1-c1-split-receipting-deemed-fair-market-value.html</a> >	9
12. Factum of the Respondent Randy Wall in Highwood Congregation of Jehovah’s Witnesses (Judicial Committee) v. Wall, 2018 SCC 26, [2018] 1 S.C.R. 750, online: < <a href="https://www.scc-csc.ca/WebDocuments-DocumentsWeb/37273/FM020_Respondent_Randy-Wall.pdf">https://www.scc-csc.ca/WebDocuments-DocumentsWeb/37273/FM020_Respondent_Randy-Wall.pdf</a> >	17

**Secondary sources (cont.)****Paragraph(s) in factum**

13. The Right Honourable Beverley McLachlin, PC, "Freedom of Religion and the Rule of Law: A Canadian Perspective," in Douglas Farrow, ed., *Recognizing Religion in a Secular Society: Essays in Pluralism, Religion, and Public Policy* (Montreal & Kingston: McGill-Queen's University Press, 2004) 12

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

**BETWEEN:**

**ETHIOPIAN ORTHODOX TEWAHEDO CHURCH OF CANADA, MESALE  
ENEGADA, ABUNE DIMETROS, AND HIWOT BEKELE**

**APPLICANTS**  
(Respondents)

-and-

**TESHOME AGA, YOSEPH BEYENE, DEREJE GOSHU,  
TSEDUKE GEZAW, AND BELAY HEBEST**

**RESPONDENTS**  
(Appellants)

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**AFFIDAVIT OF ANDRÉ MARSHALL SCHUTTEN**

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I, André Marshall Schutten, Director of Law and Policy for the Association for Reformed Political Action (ARPA) Canada, of the City of Gatineau, in the Province of Quebec, MAKE OATH AND SAY:

1. I am the Director of Law and Policy of the Association for Reformed Political Action (ARPA) Canada (hereinafter "ARPA Canada"). I have held this position since June 2011.
2. I have been an active member of the Jubilee Canadian Reformed Church of Ottawa since 2007 and I was ordained as an elder of this church in May, 2016. I have been a member of a church in the federation of Canadian Reformed Churches my entire life.
3. I have personal knowledge of the facts and matters herein, except where stated to be based on information and belief, and where so stated I believe them to be true. ARPA Canada has authorized me to make this Affidavit in support of an application to intervene jointly with the Christian Legal

Fellowship and the Canadian Council of Christian Charities in the Applicants' application for leave to appeal the Ontario Court of Appeal's judgment in the present case.

4. ARPA Canada seeks to intervene jointly at the leave to appeal stage in order to:
  - (a) Make submissions regarding the significance of the questions that the judgment of the Court below raises that are of concern to Reformed Christian churches, and
  - (b) To respect the Court's time as much as possible by focusing at this stage on concerns that ARPA Canada holds in common with other organizations.

5. ARPA Canada is concerned that courts may misconstrue written church rules governing discipline of members (or other religious and ecclesiastical matters) as “contractual” – thus creating civil rights enforceable in a secular court – merely because such rules have a “legal flavour”. Reformed Churches have clear rules for the discipline of church members contained in their confessional statements and church orders (i.e. constitutions). These rules include procedures for hearings and appeals. Reformed churches view such rules as *religiously* binding and *ecclesiastically* enforced – not as granting legal authority or oversight to civil courts.

6. Reformed doctrinal confessions teach that Jesus Christ has entrusted the authority to admit, teach, admonish, and expel members of his Church directly and exclusively to office-bearers of the Church, who are answerable to Christ and not to secular authorities for how they carry out their office.

7. ARPA Canada intervened in *Highwood v. Wall*, 2018 SCC 26. ARPA Canada and, I believe, the Reformed Christian community which supports ARPA Canada, understood *Wall* as guarding the freedom of churches to decide matters of membership free from the threat of civil litigation and oversight from secular courts, including churches that – like Reformed churches – have for centuries had formal written rules governing the admission and discipline of members.

### **ARPA Canada's Mission, History, and Expertise**

8. ARPA Canada is a Reformed Christian “parachurch” organization – a not-for-profit and non-partisan organization devoted to educating, equipping, and assisting members of Canada's Reformed churches as they seek to participate in the public square. ARPA Canada's mission is also to bring a Reformed Christian perspective to civil authorities, including the courts.

9. Local, voluntary ARPA groups first started in Canadian Reformed churches in the late 1970s and operated independently until 2007, when ARPA Canada was registered as a national not-for-profit corporation. Since its incorporation in 2007, ARPA Canada has become the primary means through which many Reformed Christians engage in politics and public life. ARPA Canada coordinates approximately 30 local ARPA chapters and school clubs across Canada.

10. ARPA Canada directs its mission primarily to the following church denominations, comprising well over one hundred congregations in Canada, spread across Canada:

- Canadian Reformed Churches
- United Reformed Churches
- Free Reformed Churches
- Heritage Reformed Churches
- Reformed Presbyterian Churches

11. Each of the denominations listed above are members of the North American Presbyterian and Reformed Council (NAPARC), an informal partnership of thirteen North American denominations committed to the Bible as the divinely inspired and inerrant Word of God, and to the Bible's teaching as summarized in the *Heidelberg Catechism* (1563), *Belgic Confession* (1559), *Canons of Dort* (1619), *Westminster Confession of Faith* (1647), and the *Westminster Larger Catechism* (1647) and *Westminster Shorter Catechism* (1647).

12. ARPA Canada officially holds to the teaching of the *Heidelberg Catechism*, *Belgic Confession*, and *Canons of Dort* ("the Confessions"). All of ARPA Canada's board members and staff personally affirm the teaching of the Confessions – a prerequisite for holding a board or staff position. The Confessions set out core Reformed Christian doctrines, including the doctrine that governs admitting and disciplining church members. All of ARPA Canada's eight board members and fourteen staff are also members of Reformed churches.

13. ARPA Canada is an adherent of and advocate for the Reformed (more specifically, neo-Calvinist) concept of *sphere sovereignty*, an outworking of the Reformed emphasis on the sovereignty of God. Sphere sovereignty teaches that all authority ultimately belongs to God, who has granted specific authority and responsibility to distinct "spheres" of human society, the most basic being the church, the family and the state (which includes the judiciary). This divine "separation of powers" requires that each "sphere" fulfil its respective duties and honour its proper limits.

14. ARPA Canada has developed expertise both in Reformed theology and in Canadian constitutional law. ARPA Canada staff speak and write regularly on the proper role and scope of authority of the state, the church, the family, and various social institutions. ARPA Canada staff contribute regularly both to Christian and secular publications on matters of law and public policy.

15. I, as ARPA's Director of Law and Policy and Legal Counsel, with ARPA Canada's support, earned my Master of Laws degree at Osgoode Hall in Toronto, with the focus of my LLM thesis being the corporate dimensions of religious freedom. ARPA Canada's in-house legal counsel John Sikkema, also with ARPA Canada's support, earned his LLM from Emory University's Centre for the Study of Law and Religion. ARPA Canada and its board, staff, and supporting community have invested significantly in deepening its institutional knowledge and experience in theology, political philosophy, law, and public policy, in order to better serve the Church and this nation.

#### **Distinctiveness of Reformed churches and ARPA Canada's interest in this proceeding**

16. Confessional Reformed churches are distinct from other well-known branches of Christianity, such as Evangelical, Mainline, Roman Catholic, and Orthodox. From ARPA Canada's perspective, the question of whether a court can claim jurisdiction to review a church membership or "church discipline" decision goes to the very heart of the relationship between church and state. And it raises the fundamental question: What is the church? Reformed doctrinal confessions answer this question based on the Bible.

17. As Jesus said to Peter, "And I tell you, you are Peter, and on this rock I will build my church, and the gates of hell shall not prevail against it. I will give you the keys of the kingdom of heaven, and whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed in heaven" (Matthew 16:18-19, English Standard Version). According to Lord's Day 31 of the *Heidelberg Catechism*, the "keys of the kingdom" referred to by Jesus in this passage are the "preaching of the holy gospel and church discipline", which he entrusts to his church. The *Heidelberg Catechism*, citing Matthew 16:19, states further that "[b]y these two the kingdom of heaven is opened to believers and closed to unbelievers."

#### ***Admitting and disciplining members in Reformed churches***

18. The *Heidelberg Catechism* explains church discipline in Lord's Day 31:  
According to the command of Christ, people who call themselves Christians



but show themselves to be un-Christian in doctrine or life are first repeatedly admonished in a brotherly manner. If they do not give up their errors or wickedness, they are reported to the church, that is, to the elders. If they do not heed also their admonitions, they are forbidden the use of the sacraments, and are excluded by the elders from the Christian congregation, and by God himself from the kingdom of Christ. They are again received as members of Christ and of the church when they promise and show real amendment. [emphasis added]

19. The *Belgic Confession* states in Article 29 that the faithful exercise of church discipline is *one of the marks of the true church*:

The true church is to be recognized by the following marks: it practices the pure preaching of the gospel. It maintains the pure administration of the sacraments as Christ instituted them. It exercises church discipline for correcting and punishing sins. In short, it governs itself according to the pure Word of God, rejecting all things contrary to it and regarding Jesus Christ as the only Head. [emphasis added]

20. The *Westminster Confession of Faith*, similarly, in Chapter 30 (“On Church Censures”) begins by declaring: “The Lord Jesus, as King and Head of His Church, hath therein appointed government, in the hand of Church officers, distinct from the civil magistrate. Isaiah 9:6,7; 1 Timothy 5:17; 1Thessalonians 5:12; Acts 20:17-18; Hebrews 13:7,17,24; 1 Corinthians 12:28; Matthew 28:18-20.” John Calvin, the great sixteenth century Reformed theologian, described church discipline as “the spiritual jurisdiction of the church” and “the jurisdiction which it has received from the Lord.” This jurisdiction is granted by Jesus, who promised his apostles that “whatever you bind on earth will be bound in heaven, and whatever you loose on earth will be loosed in heaven” (Matthew 18:18).

21. Consequently, ARPA Canada sees this case as involving nothing less than a challenge by the judiciary to the authority of the church to hold and to use the keys of the kingdom, which Christ himself gave to the church, not to civil magistrates.

***Reformed churches follow written ecclesiastical constitutions***

22. The Reformed church denominations mentioned in paragraphs 10-11, above, govern

themselves according to written constitutions, with differing but similar titles. The Canadian Reformed Churches, United Reformed Churches, Free Reformed Churches, and Heritage Reformed Churches each have their own “Church Order”. The Presbyterian Church in America has a “Book of Church Order”. Another denomination has its “Constitution of the Reformed Presbyterian Church of North America”. These constitutions are based on the historical Reformed confessions and some include these confessions in their entirety. The purpose of these constitutions is to ensure the good and orderly governance of the churches within each denomination in accordance with the Bible as summarized in the Reformed confessions.

23. One of the concerns that motivated ARPA Canada’s intervention in *Wall* was that civil courts might claim jurisdiction to interpret and apply Reformed ecclesiastical constitutions or overturn a church’s decision at the behest of a (former) church member, even where no proprietary or other identifiable legal right (in civil rather than ecclesiastical law) is at stake. ARPA Canada was concerned that courts might give orders – such as an order to admit or reinstate a member – with which a Reformed church simply could not comply.

24. ARPA Canada has informed Reformed churches that, in our opinion, the Supreme Court of Canada’s ruling in *Wall* respects and protects their ecclesiastical jurisdiction to admit, discipline, and expel members. That *Wall* may not protect a church that governs itself according to a religious constitution – as all Reformed churches mentioned above do – came as a genuine surprise to me and my colleagues at ARPA Canada and, I believe, to our constituents.

### ***Religious commitment to give financially***

25. The *Heidelberg Catechism* in Lord’s Day 38 teaches that Christians are obligated to “give Christian offerings for the poor” when they attend church on Sunday. When a person joins a Canadian Reformed Church – to use my own denomination as an example – he or she publicly promises, in accordance with the “Form for the Public Profession of Faith”, to live according to the Church’s doctrine, which of course includes this commitment to give financial offerings.

### **ARPA’s Previous Court Interventions**

26. This Honourable Court granted ARPA Canada permission to make written and oral arguments in *Highwood Congregation of Jehovah’s Witnesses v. Wall*, 2018 SCC 26.

27. This Honourable Court also gave ARPA Canada leave to intervene in:
- (a) *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32 and *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33;
  - (b) *Loyola High School, et al. v. Attorney General of Quebec*, 2015 SCC 12; and
  - (c) *Carter et al., v. Canada (Attorney General)*, 2015 SCC 5.
28. ARPA Canada also intervened at lower courts in *Trinity Western University v. Nova Scotia Barristers Society*, 2014 NSSC 331, *Nova Scotia Barristers Society v Trinity Western University*, 2016 NSCA 59, *Trinity Western University v. The Law Society of British Columbia*, 2015 BCSC 2326, *Trinity Western University v. The Law Society of British Columbia*, 2016 BCCA 423, *Trinity Western University v. The Law Society of Upper Canada*, 2016 ONCA 518.
29. ARPA Canada intervened in *A.B. v. C.D.*, 2020 BCCA 11, and was one of just two (out of six) intervenors to be granted permission to present oral arguments by the Court of Appeal.
30. ARPA Canada was also granted intervenor status and the right to make written and oral arguments in two cases which have been adjourned or abandoned, namely:
- (a) *P.T. v. Alberta* (unreported ABQB) – a case involving questions about the scope of parents’ freedom to direct the religious, moral, and philosophical upbringing of their children, and religious communities’ freedom to govern themselves.
  - (b) *Lamb v. Canada (Attorney General)* – B.C. Supreme Court file no. S-165851, involving a *Charter* challenge to Canada’s law on assisted suicide enacted in 2016.

### **Submissions to be made by ARPA Canada**

31. At this stage, ARPA Canada has undertaken to work with the Christian Legal Fellowship and the Canadian Council of Christian Charities in a joint intervention, to produce a concise list of arguments to present to this Honourable Court at the leave to appeal stage, which will focus on the uncertainties the ruling below raises in light of *Wall*.

**ARPA Canada's Intervention Will Not Cause Undue Delay or Prejudice**

32. I am aware of the need to avoid undue delay of proceedings or prejudice to any of the parties to this case. ARPA Canada has decided to intervene jointly with others at this stage to respect this Honourable Court's time and resources.

**ARPA Canada's Intervention is in the Public Interest**

33. I believe ARPA Canada's joint intervention will provide this Honourable Court with a valuable perspective regarding the importance of the issues raised by the judgment below.

34. I believe ARPA Canada has a legitimate and demonstrated interest in the subject matter raised in this case and can speak for a large constituency of Canadians whose views are not represented by the parties to this appeal.

35. I believe the views of ARPA Canada and the views of its constituency should be heard by this Honourable Court and that our views will be helpful to this Court.

36. I swear this affidavit in support of ARPA Canada's application to intervene in this matter and for no other or improper purpose.

SWORN BEFORE ME at the City of Ottawa,  
Province of Ontario this 7th day of April,  
2020.



\_\_\_\_\_  
A Commissioner for taking Affidavits in  
Ontario



\_\_\_\_\_  
ANDRÉ MARSHALL SCHUTTEN

SCC File Number: \_\_\_\_\_

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

**B E T W E E N:**

**ETHIOPIAN ORTHODOX TEWAHEDRO CHURCH OF CANADA also known as ST.  
MARY CATHEDRAL and MESALE ENEGADA and ABUNE DIMETROS and HIWOT  
BEKELE**

**APPLICANTS**  
(Respondents)

-and-

**TESHOME AGA, YOSEPH BEYENE, DEREJE GOSHU,  
TSEDUKE GEZAW and BELAY HEBEST**

**RESPONDENTS**  
(Appellants)

---

**AFFIDAVIT OF JOHN PELLOWE**

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I, John Pellowe, of the City of Waterloo, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Chief Executive Officer of the Canadian Council of Christian Charities (“CCCC”). I have personal knowledge of the matters deposed to herein.

**Background, Mandate, and Activities of CCCC**

2. CCCC was founded in 1972 out of concern that good stewardship practices be carried out by Canadian Christian charities in order for them to effectively advance their religious charitable objects.
3. CCCC is an association of approximately 3,400 members, including religious organizations such as churches and denominational offices, educational institutions, international developmental agencies, nursing care homes, religious summer camps, and

a host of other ministries. CCCC focused on charity management and advocates for a favourable legal and regulatory framework in which its members may operate.

4. More specifically, CCCC's membership includes 51 colleges and universities, 72 Christian elementary and primary schools, and 128 denominational offices that are umbrella organizations for their respective local churches throughout Canada.
5. CCCC is the largest single umbrella organization and prominent voice representing Christian charities in Canada. CCCC was incorporated under the Ontario *Corporations Act* and is a Canadian registered charity.
6. The mandate and purpose of CCCC is to support and educate Christian charities by integrating the spiritual concerns of ministry with the practical aspects of management, stewardship, and accountability, which include fiscal, tax, accounting, and legal compliance. CCCC helps its members navigate their legal rights and responsibilities as Christian institutions in an increasingly secular state and in the context of a constantly changing legal landscape.
7. CCCC serves its members by providing affordable resources that help them operate in an exemplary, healthy, and effective way. CCCC's team of professionals – accountants, pastors, lawyers, educators – help members with specific questions and complex issues in a manner that unites religious faith and practice. CCCC provides its members with practical information on how best to run their ministries in compliance with Canada Revenue Agency regulations and the law while maintaining their Christian identity, character, and integrity.
8. CCCC provides valuable resources and legal information to its members. CCCC in-house lawyers are routinely sought to participate in the development of public policy in Canada through communications with government, participation in the legislative process, court interventions, litigation, and sitting on regulatory advisory committees such as Canada Revenue Agency, Charities Directorate, and Technical Issues Working Group. They are also involved in various committees affecting charities with the Canadian and Ontario Bar Associations.

9. CCCC is broadly recognized as an expert in Canadian charity law and the issues that affect religious charities and institutions across Canada, including regular publication of the *Charities Handbook*, a comprehensive reference tool to assist boards and staff navigate legal and accounting issues that affect charities.
10. CCCC is evangelical in identity and ecumenical in service, meaning that while it self-identifies as evangelical, it makes its services available to the broader public. Many charities that are not Christian in identity, or that may not be particularly religious, use our *Charities Handbook*. Each year CCCC answers more than 6,000 inquiries from its members on a wide range of issues. Because of this, I believe CCCC has a comprehensive understanding of the religious charitable sector and its needs. This expertise makes it uniquely qualified to bring a perspective distinct from those of the other parties and interveners in these appeals.

### **CCCC's Interest in This Appeal**

11. CCCC intervened in the *Wall v. Highwood Congregation* due the impact that the case would have on its members and its members' respective constituencies across Canada. We were concerned that the public space in the law respect the "autonomy" of religious organizations to carry out their respective religious practice. Judicial review of decisions of religious organizations would directly interfere with that autonomy over internal religious affairs. We were concerned then, and are today, that secular courts lack competence in assessing theologically based processes and decisions, church policy, ecclesiology, and hermeneutics.
12. The Supreme Court of Canada's ruling in *Wall v. Highwood Congregation* clarified that religious organizations are free to determine their internal affairs without the worry over secular interference by the courts.
13. The Ontario Court of Appeal's decision in this matter has put the *ratio* of *Wall v. Highwood Congregation* into confusion. Our membership's concerns are, yet again, raised. Exactly what does *Wall v. Highwood Congregation* mean in light of the Ontario

Court of Appeal's decision? Are internal church affairs now justiciable?

14. As an advocate for and advisor to a diverse constituency of Christian charities, including churches across Canada, CCCC is compelled but to impress upon this Honourable Court the need for the *Aga* decision to be reviewed given the implications as to how religious organizations can operate going forward.
15. The Ontario Court of Appeal's decision would impinge upon the internal operations of religious institutions and their ability to carry out their charitable mandate. It also impacts their ability to contribute to the public benefit or the common good. Most importantly, it would undermine, *inter alia*, the constitutional protections of religion in the *Charter*, directly impacting CCCC's membership and putting in jeopardy the principles and objects enshrined in the mandate of CCCC and of its members. The majority of churches and many of the other religious charities in our membership adopt written rules for membership and other internal decisions and would therefore be directly impacted by any decision in this case, including a decision not to review it.

#### **Assistance to Be Provided by CCCC**

16. CCCC intends to work with the joint interveners at this application stage to ensure that our joint submission will be of assistance to this Honourable Court in determining whether this case is worthy of review. We will provide a perspective that accounts for the wide-ranging experience of many different religious groups across the country who are concerned with this development. Together our coalition represents private bodies with different mandates, and constituencies. Contained within this diversity, are many churches with religiously defined congregations who came together voluntarily for a specific purpose involving religious belief and practice. We therefore represent and will bring an important perspective to your evaluation of the application for leave.
17. As interference with religious matters unduly encroach upon a religious community's ability to carry out its theological, spiritual, and, in many cases, charitable endeavours, it is my view and the view of CCCC that civil courts should exercise restraint in matters in which they lack skill, training, and experience. Courts should respect a religious



community's ability to decide for itself matters of a spiritual and religious nature. This is what makes Ontario Court of Appeal's decision so very troubling.

18. I make this affidavit in support of CCCC's application for leave to intervene and for no other or improper purpose.

SWORN BEFORE ME at the City of  
Waterloo, Province of Ontario, this 8<sup>th</sup> day  
of April 2020



*John Pellowe*  
\_\_\_\_\_  
**JOHN PELLOWE**

SCC File Number: \_\_\_\_\_

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

**B E T W E E N:**

**ETHIOPIAN ORTHODOX TEWAHEDRO CHURCH OF CANADA also known as ST.  
MARY CATHEDRAL and MESALE ENEGADA and ABUNE DIMETROS and HIWOT  
BEKELE**

**APPLICANTS**  
(Respondents)

-and-

**TESHOME AGA, YOSEPH BEYENE, DEREJE GOSHU,  
TSEDUKE GEZAW and BELAY HEBEST**

**RESPONDENTS**  
(Appellants)

**AFFIDAVIT OF RUTH A.M. ROSS**

I, RUTH A.M. ROSS of the city of London in the Province of Ontario, barrister and solicitor,  
**MAKE OATH AND SAY AS FOLLOWS:**

1. I am Special Advisor and former Executive Director and General Counsel for Christian Legal Fellowship (“CLF”). As such, I have knowledge of the facts and matters herein set forth, except where stated to be on information and belief and where so stated, I believe them to be true.

**Christian Legal Fellowship’s Background, Expertise, and Interest in this Proceeding**

2. CLF, founded in the mid-1970s and incorporated in 1978, is a national, charitable association of over 700 lawyers, law students, law professors, retired judges, pre-law students, friends, and other legal professionals, with members in eleven provinces/territories and from more than 30 Christian denominations, including: Anabaptist; Anglican; Apostolic; Armenian Brotherhood; Baptist; Be in Christ; Christian and Missionary Alliance; Chinese Alliance;

Christian Brethren; Coptic Orthodox; Evangelical; Evangelical Missionary; Free Methodist; Greek Orthodox; Lutheran; Mennonite Brethren; Non-Denominational; Pentecostal; Presbyterian; Reformed; Roman Catholic; Salvation Army; Seventh-day Adventist; and Wesleyan.

3. CLF is a non-governmental organization (NGO) in Special Consultative Status with the Economic and Social Council of the United Nations. CLF has also appeared before Parliamentary committees and has made representations to provincial governments and regulators on issues of conscience, religious freedom, human rights, and other issues affecting religious communities and their accommodation in a pluralistic society.

4. As Canada's national association of Christian legal professionals, CLF has a well-established history of engaging matters of public policy and law, both nationally and internationally, and articulating their implications for the specific rights and freedoms guaranteed by the *Charter of Rights and Freedoms* (the "*Charter*") and for the exercise and enjoyment of human rights and fundamental freedoms more broadly. CLF has participated as an intervener in nearly 40 such cases, including 12 before this Honourable Court, one of which is the *Wall v. Highwood Congregation* case ["*Wall*"]. Specifically, the Supreme Court of Canada and other courts have granted CLF intervener status, either individually or with others, in the following cases, among others:

- a. *Lamb v. Canada*, British Columbia Supreme Court, file no. S-165851 (leave to intervene granted August 20, 2019; case subsequently adjourned);
- b. *Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario*, 2019 ONCA 393 and *Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario*, 2018 ONSC 579 (Div. Ct.);
- c. *Truchon v. Procureur général du Canada*, 2019 QCCS 3792, [2019] QJ No 7750;
- d. *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33; *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32; *Trinity Western University v. Law Society of British Columbia*, 2016 BCCA 423; *Trinity Western University v. Law Society of British Columbia*, 2015 BCSC 2326; *Nova Scotia Barristers' Society v. Trinity Western University*, 2016 NSCA 59; *Trinity Western University v. Nova Scotia Barristers Society*, 2015 NSSC 25; *Trinity Western University v. Law Society of Upper Canada*, 2016 ONCA 518; and *Trinity Western University v. Law Society of Upper Canada*, 2015 ONSC 4250;

- e. *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26;
  - f. *E.T. v. Hamilton-Wentworth District School Board*, 2017 ONCA 893;
  - g. *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54;
  - h. *D'Amico et. Saba c. Procureure Générale Du Québec*, 2015 QCCS 5566, 2015 QCCA 2138;
  - i. *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12;
  - j. *Carter v. Canada (Attorney General)*, 2015 SCC 5; *Carter v. Canada (Attorney General)*, 2013 BCCA 435; *Carter v. Canada*, 2012 BCSC 886; as well as *Carter v. Canada (AG)*, 2016 SCC 4;
  - k. *Canada (Attorney General) v. Bedford*, 2013 SCC 72; *Canada (Attorney General) v. Bedford*, 2012 ONCA 186; and *Bedford v. Canada*, 2010 ONSC 4264;
  - l. *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11;
  - m. *SL v. Commission Scolaire Des Chênes*, 2012 SCC 7;
  - n. *Ginette Leblanc v. Le Procureur Général du Canada et al.*, 2012 QCCS 3530 (discontinued);
  - o. *Reference re: Section 293 of the Criminal Code of Canada*, 2011 BCSC 1588;
  - p. *Marriage Commissioners Appointed Under The Marriage Act (Re)*, 2011 SKCA 3;
  - q. *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37;
  - r. *A.A. v. B.B.*, 2007 ONCA 2;
  - s. *R. v. Spratt*, 2004 BCCA 367;
  - t. *Owens v. Saskatchewan Human Rights Commission*, 2006 SKCA 41;
  - u. *Kempling v. British Columbia College of Teachers*, 2005 BCCA 327;
  - v. *Ontario (Human Rights Commission) v. Scott Brockie*, [2002] OJ No 2375 (SC);
  - w. *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31;
  - x. *Vriend v. Alberta*, [1998] 1 SCR 493.
5. Members of CLF are regularly called upon to advise their clients, denominations, co-religionists and others with respect to freedom of religion and conscience, religious

discrimination, legal issues for religious organizations, as well as constitutional and human rights protections.

6. Members of CLF have also contributed to peer-reviewed, scholarly legal journals (in Canada and internationally) on matters of human rights law, constitutional law, and moral, legal and political philosophy.

7. Over the past 40 years, CLF has developed an institutional legal knowledge and expertise as to how freedom of association and freedom of religion are integrally connected, and the detrimental impact of undue state interference in religious communities' internal affairs. As its intervention history demonstrates, CLF has a longstanding public interest in the development of law and religion jurisprudence, and in ensuring clarity and fairness in the law as it pertains to the free exercise of religion and religious expression, as well as the autonomy of religious communities. I believe that CLF has a legitimate and demonstrated interest in the subject matter raised in this case.

#### **Significance of the Decision: Certainty in Matters of National Importance**

8. CLF intervened before this Honourable Court in *Wall* because of its engagement with several issues of fundamental importance to CLF and other associations across Canada, including, *inter alia*: the proper scope of civil law and the circumstances in which it applies to religious and other voluntary associations; the importance of preserving associational autonomy for religious communities; the nature of the relationship between voluntary associations and their members; and the implications of interjecting judicial oversight into questions involving or integrating theological/religious considerations. CLF believes that each of these issues are engaged in the present application for leave to appeal.

9. CLF understands the Supreme Court of Canada's ruling in *Wall* to provide much-needed clarification on these issues, particularly as they relate to the justiciability of internal disputes over the handling of membership and other religiously informed practices. *Wall* is understood by CLF to confirm that courts will not adjudicate disputes over the internal matters of religious and other private voluntary associations except to the extent that such disputes involve an independently recognized legal interest or cause of action. However, CLF is concerned that,

without further guidance, the decision underlying the present leave application risks reintroducing uncertainty by bringing the scope and application of *Wall* into question.

10. CLF is also concerned that there will be confusion in the law – and its application to religious communities – on such fundamental questions as whether a contract automatically exists between members and their religious communities, whether by-laws or church documents can constitute enforceable contractual terms, and whether financial contributions to a church or religious community constitute valid consideration for those terms.

11. The answers to these questions will directly impact CLF (itself a religious, membership-based community with written rules in place), and I believe will similarly impact many religious and charitable organizations across Canada to whom CLF members belong and regularly advise.

12. Without further guidance from this Honourable Court, CLF is concerned that religious associations may possess markedly different levels of autonomy from judicial interference based upon their membership rules and/or their provincial jurisdiction. CLF is further concerned that this may result in increased judicial intervention in internal, religious disputes, ultimately undermining not only domestic but international law principles which affirm church autonomy and the duty of state neutrality (which CLF highlighted in its intervention in *Wall*).

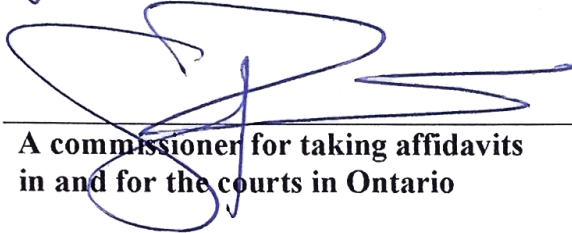
#### **CLF's Intervention will Provide Assistance in this Proceeding**

13. CLF perceives the proposed appeal as an invitation for this Court to clarify the scope of *Wall*'s application to religious and other private voluntary associations in light of the Ontario Court of Appeal's decision under review. CLF is applying to intervene in a coalition at the leave stage only, along with the Association for Reformed Political Action and the Canadian Council of Christian Charities, recognizing that we share a number of key concerns and questions which we believe merit review by this Honourable Court, and which can be expressed most efficiently at this stage through a joint submission.

14. I believe CLF can, together with the other organizations in this proposed coalition of interveners, provide the Court with unique information, insight, and perspective that would be useful to the Court in considering whether leave to appeal should be granted in this case.

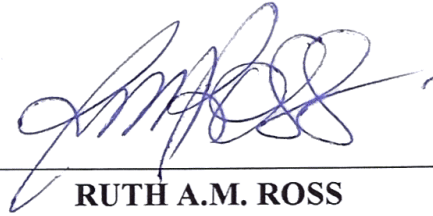
15. I swear this Affidavit in support of CLF's application for intervener status on leave to appeal at the Supreme Court of Canada and for no other or improper purpose.

SWORN BEFORE ME at the City of London, in the Province of Ontario, this 8<sup>th</sup> day of April, 2020.



A commissioner for taking affidavits  
in and for the courts in Ontario

SARAH ELIZABETH MIX-ROSS  
BARRISTER AND SOLICITOR  
LSOH 69851E



RUTH A.M. ROSS