

PART I: OVERVIEW

1. On this motion, Christian Legal Fellowship (“CLF”) seeks leave to intervene with the right to file a factum and present oral argument at the hearing of this Appeal.
2. Central to this Appeal are at least two questions which will have a profound impact on all faith communities in Canada:
 - a. What parameters does the Constitution place on the court’s jurisdiction to resolve religiously-based disputes?
 - b. How are religious relationships and commitments to be understood and treated in Canadian law once they are expressed in writing?
3. Answering these questions requires a nuanced understanding of both religious and legal considerations. As an association of religious legal professionals, CLF’s expertise bridges the legal and religious spheres.
4. CLF seeks leave to assist this Honourable Court with submissions on how Canada’s constitutional and international law obligations inform the Canadian legal doctrines of justiciability and religious group autonomy. In three recent cases, for example, this Honourable Court specifically looked to international sources in articulating the law relating to religious group rights.¹ Drawing from this international jurisprudence, CLF will also speak to the legal and constitutional implications of constructing religious commitments and ecclesiastical rules as contractually binding.

PART II: STATEMENT OF QUESTIONS IN ISSUE

5. The question at issue in this motion is: does CLF meet the requirements for an intervention order as set out in Rule 57 of the [Rules of the Supreme Court of Canada](#), SOR/2002-156, and should it be granted leave to intervene in this Appeal? The Rule requires CLF to demonstrate (a) its interest in the proceeding and (b) that its submissions will be relevant, useful, and different from those of other parties.

¹ [Mounted Police Association of Ontario v Canada \(Attorney General\)](#), 2015 SCC 1 at para 64; [Alberta v Hutterian Brethren of Wilson Colony](#), 2009 SCC 37 at paras 131-132 (per Abella J); [Loyola High School v Quebec \(Attorney General\)](#), 2015 SCC 12 at paras 45, 65 (per Abella J) and paras 91, 96-98 (per McLachlin CJC and Moldaver J).

PART III: STATEMENT OF ARGUMENT

A. Interest in the Proceeding

CLF, the Proposed Intervener

6. CLF is a national, charitable association of over 700 lawyers, legal scholars and professors, law students, prospective law students, retired jurists, and others, representing diverse Christian traditions. CLF represents lawyers from over 30 Christian denominations with a broad spectrum of Christian legal thought and experience, whose views are not necessarily represented by the parties or other proposed interveners.²

7. CLF, like the Appellants, is a community of people freely associating for a religious purpose. It has internal processes for prospective members, and, while it does not function as a church, it is nonetheless a voluntary association that governs its own internal policies and procedures.³

8. As a faith-based association of lawyers, whose members have made a professional commitment to uphold the Constitution and the rule of law, CLF is concerned with the implications of allowing judicial oversight of religious obligations, precepts, customs, or rituals:⁴ “[s]ecular judicial determinations of theological or religious disputes, or of contentious matters of religious doctrine [such as church discipline], unjustifiably entangle the court in the affairs of religion.”⁵

CLF’s Interest in the Appeal

9. As a voluntary association of legal professionals committed to a shared set of religious beliefs, CLF has a direct stake in the issues raised in this Appeal, the resolution of which may directly impact CLF’s internal operations.⁶ This Appeal will also impact more broadly the various religious minority communities in Canada, as it affects their rights to self-determination and self-definition. This Appeal speaks directly to the interaction between state authorities and religious minorities, including whether and on what basis state authorities can interfere with internal

² Affidavit of Ruth A.M. Ross, sworn October 14, 2020, at paras 3, 6, 22 [RAMR Affidavit], **TAB 2**.

³ RAMR Affidavit at paras 7, 9, **TAB 2**.

⁴ RAMR Affidavit at paras 4, 9, 24 **TAB 2**.

⁵ *Syndicat Northcrest v Amselem*, 2004 SCC 47 at para 50.

⁶ RAMR Affidavit at paras 4, 7, 9, **TAB 2**.

functions of private, voluntary organizations, and the extent to which such organizations are able to exercise authority over internal matters.

CLF's Unique Position

10. Unique to CLF is its identity as both a religious *and* legal association, founded upon shared religious beliefs with an institutional interest and expertise in religious freedom and association. CLF possesses a thoroughly integrated understanding of religion and law, from the perspective of practicing lawyers who share a common faith *and* commitment to the rule of law, and who associate together on that basis. By its communal and religious nature, CLF understands the broader implications and effects of any decision in this Appeal in a way and from a perspective that is helpful for this Court, particularly when viewed through the international framework CLF proposes to apply.⁷

11. CLF is a non-governmental organization with Special Consultative Status with the Economic and Social Council of the United Nations. CLF has presented written submissions to the United Nations on issues of religious defamation as well as the protection of religious minorities and incitement laws (i.e. blasphemy, hate-speech). It has also participated in proceedings before international courts, including the Supreme Court of Sweden and the Inter-American Court of Human Rights.⁸

12. CLF is particularly knowledgeable concerning how the Constitution, informed by Canada's international commitments, places limits on the state's jurisdiction to intervene in religious disputes. CLF has expertise in the issues raised in this Appeal, including the scope of religious freedom and association, and the extent to which limits on those freedoms may be justified in a free and democratic society.⁹

13. CLF's proposed intervention thus provides an internationally informed perspective on the continued development of the Canadian doctrine of religious group autonomy, which will be impacted by this Appeal. CLF's intervention would allow an international perspective, beyond the American and United Kingdom authorities already mentioned in the Appellants' factum, to be further examined.¹⁰

⁷ RAMR Affidavit at paras 4, 8, 9, 13, 14, 18, 22, **TAB 2**.

⁸ RAMR Affidavit at paras 16, 19, **TAB 2**.

⁹ RAMR Affidavit at paras 23, 24, **TAB 2**.

¹⁰ Factum of the Appellants at paras 27, 55, 77-79.

14. CLF is actively engaged in issues of religious freedom and association and has been an intervener both independently and in coalition with other organizations in over 30 cases, including: *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32; *Ktunaxa Nation v British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54; and *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37.¹¹

15. In addition to its long-standing involvement in matters of public interest involving human rights and the *Charter of Rights and Freedoms*, CLF also has a history of intervening to speak to the relevance and importance of international human rights law obligations in interpreting the scope and nature of fundamental rights and freedoms in both Canadian and international courts, including the following cases: *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall*, 2018 SCC 26 (“Wall”); *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12; *Carter v Canada (Attorney General)*, 2015 SCC 5; *Reference re: Section 293 of the Criminal Code of Canada*, 2011 BCSC 1588; *Re Ake Green* (Supreme Court of Sweden, Case No. B 1050-05, 29 November 2005); and *SL v Commission scolaire des Chênes*, 2012 SCC 7.¹²

16. As this active engagement shows, CLF has a long history of responsible and useful interventions involving the *Charter*, freedom of religion, freedom of association, the duty of state neutrality, religious group autonomy, and the principles of a free and democratic society. CLF’s sustained attention to such matters through numerous interventions has cultivated institutional legal knowledge on these issues. CLF offers the perspective of a public interest intervener whose views and submissions “on issues of public importance frequently provide great assistance to the courts.”¹³

17. CLF submits that it has a demonstrable interest in this Appeal, satisfying the first necessary criterion.

B. Submissions are Relevant, Useful, and Different

18. The second criterion of useful and different submissions “is easily satisfied by an applicant who has a history of involvement in the issue giving the applicant an expertise which can shed fresh light or provide new information on the matter.”¹⁴

¹¹ RAMR Affidavit at paras 19-21, **TAB 2**.

¹² RAMR Affidavit at paras 19, 20, **TAB 2**.

¹³ *Canadian Council of Churches v Canada (Minister of Employment and Immigration)*, [1992] 1 SCR 236 at 256.

¹⁴ *Reference re Workers' Compensation Act, 1983 (Nfld)*, [1989] 2 SCR 335 at 340.

19. CLF will offer a useful, unique, and fresh perspective by highlighting applicable constitutional principles, as well as Canadian’s obligations under international human rights law, as they relate to this Appeal.

20. The scope of the court’s jurisdiction is a central issue in this case. As this Honourable Court clearly stated in *Wall*, the court’s jurisdiction is limited to questions that it has both the legitimacy and capacity to answer.¹⁵ Additionally, as CLF proposes to explain, the court’s jurisdiction is *also* limited by constitutional parameters. As this Honourable Court previously observed: “In exercising its discretion whether to determine a matter that is alleged to be non-justiciable, the Court’s primary concern is to retain *its proper role within the constitutional framework* of our democratic form of government.”¹⁶

21. CLF seeks to assist this Court in further articulating the judiciary’s “proper role within the constitutional framework”, particularly in the context of its approach to private religious disputes. CLF’s proposed submissions will highlight the applicability of constitutional principles, including the duty of religious neutrality, the rule of law, freedom of religion, and freedom of association. Because this is still an evolving/emerging area of Canadian jurisprudence (the Appellants’ factum notes the law on this matter is not yet fully “settled”¹⁷), CLF proposes to draw from international jurisprudence that will be helpful to this Court in deciding these issues.

22. For example, CLF will make submissions to the Court in respect of Canada’s international obligations to guarantee rights to freedom of religion (manifested both individually and in community with others) and religious association, including under the [Universal Declaration of Human Rights](#),¹⁸ the [International Covenant on Civil and Political Rights](#),¹⁹ the [International Covenant on Economic, Social and Cultural Rights](#),²⁰ and the [American Declaration on the Rights](#)

¹⁵ [Highwood Congregation of Jehovah’s Witnesses \(Judicial Committee\) v Wall](#), 2018 SCC 26 at para 34.

¹⁶ [Reference Re Canada Assistance Plan \(B.C.\)](#), [1991] 2 SCR 525 at 545 [emphasis added].

¹⁷ Factum of the Appellants at para 71.

¹⁸ [Universal Declaration of Human Rights](#), GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71.

¹⁹ [International Covenant on Civil and Political Rights](#), GA Res 2200A (XXI), UNGAOR, 1966, Supp No 16, UN Doc A/6316 52.

²⁰ [International Covenant on Economic, Social and Cultural Rights](#), GA Res 2200A (XXI), UNGAOR, 1966, Supp No 16, UN Doc A/6316 49.

and Duties of Man.²¹ CLF has particular knowledge in these areas, and is unique from parties and interveners in providing this distinct perspective.²²

23. This Honourable Court has previously looked to a number of these instruments, as well as international jurisprudence, in articulating the rights and freedoms of religious communities.²³ CLF submits that international human rights law instruments, and their interpretations by international courts and bodies, can provide helpful guidance in the resolution of the present dispute. As Justice LeBel affirmed in *R v Hape* (writing for the majority):

[The Supreme] Court has also looked to international law to assist it in interpreting the *Charter*. Whenever possible, it has sought to ensure consistency between its interpretation of the *Charter*, on the one hand, and Canada's international obligations and the relevant principles of international law, on the other.²⁴

24. Justice LeBel also cited Dickson CJC's statement in *Re Public Service Employee Relations Act* that "the *Charter* should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified."²⁵

25. These human rights documents, along with similarly worded international law instruments and decisions applying them, are relevant to this Appeal. CLF's submissions will canvas this jurisprudence to explain why freedom of association, freedom of religion, and the duty of state neutrality necessarily limit the scope of the court's jurisdiction in resolving certain religious disputes, and that questions of religious membership are within the exclusive jurisdiction of spiritual authorities.

C. Proposed Submissions

26. If granted leave to intervene, CLF will expand on its unique perspective by making the following proposed arguments:

²¹ OAS, Inter-American Commission on Human Rights, *American Declaration of the Rights and Duties of Man*, Res XXX, OAS/Ser.L/V/I.4, rev 9 (2003).

²² RAMR Affidavit at paras 14, 16, 19, 20, 22, **TAB 2**.

²³ *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12 at paras 45, 65, 91, 96-98; *Mounted Police Association of Ontario v Canada (Attorney General)*, 2015 SCC 1 at para 64.

²⁴ *R v Hape*, 2007 SCC 26 at para 55.

²⁵ *Reference Re Public Service Employee Relations Act (Alta)*, [1987] 1 SCR 313 at 349; see also *Health Services and Support – Facilities Subsector Bargaining Assn v British Columbia*, 2007 SCC 27 at para 70.

- a. *Wall* rightly emphasized the freedom of religious groups to “determine their own membership and rules”,²⁶ recognizing the courts’ limited competence in such matters. However, as international jurisprudence affirms, religious group autonomy is rooted in *more* than a court’s limited expertise/capacity – it is a core component of a liberal democracy, derived from the interconnected principles of state neutrality, freedom of religion, and freedom of association. Thus, even if a civil court *had* the expertise and capacity to resolve religious disputes, it would still be inappropriate to do so.
- b. Canadian jurisprudence already recognizes that justiciability is rooted in certain constitutional parameters placed on the courts’ jurisdiction.²⁷ One such parameter in this context is the duty of religious neutrality. The Constitution imposes an epistemic humility on the part of all state actors, decision makers, and courts, recognizing that it is inappropriate for the state to decide certain theological questions or to influence the composition, direction, and/or leadership of religious groups. These principles are all reinforced by international jurisprudence. For example, the European Court of Human Rights has recognized the following:
 - i. To give meaningful protection to freedom of religion, it must be interpreted in light of freedom of association and the state’s duty of neutrality, which requires that government actors – and courts²⁸ – abstain from interfering with internal religious disputes or religious “associative life”, including disputes about membership and/or doctrinal interpretation²⁹; Canadian jurisprudence similarly requires constitutional principles to be interpreted and applied holistically, as interconnected protections, not as “insular and discrete” silos.³⁰

²⁶ [Highwood Congregation of Jehovah’s Witnesses \(Judicial Committee\) v Wall](#), 2018 SCC 26 at para 39.

²⁷ [Reference Re Canada Assistance Plan \(B.C.\)](#), [1991] 2 S.C.R. 525 at 545; [Nevsun Resources Ltd. v Araya](#), 2020 SCC 5 at para 294 (per Côté J).

²⁸ [Sindicatul “Păstorul cel Bun” v Romania](#), No 2330/09, [2013] V ECHR 41 [GC] at para 159.

²⁹ [Metropolitan Church of Bessarabia and Others v Moldova](#), No 45701/99, [2001] XII ECHR 81 at paras 117-118; [Svyato-Mykhaylivska Parafiya v Ukraine](#), No 77703/01 (14 June 2007) at paras 146, 150.

³⁰ [R v Lyons](#), [1987] 2 SCR 309 at para 21; [Baier v Alberta](#), 2007 SCC 31 at para 58.

- ii. If the “organisational life of the [religious] community” is not protected from such state interference, “all other aspects of the individual’s freedom of religion would become vulnerable”.³¹
- c. Religious group autonomy, like the duty of state neutrality, is always a relevant consideration in delineating the court’s authority and remedial jurisdiction – even where a government actor is not involved in the litigation, and the *Charter* does not directly apply – because it informs the court’s “proper role within the constitutional framework of our democratic form of government.”³² International jurisprudence emphasizes that respecting the autonomy of religious associations is a prerequisite to the “proper functioning” of the democratic political model.³³
- d. Religious group autonomy is not absolute, but at minimum requires freedom for religious groups to self-define and set their own rules and expectations for membership. This precludes courts from automatically construing membership in a voluntary religious association as a legally enforceable contractual relationship. To allow otherwise would drastically transform and disrupt religious associative life. Religious commitments, expectations, and relationships – even those expressed in writing through ecclesiastical statements – are *spiritual*, not *legal*, in nature. They are premised on voluntary, religious beliefs which members must have the freedom to change or reject at any time without fear of civil/legal consequences, lest they face the risk of compelled religious association and/or observance. As international case law has recognized, a court’s role is to ensure that members may freely leave a religious group, rather than trying to achieve a particular outcome by intervening in its internal affairs.³⁴
27. CLF submits that its unique international human rights law perspective, experience, and expertise related to extra-Canadian jurisprudence on freedom of religion and association will be of assistance to the Court in interpreting the *Charter* protections at issue in the present Appeal, and that its proposed arguments are relevant, useful, and different, satisfying the second necessary criterion.

³¹ [Hasan and Chaush v Bulgaria](#), No 30985/96 [2000] XI ECHR 117 [GC] at paras 62, 78.

³² [Reference Re Canada Assistance Plan \(B.C.\)](#), [1991] 2 S.C.R. 525 at 545.

³³ [Moscow Branch of the Salvation Army v Russia](#), No 72881/01, [2006] XI ECHR 1 at paras 60-61; [Gorzelik and Others v Poland](#), No 44158/98, [2004] I ECHR 219 [GC] at paras 88-93.

³⁴ [Sindicatul “Păstorul cel Bun” v Romania](#), No 2330/09 [2013] V ECHR 41 [GC] at para 137.

D. Conclusion

28. CLF has a direct stake in the outcome of this Appeal. CLF has been actively engaged in promoting religious freedom and freedom of association, as well as the necessity of protecting religious group autonomy. As a faith-based organization with its own set of internal policies and procedures, CLF also has concerns about the broader implications of the result in this Appeal. CLF has an interest in ensuring that the interpretation of religious freedom and freedom of association aligns with Canada's international obligations and commitments to grant religious organizations a significant scope of autonomy, free of judicial interference. CLF has a unique perspective, useful arguments, and submits it should be granted intervener status accordingly.³⁵

PART IV: SUBMISSIONS CONCERNING COSTS

29. CLF requests that no costs be awarded either for it or against it.

PART V: ORDER SOUGHT

30. CLF requests that the motion for intervention in this Appeal be allowed on the same terms as requested in CLF's Notice of Motion, namely that CLF be permitted:

- a. to file a factum of no more than 10 pages;
- b. to present oral arguments of no more than 5 minutes or a time this Honourable Court deems appropriate in the exercise of its discretion;
- c. to have no costs awarded for or against it; and
- d. such further grounds as counsel may advise and this Honourable Court may permit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of October, 2020.



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³⁵ [R v Finta](#), [1993] 1 SCR 1138 at 1142.

PART VI: TABLE OF AUTHORITIES

<u>Source</u>	Paragraph(s) in Factum
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Case Law

<i>Canada</i>	
<i>Alberta v Hutterian Brethren of Wilson Colony</i>, 2009 SCC 37	4
<i>Baier v Alberta</i>, 2007 SCC 31	26
<i>Canadian Council of Churches v Canada (Minister of Employment and Immigration)</i>, [1992] 1 SCR 236	16
<i>Health Services and Support – Facilities Subsector Bargaining Assn v British Columbia</i>, 2007 SCC 27	24
<i>Highwood Congregation of Jehovah’s Witnesses (Judicial Committee) v Wall</i>, 2018 SCC 26	20, 26
<i>Loyola High School v Quebec (Attorney General)</i>, 2015 SCC 12	4, 23
<i>Mounted Police Association of Ontario v Canada (Attorney General)</i>, 2015 SCC 1	4, 23
<i>Nevsun Resources Ltd. v Araya</i>, 2020 SCC 5	26
<i>R v Finta</i>, [1993] 1 SCR 1138 at 1142	28
<i>R v Hape</i>, 2007 SCC 26	23
<i>R v Lyons</i>, [1987] 2 SCR 309	26
<i>Reference Re Canada Assistance Plan (B.C.)</i>, [1991] 2 SCR 525	20, 26
<i>Reference Re Public Service Employee Relations Act (Alta)</i>, [1987] 1 SCR 313	24
<i>Reference re Workers’ Compensation Act, 1983 (Nfld)</i>, [1989] 2 SCR 335	18
<i>Syndicat Northcrest v Amselem</i>, 2004 SCC 47	8

European Court of Human Rights

<i>Gorzelik and Others v Poland</i>, No 44158/98, [2004] I ECHR 219 [GC]	26
<i>Hasan and Chaush v Bulgaria</i>, No 30985/96 [2000] XI ECHR 117 [GC]	26
<i>Metropolitan Church of Bessarabia and Others v Moldova</i>, No 45701/99, [2001] XII ECHR 81	26
<i>Moscow Branch of the Salvation Army v Russia</i>, No 72881/01, [2006] XI ECHR 1	26

Sindicatul “Păstorul cel Bun” v Romania , No 2330/09, [2013] V ECHR 41 [GC]	26
Svyato-Mykhaylivska Parafiya v Ukraine , No 77703/01 (14 June 2007)	26

Secondary Sources

<i>International Instruments (United Nations)</i>	
International Covenant on Civil and Political Rights , GA Res 2200A (XXI), UNGAOR, 1966, Supp No 16, UN Doc A/6316 52.	22
International Covenant on Economic, Social and Cultural Rights , GA Res 2200A (XXI), UNGAOR, 1966, Supp No 16, UN Doc A/6316 49.	22
Universal Declaration of Human Rights , GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71.	22
<i>Regional Instruments</i>	
OAS, Inter-American Commission on Human Rights, American Declaration of the Rights and Duties of Man , Res XXX, OAS/Ser.L/V/I.4, rev 9 (2003).	22