**ACTE D'INTERVENTION DE L'ALLIANCE DES CHRÉTIENS EN DROIT**
**DATÉ DU 2 JUILLET, 2021**
**(art. 185, 186 et 187 C.p.c.)**

[UNOFFICIAL TRANSLATION]

IN SUPPORT OF THIS APPLICATION, THE APPEAL INTERVENER STATES THE FOLLOWING:

## I INTRODUCTION

1. By this application to intervene as a friend of the court, the Intervener in appeal (hereinafter, 'the Intervener') wishes to intervene in this appeal, in order to support the claims of the appellants, aimed at declaring inoperative and unconstitutional the Act respecting the laicity of the State;
2. Like the appellants and certain other parties and interveners, the Intervener will claim that this law infringes the fundamental right to freedom of religion of many believers, despite the appeal to section 33 of this Charter, made by the National Assembly of Quebec;
3. However, the Intervener believes that it will be able to present a distinct and unique perspective on the issues raised by this appeal;
4. Specifically, the Intervener intends to make submissions on (1) the nature and scope of section 31 of the Charter, as well as its limiting effect on recourse to section 33 in the context of certain rights that existed before the Charter, and (2) how Bill 21 unduly interferes with the independence of the legal profession;
5. As an association of legal professionals, the Intervener is uniquely positioned to address these issues, as indicated below;
6. In fact, the Intervener is both a legal and a religious association, whose members seek to integrate their religious identity into the practice of law;
7. The Intervener therefore has a distinct understanding of the relationship between law and religion, specifically in the context of public professions;

8. The present dispute has a direct impact on the Intervener, since its members could be prevented from exercising their profession according to the provisions of APPENDIX II of Bill 21, in articles 6, 7, and 8, if they manifest their faith through the wearing of religious symbols;
9. This is an appeal which is unquestionably of great importance beyond the interests of the parties to the dispute;
10. As demonstrated below, the Intervener considers that its presence in this case would be useful for the Court, given its extensive experience in similar matters, and because of the arguments it intends to present;

## II THE PUBLIC INTEREST OF THIS CASE

11. There is no doubt that this case raises several questions of public interest, such as fundamental freedoms of religion and conscience, as well as the right to equal treatment and to human dignity, as evidenced by, among others, paragraphs 65, 69 and 70 of the lower court's judgment;

## III THE IDENTITY OF THE ALLIANCE DES CHRÉTIENS EN DROIT

12. L'Alliance des chrétiens en droit (the English name is "Christian Legal Fellowship") (hereinafter "the Alliance") was founded in 1978, and is the largest association of lawyers of the Christian faith in Canada;
13. The Alliance now has over 700 members across Canada (including Quebec), representing over 40 Christian denominations, whose perspectives are not necessarily represented by the parties or other stakeholders;
14. These members are composed primarily of lawyers, but also of law students, law professors, retired judges, and other legal professionals who profess the Christian faith, and one of whose goals is to examine the relationship between the Christian faith and the theory and practice of law;
15. Groups of law students affiliated with the Alliance are found in several law schools across Canada, including the Faculty of Law at McGill University;
16. The Alliance fulfills its mandate by means of symposia, national conventions, and local meetings, by means of journals, newsletters, and other publications, and, when

appropriate, by intervening in proceedings before the courts to (among other things) promote freedom of religion in Canada;

17. Alliance's expertise has been recognized by Quebec and Canadian courts. For example, the Superior Court of Quebec recognized that "the Alliance brings together more than 500 jurists and has significant expertise in philosophy, morality, and ethics". Also, the Federal Court of Canada declared that the Alliance “possesses special knowledge and expertise on issues relating to sections 2 (a) and (d) of the Charter […] and the principle of state neutrality”.
18. Alliance members have contributed articles to peer-reviewed legal publications in Canada and abroad on human rights, constitutional law, and moral, legal and political philosophy;
19. The Alliance organizes an annual Symposium on Religion, Law and Human Rights, which brings together jurists for the purpose of presenting papers on human rights (among other themes), including the topics covered by this appeal, such as religious neutrality, religious freedom and equality, and unwritten constitutional principles. These papers presented at the Symposium have been published in three volumes of the Supreme Court Law Review, and also in three books edited by members of the Alliance. In addition, some of the articles published in these books have been cited in judgments of the Superior Court of Quebec and the Supreme Court of Canada. At the 2021 Symposium, papers were presented on Bill 21, on the constitutional architecture, on religious freedom in Quebec before the Charter, on sections 26 and 31 of the Charter, on the Preamble of the Charter, and on the so-called "notwithstanding" clause. All of these matters are relevant to this appeal. These briefs therefore constitute a resource which could inform these procedures;
20. The Alliance's periodical publication (Revue Juridique Chrétienne) regularly includes analyses of current legal, social and political issues, including issues raised by this case;
21. For several years, the Alliance has taken a particular interest in public policy issues that affect fundamental rights, including freedoms of conscience and religion;

22. Alliance members are often called upon to counsel their clients, coming from various religious backgrounds, and to lecture on issues of human dignity and religious freedom, among other topcis;
23. Representatives of the Alliance have made representations to parliamentary committees and other bodies on issues relating to freedom of conscience, freedom of religion, religious equality, the accommodation of religion in public professions, and the duty of state neutrality on several occasions;
24. With regard to the issues raised by this case, the Alliance made representations to the National Assembly of Quebec regarding Bill 21 (signed by 116 lawyers and law students) on May 14, 2019, and regarding Law 62*, Law to promote respect for the religious neutrality of the State and in particular to regulate requests for accommodation for religious reasons in certain organizations* (submitted on December 9, 2016);
25. The Alliance is a non-governmental body "with Special Consultative Status" with the United Nations Economic and Social Council. The Alliance has made representations to various United Nations bodies and personnel on matters of religious expression, freedom of thought, and the protection of religious minorities.
26. The Alliance has already intervened in more than 40 cases affecting freedom of conscience and religion, religious equality and human dignity, the protection of minorities and the accommodation of religious differences, constitutional interpretation, and the duty of state neutrality. It has been granted permission to intervene before the Supreme Court of Canada and other courts in the following cases, among others:
    a. Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga, 2021 SCC 22;
    b. Redeemer University College v. Canada (Minister of Employment, Workforce Development and Labour, and the Attorney General of Canada), 2021 FC 686;
    c. Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario, 2019 ONCA 393;
    d. Truchon c. Procureur général du Canada, 2019 QCCS 3792;

e. Trinity Western University v. Law Society of Upper Canada, 2018 SCC 33;
f. Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall, 2018 SCC 26;
g. E.T. v. Hamilton-Wentworth District School Board, 2017 ONCA 893;
h. Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations), 2017 SCC 54;
i. Saba v. Procureure générale du Québec et al., 2018 QCCA 1526;
j. École secondaire Loyola v. Québec (Procureur général), 2015 SCC 12;
k. Carter v. Canada (Attorney General), 2015 SCC 5;
l. Canada (Attorney General) v. Bedford, 2013 SCC 72;
m. Saskatchewan (Human Rights Commission) v. Whatcott, 2013 SCC 11;
n. S.L. v. Commission scolaire des Chênes, 2012 SCC 7;
o. Ginette Leblanc c. Procureur Général du Canada, no. 400-17-002642-110, Superior Court of the District of Trois-Rivières (discontinued);
p. Reference re: Section 293 of the Criminal Code of Canada, 2011 BCSC 1588;
q. Alberta v. Hutterian Brethren of Wilson Colony, 2009 SCC 37;
r. Trinity Western University v. British Columbia College of Teachers, 2001 SCC 31.

27. The Intervener believes that it will be able to provide the Court with a perspective on the issues raised by this case that other parties and interveners will not provide;

## IV THE PROPOSED ARGUMENTS

28. The Alliance now wishes to elucidate the sections of the Charter, especially section 31, which prevent the National Assembly of Quebec from treating section 33 as a *carte blanche*;

29. The Intervener intends to present (among others) the following arguments:
    a. Freedom of religion is a fundamental freedom that was recognized and enforced in Canada, even before Confederation. The judgment of the lower court recognizes this fact in paragraphs 575 and following.

b. However, the fact that freedom of religion was enshrined in the Canadian Charter ("the Charter") in section 2(a) in 1982 does not mean that there are two kinds of freedom of religion (one before and one after the Charter) which can be interpreted in different ways, contrary to what the trial judge claimed in paragraph 582 of his judgment.

c. On the contrary, Canadian law, before and after 1982, recognized a uninterrupted conception of freedom of religion, which has always included certain non-derogable elements which are inherent in all human beings, including the right not to be coerced to observe and adopt another religion. As established by the Court of Appeal in *Chabot v. Les Commissaires d'Écoles de la Morandière* (1957) C.A. 707, these non-derogable protections are a prerequisite for our legal order, and are "prior to the positive law" (Pratte J., P.117). Moreover, according to Justice Cassey, "… these rights… find their existence in the very nature of man (and) they cannot be taken away, and <u>they must prevail should they conflict with the provisions of positive law</u>" (p. 722). (emphasis added)

d. Indeed, the fundamental freedom of religion, which existed in Canada before the Charter, also persists after the Charter. Every man and woman has this inherent freedom that even section 33 of the Charter cannot take away.

e. Since freedom of religion existed before the Charter, legislators in Canada could not infringe it at will, as the case law before the enactment of the Charter in 1982 demonstrates.

f. This reality has not changed after the Charter, since we read in section 31: "This Charter does not extend the legislative powers of any body or authority whatsoever."

g. The text of section 31 is clear: it refers to "any body or authority whatsoever" that would have legislative competence, which necessarily includes the National Assembly of Quebec, as well as any other legislative authority in Canada.

h. The text of section 31 goes on to state that "this Charter does not extend the legislative powers" of said legislative authorities. The English version says: "Nothing in this Charter extends the legislative powers of any body or authority…"

i. Obviously, section 33 is part of "this Charter". It must therefore be concluded that section 33 cannot be used to extend the legislative competence of the National Assembly of Quebec in matters of freedom of religion, beyond what it was before 1982.

j. Without a doubt, Bill 21 violates the fundamental right to freedom of religion of many people, in a way that would not have been allowed before 1982. Here is how the judgment of the lower court described the content of this law :

> The trial judge said first that this law "sends the message that people who exercise their faith do not deserve to participate fully in Quebec society". He goes on to say that this law represents “an indelicate and morally repugnant gesture of faith. . . ", and that it represents “a policy of exclusion” which has negative consequences for “all persons who wear religious symbols in public”. In fact, he says, this exclusionary policy creates the following dilemma for people who display their religious faith and who aspire to certain jobs: "either they act according to their soul and conscience, in this case their beliefs, or they work in the profession of their choice. It is easy to understand that this is a cruel consequence which dehumanizes those targeted.” The trial judge continued: “For them, Bill 21 postulates that there is something fundamentally wrong or harmful with religious practices, especially some of them, and that the public must be guarded against them.” [unofficial translation]

k. In light of these comments, we submit that, given the state of the law on religious freedom before the Charter, a Canadian legislature could not have successfully passed Bill 21 before the enactment of the Charter in 1982.

l. The National Assembly of Quebec nevertheless allows itself to infringe the freedom of religion of people who display their religious faith, by relying on section 33 of the Charter.

m. Bill 21 does not create neutrality. On the contrary, it imposes a secular ideology which forces a quasi-religious submission. The trial judgment recognizes that Bill 21 has a quasi-religious purpose which requires "what constitutes essentially a secular obligation" (para. 369). The conception of "secularism" promoted by Bill 21 "has the same essence as that of ‘religion’" (para. 369). "This existence of secularism occurs only by advocating the inexistence of religion" (para. 380). Secularism and religion are "two poles of the same philosophical and social notion"

(para. 370). It can therefore be concluded that forcing a person to remove a religious symbol only because it signifies a religious affiliation is tantamount to forcing that person to wear the symbol of another religion. This requirement forces individuals to abandon their religious identity and adopt another, which is contrary to the freedoms of religion and conscience which existed before the Charter, and which, according to the decision of the Court of Appeal in the *Chabot* case (supra, para. 30(c)) “cannot be taken away” and “must prevail should they conflict with the provisions of positive law”. This is a non-derogable aspect of the freedom of religion that existed before the Charter, and one that a legislative authority could not violate before 1982.

n. Therefore, the adoption of Bill 21 is an expansion of legislative competence which is invalid under section 31 of the Charter, and which should therefore be declared unconstitutional and inoperative. In fact, the purpose of the Charter that appears in its preamble, and in sections 1 and 26, is to limit state power, not to expand it.

o. The Alliance recognizes that a lawyer’s religious identity (if any) is embedded in all aspects of their life and work. Forcing a lawyer or notary to separate his identity from his work violates his personal integrity. Moreover, such an act on the part of the State constitutes an interference with the independence of the legal profession, a principle which has been recognized as "one of the hallmarks of a free society" (*A.G. Canada v. Law Society of B.C.,* [1982] 2 SCR 307 at p. 335). An independent bar is essential to maintain the rule of law, which is one of the “fundamental and organizing principles of the Constitution” (*Reference re Secession of Quebec* [1998] 2 SCR 217, para. 32). This principle cannot be derogated from by invoking section 33 of the Canadian Charter.

p. Bill 21 undermines the independence of the legal profession by erecting an arbitrary barrier to the public sector of the Bar, based on the practice of religion. Lawyers who display their religion are therefore excluded from the public sector of the Bar. The trial judge concluded that Bill 21 unfairly interferes with the autonomy of English language school boards. This conclusion should also apply to the legal professions, which must also "reflect the cultural diversity of the population they serve" (para. 993, judgement of the lower court). Further on, the trial judge

continued: “The systematic absence in a social space of people with whom another, sharing the same characteristics, can identify constitutes both an obstacle in the social recognition of the value of these characteristics, while as much as a factor of marginalization for any individual who aims to obtain this recognition.” (para. 994)

q. Such interference in the legal profession is unacceptable, according to the Supreme Court of Canada:

> The independence of the Bar from the state in all its pervasive manifestations is one of the hallmarks of a free society. Consequently, regulation of these members of the law profession by the state must, so far as by human ingenuity it can be so designed, be free from state interference, in the political sense, with the delivery of services to the individual citizens in the state, particularly in fields of public and criminal law. The public interest in a free society knows no area more sensitive than the independence, impartiality and availability to the general public of the members of the Bar and through those members, legal advice and services generally. [*A.G. Can. v. Law Society of B.C.*, [1982] 2 SCR 307 at pp. 335-336]

30. We therefore submit that the present Intervener has a strong interest and a great expertise in matters of freedom of religion, and that its participation in the case will be useful to the Court;
31. The present Intervener proposes to present oral argument, and to present a written brief;
32. This Intervener will respect the deadlines already prescribed by the Court, as well as all future deadlines.

**FOR THESE REASONS, THE COURT IS ASKED:**

TO ALLOW the intervention of the Alliance des chrétiens en droit as a friend of the court according to the modalities provided for in this act of intervention or according to the modalities of intervention that the court may well set;

TO AUTHORIZE the Alliance des chrétiens en droit to participate in these proceedings, and to present the following arguments, among others:

i. Art. 4, 6, 7 to 10 and 13 to 16, as well as Schedules II and III of the Act respecting the laicitie of the State, R.L.R.Q. vs. L-0.3 ('the Act') contravene the constitutional

right to the free exercise of religion without discrimination, since they seek to broaden the legislative powers of the National Assembly of Quebec in matters of freedom of religion by invoking s. 33 of the Canadian Charter of Rights and Freedoms ("the Charter"), which they cannot do under s. 31 of the Charter, and are therefore invalid and inoperative pursuant to s. 52 of the Constitution Act, 1982 (CA 1982);

ii. Art. 4, 6, 7 to 10 and 13 to 16, as well as Schedules II and III of the Act violate the constitutional right to the free exercise of religion without discrimination as it existed in Canada before the enactment of the CA 1982, and, moreover, that they infringe this non-derogable right which has been recognized and preserved by sections 2, 15, 26 and 31 of the Charter, and that these provisions are therefore invalid and inoperative in accordance with to s. 52 CA 1982;

iii. Art. 4, 6, 7 to 10 and 13 to 16, as well as Schedule II of the Act constitute an interference with the independence of the legal profession, and are therefore incompatible with the constitutional principle of the rule of law, and are therefore invalid and inoperative, in accordance with s. 52 CA 1982;

ALL, without legal costs.

MONTREAL, this 2nd day of July, 2021

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