

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

BETWEEN:

**KTUNAXA NATION COUNCIL and KATHRYN TENEESE, ON THEIR OWN BEHALF  
AND ON BEHALF OF ALL CITIZENS OF THE KTUNAXA NATION**

Appellants  
(Appellants)

-and-

**MINISTER OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS and  
GLACIER RESORTS LTD.**

Respondents  
(Respondents)

-and-

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Interveners

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**ALBERTA MUSLIM PUBLIC AFFAIRS COUNCIL**  
*Rule 42 of the Rules of the Supreme Court of Canada*

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## **PART I: OVERVIEW**

1. In Islam, sacred lands form the focal of communal worship. The Hajj is a pilgrimage made by millions of Muslims each year to the sacred Kaba at Mecca. This pilgrimage is a religious obligation incumbent upon every able-bodied Muslim. At Mecca, Muslims find communion with the Almighty in community. And wherever they may be in the world, Muslims pray towards the Kaba.
2. For Muslims, the collective manifestation of faith and veneration of sacred spaces is integral to their connection with the Divine.
3. The same is true for the Ktunaxa, an Aboriginal people recognized under section 35 of the *Constitution Act, 1982* that have inhabited the Columbia and Kootenay River valleys and parts of the Purcell, Selkirk, and Rocky Mountains since before contact with Europeans.
4. This appeal is about whether the *Canadian Charter of Rights and Freedoms* (“*Charter*”) protects the Ktunaxa Nation’s collective claim that their religious freedom will be infringed by a ski resort development over lands considered sacred by the Ktunaxa.
5. The Alberta Muslim Public Affairs Council (“AMPAC”) believes that this appeal provides this Honourable Court with an opportunity to address the scope of the freedom of religion, and to do so in a manner that recognizes the value of differing religious traditions and makes the *Charter* a document that protects all Canadians.
6. AMPAC submits that section 2(a) of the *Charter* must be read as broadly as possible to protect the Ktunaxa Nation’s religious liberty.
7. Specifically, AMPAC submits that the *Charter*-protected freedom of religion should be read in a manner that recognizes the equal dignity of non-Western, non-individualistic religious traditions.
8. Freedom of religion under the *Charter* should extend to encompass collective manifestations of faith and the protection of sacred spaces.



9. AMPAC urges this Honourable Court to affirm a conception of freedom of religion that protects not only individual liberties — a conception founded on Western political thought — but also protects communities that practice religion in a communitarian manner, as observed in Indigenous and minority non-Western religious cultures.
10. AMPAC makes three submissions in this respect:
  - (a) *First*, different conceptions of religious practice must be protected in Canada because doing so fosters self-fulfillment of, autonomy for, and the political protection of minorities.
  - (b) *Second*, the architecture of the Constitution of Canada supports the protection of differing conceptions of religious practice; and
  - (c) *Finally*, the jurisprudence under section 2(a) of the *Charter* allows for the protection of differing conceptions of religious practice, including collectivist manifestations of faith.

## **PART II: STATEMENT OF POSITION**

11. AMPAC supports the position of the Appellants, Ktunaxa Nation Council and Kathryn Teneese, on their own behalf and on behalf of all citizens of the Ktunaxa Nation, and adopts the facts as stated by the Appellants.

## **PART III: STATEMENT OF ARGUMENT**

### **1. Canadian Courts Must Protect Differing Conceptions of Religion**

#### **A. Individual and Collective Conceptions of Freedom of Religion**

12. A robust conception of the freedom of religion requires Canadian courts to protect not only individualistic conceptions of faith (rooted in Western history and culture) but also collectivist practices from non-Western cultures.

13. The traditional paradigm for the treatment of religion in Canadian constitutional law is to consider it as: (a) essentially individual; (b) centered on autonomy and choice; and (c) private.<sup>1</sup>
14. The conception of freedom of religion found in Canadian constitutional law is rooted in liberal individualism.<sup>2</sup> This liberal tradition is a by-product of the “religious struggles of post-reformation Europe,” and the history of the relationship between church and state in the Western world.<sup>3</sup>
15. The religious persecution of Indigenous peoples in the name of Western religions upon the arrival of European settlers is not reflected in the Canadian Constitution’s conception of freedom of religion.<sup>4</sup> Burrows argues that this “presents a problem for Indigenous peoples” seeking protection of their religious practices under the *Charter*, as the contextual origins of this conception of freedom of religion does not include non-Western notions of religious practice.<sup>5</sup> This includes collective manifestations of faith.
16. But freedom of religion is not always purely individualistic. Religious freedom “is not the right of an individual to go into a closet and worship alone.”<sup>6</sup> Indeed, to treat faith as a purely individual matter denigrates religious traditions that emphasize communal worship or other communal religious activities.<sup>7</sup>

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<sup>1</sup> Benjamin Berger, “Law’s Religion: Rendering Culture” (2007) 45 OHLJ 277 at 283, Book of Authorities of the Alberta Muslim Public Affairs Council (**AMPAC’s Authorities**), Tab 8.

<sup>2</sup> *Ibid* at 291, AMPAC’s Authorities, Tab 8.

<sup>3</sup> Charles Taylor, “The politics of recognition” in *Multiculturalism: Examining the politics of recognition* (1992: Princeton, Princeton University Press) at 62, AMPAC’s Authorities, Tab 9 and *R v Big M Drug Mart Ltd.* [1985] 1 SCR 295 at 344-345, AMPAC’s Authorities, Tab 3.

<sup>4</sup> John Burrows, *Canada’s Indigenous Constitution* (2010: Toronto, University of Toronto Press), at 249, AMPAC’s Authorities, Tab 10.

<sup>5</sup> *Ibid*, AMPAC’s Authorities, Tab 10.

<sup>6</sup> Dwight Newman, *Community and Collective Rights: A Theoretical Framework for Rights held by Groups* (2011: Portland, Oregon, Oxford University Press) at 78, AMPAC’s Authorities, Tab 11.

<sup>7</sup> *Ibid*, AMPAC’s Authorities, Tab 11.

17. “If freedom of religion is to extend beyond those who practice more individually-oriented religions and thus to be a meaningful *freedom of religion*, it must include some protection for religious communities.”<sup>8</sup>
18. Communal religious freedom enables many individuals in our society — religious and not — to flourish.<sup>9</sup>
19. The protection of collective rights, including collective religious claims, has three distinct benefits. First, individuals find fulfillment as members of a social group and therefore the protection of social (and religious) groups enables that self-fulfillment. Second, collective rights ensure a degree of autonomy to social, ethnic, or religious groups from governmental interference, allowing them to develop and preserve their institutions and customs. Third, conferring collective rights vests protected groups with greater weight and therefore protection from majoritarian power.<sup>10</sup>

#### **B. Differing Conceptions of Freedom of Religion and Sacred Lands**

20. AMPAC submits that the Canadian Constitution’s understanding of the freedom of religion must also incorporate Indigenous and other minority conceptions of religion and religious practice.
21. There are a variety of religious belief systems practiced among and within Indigenous and other minority religious communities in Canada. Generalizations gloss over this diversity and fail to capture the nuance of a community’s spiritual beliefs.
22. In Islam, there are both individual and collective religious obligations that Muslims must follow. This includes performing religious rituals in concert with other Muslims, such as Jumu’ah, a congregational prayer that is performed every Friday afternoon. Maintaining

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<sup>8</sup> *Ibid*, AMPAC’s Authorities, Tab 11.

<sup>9</sup> Ian T. Benson, “The Case for Religious Inclusivism and the Judicial Recognition of Associational Rights” (2008) 1 Constitutional Court Review 297 at 307, AMPAC’s Authorities, Tab 12.

<sup>10</sup> Joseph Eliot Magnet, “Collective Rights, Cultural Autonomy and the Canadian State” (1986) 32 MLJ 170 at 176-177, AMPAC’s Authorities, Tab 13.

the Ummah or ‘Community of Islam’ itself is a religious obligation, as Muslims are required to uphold and propagate the values and teachings of their faith in order to strengthen the religious community. Collectivism is at the very foundation of Islam, and a purely individualistic conception of freedom of religion under section 2(a) of the *Charter* signifies to Muslims in Canada that their fundamental freedoms are deserving of less protection.

23. With respect to Indigenous religious traditions, land holds a central role.<sup>11</sup> Land encompasses both physical and spiritual dimensions that provide Indigenous communities physical and spiritual fulfillment.<sup>12</sup>
24. Maintaining the spiritual connection with the land is critical to the preservation of the religious character of Indigenous communities and their ability to pass on religious practices to future generations.
25. The spiritual dimension of the land gives rise to religious interests in the preservation of sacred sites from an individual and communitarian perspective.
26. Individual members of an Indigenous community require the spiritual dimension of the land to be maintained to ensure that associated religious practices have meaning.<sup>13</sup>
27. Preserving the spiritual dimension of sacred Indigenous sites also engages the communitarian character of the freedom of religion. An Indigenous community’s spiritual connection with the land informs its identity.<sup>14</sup> Sacred sites and associated religious

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<sup>11</sup> Natasha Bakht and Lynda Collins, “The Earth is Our Mother: Freedom of Religion and the Preservation of Aboriginal Sacred Sites in Canada” (June 29, 2016). McGill Law Journal, Forthcoming; Ottawa Faculty of Law Working Paper No. 2016-24 at 1, AMPAC’s Authorities, Tab 14.

<sup>12</sup> *Ibid*, AMPAC’s Authorities, Tab 14.

<sup>13</sup> *Ibid*, at 12-14, AMPAC’s Authorities, Tab 14.

<sup>14</sup> *Supra*, note 4 at 239-269, AMPAC’s Authorities, Tab 10: Although Burrows discusses how the Anishinabek’s spiritual attachment with the land informs the nation’s religious, political, and legal identity, this is common with many Indigenous communities in Canada, including the Ktunaxa. The Appellant argues in this appeal that the Ktunaxa’s spiritual connection with the Grizzly Bear Spirit will be severed if the ski resort is approved and built. This would have “devastating consequences” on the Ktunaxa identity (¶22 of Appellant’s Factum), including the “destruction of Ktunaxa spiritual beliefs and practices, culture and identity” (¶109 of Appellant’s Factum).

practices demarcate the religious and cultural boundaries of Indigenous communities.<sup>15</sup> Indigenous communities and their members are able to differentiate themselves with other communities by their unique religious attachment with sacred sites on their traditional territories.<sup>16</sup>

28. Protecting the collective religious rights of Indigenous communities can allow for their spiritual belief systems to flourish and endure.
29. For instance, the protection of collective religious rights aids Indigenous people in their pursuit of self-fulfillment as members of a distinct Indigenous community that share the same belief system and spiritual attachment to the land. This can allow Indigenous peoples to obtain deeper appreciation and understanding of the spiritual belief systems of their community. Stronger group identification reaffirms an Indigenous community's sense of dignity, and provides its members with a greater sense of purpose and enhances their standing in society.
30. Indigenous groups are also afforded a degree of autonomy with the protection of collective religious rights that can shield against unwanted interference from the state or other external actors. This can prevent attempts to restrict or eradicate Indigenous belief systems, which only a cursory study of Canadian history will reveal is a concern.<sup>17</sup>
31. Expanding the understanding of freedom of religion in the Canadian Constitution to include differing conceptions of religious practice will also recognize the origins of the Canadian state and the treatment of Indigenous peoples. Indigenous religious belief systems have survived numerous attempts of eradication. Our conception of religious

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<sup>15</sup> Charles Taylor in *Sources of the Self: The Making of the Modern Identity*, (Cambridge, Massachusetts: Harvard University Press, 1989) explains how religion plays an instrumental role in one's sense of self. Religious affiliation is a constituent element of an individual's identity that differentiates them from others.

<sup>16</sup> This includes both Indigenous and non-Indigenous communities within the geographical area of an Indigenous community's traditional territory, and even among Indigenous communities of the same Indigenous nation.

<sup>17</sup> *Supra*, note 11 at 9-12, AMPAC's Authorities, Tab 14.

freedom must acknowledge this fact and be capable protecting against any further persecution.

32. Fortunately, the constitutional framework of Canada can accommodate differing conceptions of the freedom of religion.

## **2. The Constitution of Canada Supports the Protection of Differing Conceptions of Religious Practice**

33. AMPAC submits that the Constitution of Canada supports a pluralist conception of the protection of religious freedom that includes protections for collectivist practices of religion.
34. Canada's constitutional foundations are built on the preservation of collective rights, either for linguistic communities, Aboriginal peoples or religious minorities.<sup>18</sup> The respect for minority rights is an underlying constitutional principle.<sup>19</sup>
35. The articles of capitulation in 1759 and 1760 between Britain and New France granted the residents of Quebec the right to the "free exercise of the roman religion" in a protestant-controlled territory.<sup>20</sup>
36. The *British North America Act* secured religious freedoms for the Catholic and Protestant minorities in their respective provinces by providing a constitutional guarantee for minority religious schools.<sup>21</sup>
37. Section 27 of the *Charter* endorses the principle that Canada is a pluralist society: "[t]his *Charter* shall be interpreted in a manner consistent with the preservation and enhancement

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<sup>18</sup> *Supra*, note 10 at 172-173, AMPAC's Authorities, Tab 13.

<sup>19</sup> *Reference re Secession of Quebec*, [1998] 2 SCR 217 at ¶49, AMPAC's Authorities, Tab 1.

<sup>20</sup> Rt Hon Beverly 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: McGill-Queen's University Press, 2004) 12 at 17, AMPAC's Authorities, Tab 15.

<sup>21</sup> *Constitution Act, 1867 (UK)*, 30 & 31 Viet, c 3, reprinted in RSC 1985, Appendix II, No 5, s 93.

of the multicultural heritage of Canadians.”<sup>22</sup> Canada’s multicultural heritage includes recognition of our ethnic, cultural, and religious differences.<sup>23</sup>

38. Although section 27 of the *Charter* is not a right unto itself, it has been used to interpret other rights, including the freedom of religion. For example, in *Big M Drug Mart*, this Court held that compelling a universal day of rest preferred by one religion is inconsistent with Canada’s multicultural heritage.<sup>24</sup>
39. More pertinent to this appeal, section 35 of the *Constitution Act, 1982* protects collective rights held by Aboriginal peoples.<sup>25</sup>

### **3. The *Charter* Protects Differing Conceptions of Religious Freedom**

40. Informed by this pluralist conception of the Constitution of Canada, the *Charter* has been held to protect both individual and collective conceptions of religious freedom.
41. Canadian constitutional jurisprudence has, from its inception, included a recognition of both the group and individual bases of religious practice and identity: “individual freedoms appear to be derived from the acknowledgment and affirmation of religion as a legitimate moral and institutional player with status and interests.”<sup>26</sup>
42. Soon after the *Charter* came into force, Chief Justice Dickson held that the freedom of religion, protected under section 2(a) of the *Charter*, has “both individual and collective aspects.”<sup>27</sup>

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<sup>22</sup> *The Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 27.

<sup>23</sup> *Bruker v Marcovitz*, 2007 SCC 54 at ¶1, AMPAC’s Authorities, Tab 2.

<sup>24</sup> *R v Big M Drug Mart*, [1985] 1 SCR 295 at 337-338, AMPAC’s Authorities, Tab 3.

<sup>25</sup> *R v Sparrow*, [1990] 1 SCR 1075 at 1078, AMPAC’s Authorities, Tab 4.

<sup>26</sup> Faisal Bhabha, *From Samur to L. (S.): Tracing the Theory and Concept of Religious Freedom under Canadian Law* (2012) 58 SCLR (2d), 109 at 114, AMPAC’s Authorities, Tab 16.

<sup>27</sup> *R v Edwards Books and Art Ltd*, [1986] 2 SCR 713 at 781, AMPAC’s Authorities, Tab 5.

43. The protection of collective religious belief ensures the vitality of religious communities. If a community shares a common faith and a way of life, an infringement of the collective's religious beliefs will impact both those beliefs and the life of their community.<sup>28</sup> This freedom to manifest one's religion "in community with others" is at the "heart" of section 2(a).<sup>29</sup>
44. In *Loyola*, this Court recently affirmed that religion is about relationships and that "[r]eligious freedom under the *Charter* must therefore account for the socially embedded nature of religious belief, and the deep linkages between this belief and its manifestation through communal institutions and traditions."<sup>30</sup>
45. The collective practice of religion is equally and separately worthy of constitutional protection. This Court's decision in *Loyola* recognized that a collective act (the right of a Catholic high school to object to the teaching of a particular course) could receive constitutional protection as a religious freedom, even though an individual may not necessarily receive constitutional protection for the same act (the right of individual parents to object to the teaching of that same course).
46. The Court distinguished *Loyola* from *S.L. v Commission scolaire des Chênes*, an earlier appeal concerning the rights of individual parents and students to object to the teaching of an Ethics and Religious Culture course, as follows:<sup>31</sup>

These collective aspects of religious freedom — in this case, the collective manifestation and transmission of Catholic beliefs through a private denominational school — are a crucial part of *Loyola*'s claim. In *S.L.*, this Court held that the imposition of the ERC Program in public schools did not impose limits on the religious freedom of individual students and parents. This case, however, can be distinguished from *S.L.* because *Loyola* is a private religious

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<sup>28</sup> *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at ¶182, AMPAC's Authorities, Tab 6.

<sup>29</sup> *Ibid* at ¶128, AMPAC's Authorities, Tab 6.

<sup>30</sup> *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12 at ¶60, AMPAC's Authorities, Tab 7.

<sup>31</sup> *Ibid*, at ¶61, AMPAC's Authorities, Tab 7.



institution created to support the collective practice of Catholicism and the transmission of the Catholic faith.

47. A collectivist conception of the freedom of religion – as conceived of in *Loyola* – gives birth to a right when exercised as a community and can therefore ground a claim under the *Charter*.
48. The *Charter* is capable of, and indeed designed to, protect religious freedom not just in its liberal, individualistic sense but also in a broader collectivist sense. Such a conception of religious freedom demonstrates respect for the dignity of minority religious communities and assures their self-fulfillment, autonomy and protection in Canadian society.

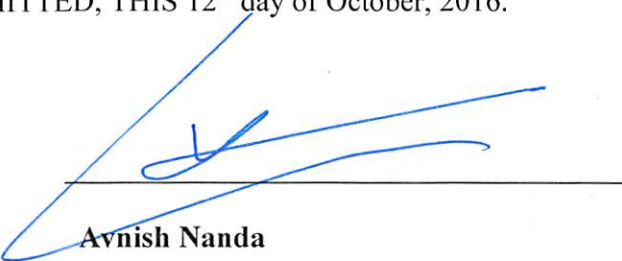
#### **PART IV: SUBMISSIONS CONCERNING COSTS**

49. AMPAC does not seek its costs of appeal, nor should it be ordered to pay the whole or any part of the costs of appeal.

#### **PART V: ORDER REQUESTED**

50. AMPAC respectfully requests that this Court grant AMPAC leave to present oral argument not exceeding ten (10) minutes at the hearing of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, THIS 12<sup>th</sup> day of October, 2016.



Avnish Nanda

**NANDA & COMPANY**  
**Counsel for the Intervener,**  
**Alberta Muslim Public Affairs Council**

**PART VI: TABLE OF AUTHORITIES**

<b>Jurisprudence</b>	<b>Cited At</b>
1. <i>Reference re Secession of Quebec</i> , [1998] 2 SCR 217	¶34
2. <i>Bruker v Marcovitz</i> , 2007 SCC 54	¶37
3. <i>R v Big M Drug Mart</i> , [1985] 1 SCR 295	¶14, ¶38
4. <i>R v Sparrow</i> , [1990] 1 SCR 1075	¶39
5. <i>R v Edwards Books and Art Ltd</i> , [1986] 2 SCR 713	¶42
6. <i>Alberta v Hutterian Brethren of Wilson Colony</i> , 2009 SCC 37	¶43
7. <i>Loyola High School v Quebec (Attorney General)</i> , 2015 SCC 12	¶44, ¶46
 <b>Secondary Sources</b>	
8. Benjamin Berger, “Law’s Religion: Rendering Culture” (2007) 45 OHLJ 277	¶13, ¶14
9. Charles Taylor, “The politics of recognition” in <i>Multiculturalism: Examining the politics of recognition</i> . (1992: Princeton, Princeton University Press)	¶14
10. John Burrows, <i>Canada’s Indigenous Constitution</i> (2010: Toronto, University of Toronto Press)	¶15, ¶27
11. Dwight Newman, <i>Community and Collective Rights: A Theoretical Framework for Rights held by Groups</i> (2011: Portland, Oregon, Oxford University Press)	¶16, ¶17
12. Ian T. Benson, “The Case for Religious Inclusivism and the Judicial Recognition of Associational Rights” (2008) 1 Constitutional Court Review 297	¶18
13. Joseph Eliot Magnet, “Collective Rights, Cultural Autonomy and the Canadian State” (1986) 32 MLJ 170	¶19
14. Natasha Bakht and Lynda Collins, “The Earth is Our Mother: Freedom of Religion and the Preservation of Aboriginal Sacred Sites in Canada” (June 29, 2016). McGill Law Journal, Forthcoming; Ottawa Faculty of Law Working Paper No. 2016-24.	¶23, ¶26, ¶30
15. Rt Hon Beverly McLachlin, PC, “Freedom of Religion and the Rule of Law: A Canadian Perspective” in Douglas Farrow, ed, <i>Recognizing Religion in a Secular Society: Essays in Pluralism, Religion and Public Policy</i> (Montreal: McGill-Queen’s University Press, 2004) 12	¶35

16. Faisal Bhabha, From *Samur* to *L. (S.)*: Tracing the Theory and Concept of Religious Freedom under Canadian Law (2012) 58 SCLR (2d), 109 ¶41

## PART VII: STATUTES AND REGULATIONS

*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11, ss. 2(a) and 27

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|--|---|
| 2. Everyone has the following fundamental freedoms:  | 2. Chacun a les libertés fondamentales suivantes :  |
| (a) freedom of conscience and religion;  | a) liberté de conscience et de religion;  |
| 27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians. | 27. Toute interprétation de la présente charte doit concorder avec l'objectif de promouvoir le maintien et la valorisation du patrimoine multiculturel des Canadiens. |

*Constitution Act, 1867* (UK), 30 & 31 Viet, c 3, reprinted in RSC 1985, Appendix II, No 5. s. 93.

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| 93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:  | 93. Dans chaque province, la législature pourra exclusivement décréter des lois relatives à l'éducation, sujettes et conformes aux dispositions suivantes :   |
| (1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union;  | (1) Rien dans ces lois ne devra préjudicier à aucun droit ou privilège conféré, lors de l'union, par la loi à aucune classe particulière de personnes dans la province, relativement aux écoles séparées (denominational);  |
| (2) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissident | (2) Tous les pouvoirs, privilèges et devoirs conférés et imposés par la loi dans le Haut-Canada, lors de l'union, aux écoles séparées et aux syndics d'écoles des sujets catholiques romains de Sa Majesté, seront et sont par la présente étendus aux écoles dissidentes des sujets protestants et |

Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec;

(3) Where in any Province a System of Separate or Dissident Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education;

(4) In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section.

catholiques romains de la Reine dans la province de Québec;

(3) Dans toute province où un système d'écoles séparées ou dissidentes existera par la loi, lors de l'union, ou sera subséquemment établi par la législature de la province — il pourra être interjeté appel au gouverneur-général en conseil de toute loi ou décision d'aucune autorité provinciale affectant aucun des droits ou privilèges de la minorité protestante ou catholique romaine des sujets de Sa Majesté relativement à l'éducation;

(4) Dans le cas où il ne serait pas décrété telle loi provinciale que, de temps à autre, le gouverneur-général en conseil jugera nécessaire pour donner suite et exécution aux dispositions du présent article, — ou dans le cas où quelque décision du gouverneur-général en conseil, sur appel interjeté en vertu du présent article, ne serait pas mise à exécution par l'autorité provinciale compétente — alors et en tout tel cas, et en tant seulement que les circonstances de chaque cas l'exigeront, le parlement du Canada pourra décréter des lois propres à y remédier pour donner suite et exécution aux dispositions du présent article, ainsi qu'à toute décision rendue par le gouverneur-général en conseil sous l'autorité de ce même article.