SCC File No.: 36664

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

BETWEEN:

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

Appellants

- AND -

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

Respondents

- AND -

ATTORNEY GENERAL OF CANADA, ATTORNEY GENERAL FOR SASKATCHEWAN, CANADIAN MUSLIM LAWYERS ASSOCIATION, SOUTH ASIAN LEGAL CLINIC OF ONTARIO, KOOTENAY PRESBYTERY (UNITED CHURCH OF CANADA), EVANGELICAL FELLOWSHIP OF CANADA, CHRISTIAN LEGAL FELLOWSHIP, ALBERTA MUSLIM PUBLIC AFFAIRS COUNCIL, AMNESTY INTERNATIONAL CANADA, TE'MEXW TREATY ASSOCIATION, CENTRAL COAST INDIGENOUS RESOURCE ALLIANCE, SHIBOGAMA FIRST NATIONS COUNCIL, CANADIAN CHAMBER OF COMMERCE, BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, COUNCIL OF THE PASSAMAQUODDY NATION AT SCHOODIC, KATZIE FIRST NATION, AND WEST MOBERLY FIRST NATIONS AND PROPHET RIVER FIRST NATION

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(Pursuant to Rules 47, 55 and 56 of the *Rules of the Supreme Court of Canada)*

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PART I - OVERVIEW

1. This appeal raises important questions regarding the nature and scope of freedom of religion under section 2(a) of the *Canadian Charter of Rights and Freedoms* (the "***Charter***"),[1] and what may justify infringements on that freedom in the context of an administrative decision-maker's exercise of discretion. The approach adopted by the British Columbia Court of Appeal ("**BCCA**") represents a dangerous narrowing of the right to freedom of religion.

2. This appeal is of significant concern to the Canadian Muslim Lawyers Association, the South Asian Legal Clinic of Ontario, and Kootenay Presbytery (the United Church of Canada) (together, the "**Coalition**") — a diverse group of non-Indigenous organizations representing a broad membership of different faiths. The Coalition makes two submissions.

3. *First*, s. 2(a) must be interpreted in a way that protects Canadians from all state conduct that interferes, in a non-trivial way, with their ability to act in accordance with their religious practices. Section 2(a)'s guarantee must include protection against conduct that undermines the conditions required for Indigenous religious beliefs and practices to have meaning and vitality. Any other result risks relegating Indigenous religions to a lower tier of *Charter* protection. Further, because s. 2(a) does not have internal limits, countervailing legal or policy implications cannot be used to narrow the scope of what is protected under the right to freedom of religion.

4. *Second*, when it comes to the proportionality stage of the *Doré* analysis[2], it is critically important for the party seeking to uphold the rights-infringing decision to identify a ***precise statutory objective*** that it is designed to serve. Further, even where the statutory objective has been established, an administrative decision-maker must conduct a balancing analysis that weighs the decision's benefits against its deleterious effects on ***all*** relevant constitutional rights and values. In cases involving an infringement of Indigenous religious beliefs or practices, this weighing exercise must include considering the negative impact of the decision on the objective of achieving reconciliation with Aboriginal peoples. If these factors are not taken into account, then the resulting decision can be neither proportionate, nor reasonable.

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[1] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

[2] As the BCCA did not find any infringement of *Charter* rights, it did not reach the balancing or proportionality stage of the framework set out by this Court in *Doré v. Barreau du Québec*, [2012] 1 S.C.R. 395, Coalition Book of Authorities ("Coalition BOA"), Tab 1 ["*Doré*"]. However, the BCSC did conduct a proportionality analysis, and the proper framework and application for that analysis remains a live issue between the parties on this appeal.

PART II - QUESTIONS IN ISSUE

5. The Coalition intervenes to provide this Court with submissions on the scope of protection under s. 2(a), and on how the proportionality stage of the *Doré* framework should be applied. The Coalition takes no position on the outcome, or the facts, of this appeal.

PART III - STATEMENT OF ARGUMENT

A. Section 2(a) Protects Vitality of Religious Practices for Adherents of All Faiths

6. The BCCA's approach in this case[3] reflects a narrow interpretation of s. 2(a), which is at odds with this Court's effects-based test for religious protection. The BCCA's decision fails to respect the principle that s. 2(a) must be applied neutrally, in a way that affords equal protection to adherents of different faiths. This includes those who practice Indigenous religions, where the meaning and vitality of their religious beliefs and practices may be inextricably linked to, and dependent upon, a relationship with certain lands. Finally, the BCCA created an unjustifiable internal limit on the scope and content of s. 2(a) — an approach with no textual basis, and one that is inconsistent with the "generous and expansive" [4] interpretation that this Court has consistently endorsed.

i. Section 2(a) Focuses on the Effects of Conduct on Religious Beliefs and Practices

7. Under the principles articulated and applied by this Court, State conduct that undermines the meaningfulness or vitality of religious practices or beliefs amounts to a violation of s. 2(a).

8. This Court's s. 2(a) framework focuses on the *effect* of an impugned measure or decision on a claimant's religious beliefs — not the *means* by which that effect is created. Section 2(a) is breached where: (i) a claimant sincerely believes in a belief or practice that has a nexus with religion, and (ii) the impugned decision interferes with the claimant's ability to act in accordance with his/her religious beliefs in a manner that is more than trivial or insubstantial.[5] Importantly, there is no restriction or qualification as to *how* the impugned decision interferes with sincerely held religious beliefs.[6] The only requirement is that the interference be non-trivial.

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[3] The crux of the BCCA's reasoning can be found in *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2015 BCCA 352 at para. 73, Appeal Record ("AR"), Tab 4 ["BCCA Reasons"].

[4] *Mouvement laique Quebecois v. Saguenay (City)*, [2015] 2 S.C.R. 3 at para. 147, Appellants' Book of Authorities, Vol. 1, Tab 23.

[5] *Alberta v. Hutterian Brethren of Wilson Colony*, [2009] 2 S.C.R. 567 at paras. 32-34, Coalition BOA, Tab 2 ["*Hutterian Brethren*"].

[6] For examples of different types of interference, see *Hutterian Brethren* at paras. 90-96, Coalition BOA, Tab 2.

9. As a matter of logic and common sense, State conduct that seriously undermines the meaningfulness or vitality of religious practices amounts to a violation of s. 2(a) under this framework. By threatening the very thing that gives beliefs and practices any meaningful religious or spiritual significance, the State interferes with a claimant's ability to act in accordance with their religious beliefs or practices. This is a breach of the *Charter*.

10. Any other interpretation would reduce s. 2(a) to protecting little more than the purely physical act of engaging in a religious practice, even if it amounts to an empty ritual. Such an impoverished view of s. 2(a) is impossible to reconcile with the important role such a fundamental freedom plays in our democratic society.[7]

11. Nor is it consistent with this Court's jurisprudence. In *Loyola*, for example, this Court affirmed that s. 2(a) has a collective dimension, reflected in religious institutions such as schools.[8] In explaining why this aspect of religion deserved s. 2(a) protection, Abella J., for the majority, put it this way: "Ultimately, measures which undermine the character of lawful religious institutions and disrupt the vitality of religious communities represent a profound interference with religious freedom" (emphasis added).[9] Section 2(a) rights were engaged not because religious schools were necessary for the claimants to act in accordance with their beliefs and practices *at all* — but because schools were necessary for communal aspects of those beliefs and practices to have vitality and meaning.

12. *Hutterian Brethren* is another instructive example. In that case, a majority of this Court held that a measure would infringe section 2(a) if it "effectively deprives" religious adherents of a "meaningful choice as to their religious practice".[10] Again, the determinative question was not whether claimants were directly precluded from acting in accordance with their religious beliefs and practices, but whether they were left with a meaningful choice on the matter.

13. Where an administrative decision eliminates the very conditions required to give meaning to religious practices and beliefs, the effect on s. 2(a) rights is far more pronounced than in either

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[7] *Commission scolaire régionale de Chambly v. Bergevin*, [1994] 2 S.C.R. 525 at paras. 37-39, Coalition BOA, Tab 3 ["*Bergevin*"]; *Loyola High School v. Quebec (Attorney General)*, [2015] 1 S.C.R. 613 at paras. 47-48, Coalition BOA, Tab 4 ["*Loyola*"].

[8] *Loyola* at para. 61, Coalition BOA, Tab 4, Vol. 1, Tab 21.

[9] *Loyola* at para. 67, Coalition BOA, Tab 4, Vol. 1, Tab 21. See also para. 94 (*per* McLachlin CJC and Moldaver J) ("The freedom of religion of individuals cannot flourish without freedom of religion for the organizations through which those individuals express their religious practices and through which they transmit their faith").

[10] *Hutterian Brethren* at paras. 95-96, Coalition BOA, Tab 2.

Loyola or *Hutterian Brethren*. One's religious beliefs cannot enjoy vitality — nor can one even exercise a "meaningful choice" to engage in a religious practice — if the very essence of what gives a belief or practice religious meaning is destroyed.

ii. Section 2(a) Must Be Applied Neutrally to Indigenous Religious Beliefs

14. The principle of State neutrality means that s. 2(a) must protect against *any* measure that has the effect of interfering in a non-trivial way with sincerely held religious beliefs or practices. This would include measures compromising lands that are inextricably linked to the vitality and meaningfulness of Aboriginal religious beliefs, even if this form of interference is unique from the perspective of those holding other religious beliefs.

15. This Court has long held that the *Charter* is religiously neutral and protects the rights of all believers, regardless of their faith.[11] A corollary of this principle is that adherents of different religious faiths can suffer interference with their religious practices and beliefs in different ways. We must avoid an approach that implicitly favours religions practiced by the majority, at the expense of minority religions and cultures.

16. For certain religions, infringement occurs through State interference with communal faith-based institutions such as schools. The majority in *Loyola*, for example, found that "individuals may sometimes require a legal entity in order to give effect to the constitutionally protected communal aspects of their religious beliefs and practice, such as the transmission of their faith", and held that any administrative decision under review had to respect "the *Charter*-protected religious freedom of the members of the Loyola community who seek to offer and wish to receive a Catholic education."[12]

17. For adherents of other faiths, however, the interference will arise in different ways. The meaningfulness and vitality of their religious beliefs and practices may stem from something other than communal educational institutions — such as a relationship with sacred lands. But just as s. 2(a) does not discriminate between different religions, it cannot discriminate between different sources of religious vitality. In all cases, the relevant question is simply whether the effect of government conduct results in a non-trivial degree of interference with one's ability to act in accordance with their religious beliefs and practices.

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[11] *Loyola* at paras. 43-44, Coalition BOA, Tab 4.
[12] *Ibid.* at paras. 33-34.

18. A broad, effects-based and neutral approach to s. 2(a) is all the more important when dealing with the religious freedom of Indigenous peoples. The purpose and values underlying s. 35 of the *Constitution Act, 1982* (the "***Constitution Act***")[13] requires a culturally sensitive approach to s. 2(a) that gives due regard to Indigenous religious practices and beliefs in the spirit of reconciliation, rather than one that risks perpetuating Canada's history of colonialism and displacement of Indigenous peoples.[14] In particular, the proper approach requires recognizing that many Indigenous peoples have a unique, spiritual relationship with their ancestral lands.[15]

19. Where State conduct interferes in a non-trivial way with the vitality or meaningfulness of sincerely held Indigenous religious beliefs or practices, such conduct must be recognized as a violation of s. 2(a). The nature or means of that interference is irrelevant at this stage. Any other conclusion would amount to abandoning the fundamental requirement of State neutrality when it comes to religious freedom. In its place would stand a newly created, two-tiered system of religious protection: adherents of the Abrahamic religions, for example, would be able to seek protection under the relatively low threshold set out in s. 2(a), but those practicing Indigenous religions would often be forced to meet the far more demanding test for "aboriginal rights" under s. 35 of the *Constitution Act*, because of the unique nature of what gives their faith meaning.

iii. Section 2(a) Should Not Be Subject to Internal Limits

20. There is no justification for reading down the scope of s. 2(a)'s protection, as the BCCA did[16], just because the impugned decision would have certain salutary benefits. If these considerations are relevant at all, it is at the proportionality stage of the analysis — not when examining whether a *Charter* right has been infringed.

21. Nothing in the text or purpose of s. 2(a) justifies taking a rights-limiting approach at the outset of the analysis. Indeed, the plain text of s. 2(a) — "everyone has the… freedom of conscience and religion" — is irreconcilable with such an approach. Where *Charter* rights are subject to internal limits, the text clearly indicates as much: for example, the right to life, liberty

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[13] This is discussed further in Part III.B.*ii*, *infra.*

[14] *R. v. Ipeelee*, [2012] 1 S.C.R. 433 at para. 60, Coalition BOA, Tab 5 ["*Ipeelee*"].

[15] See, for example, *Chippewas of Nawash First Nation v. Canada (Minister of Fisheries and Oceans)*, 2002 FCA 485 at para. 33, Coalition BOA, Tab 6. ("I have much sympathy for the appellants' position, and understand that aboriginal peoples have a special relationship with the land--the land constitutes a large part of their identity as a people. A common belief of many Aboriginal societies is that the Creator placed their people upon this land for a reason, and that the earth is their Mother, the animals their spiritual kin.")

[16] BCCA Reasons at paras. 73-74.

and security of the person "and the right not to be deprived thereof ***except in accordance with the principles of fundamental justice***" (s. 7); the right against "***unreasonable*** search and seizure" (s. 8); and the right not to be "***arbitrarily*** detained or imprisoned" (s. 9).

22. By contrast, when dealing with rights without internal limits — such as the freedom of expression[17] and the right to vote[18] — countervailing interests are addressed only at the justification stage of the analysis.[19]

B. Proportionality Requires a Full Balancing of all Relevant Rights and Values

23. Once it is established that s. 2(a) protections have been infringed, the analysis at the second stage of the *Doré* framework examines whether that decision is proportionate.[20] At a minimum, proportionality requires:

i. identifying a precise statutory objective for the particular impugned measure — a logical prerequisite for concluding that the measure is proportionate to the s. 2(a) infringement; and

ii. conducting an ultimate balancing analysis, similar to the final stage of the *Oakes* test, where the salutary benefits of the impugned measure are weighed against its deleterious effects on *all* relevant constitutional rights and values.

i. Proportionality Requires a Clearly Identified Statutory Objective

24. A proper proportionality analysis — whether under the *Doré* framework or the *Oakes* test — requires a precise statutory objective for the particular impugned measure.[21] If one does not exist, then the measure cannot be considered proportionate. One cannot engage in meaningful balancing without knowing what to balance.

25. In *Sauvé #2*, in the context of the *Oakes* test, this Court recognized that an objective framed in unworkably broad, vague or unclear terms frustrates the proportionality inquiry: "one

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[17] *Figueiras v. Toronto (Police Services Board)*, 2015 ONCA 208 at para. 53, Coalition BOA, Tab 7.
[18] *Sauvé v. Canada (Chief Electoral Officer)*, [2002] 3 S.C.R. 519 at para. 11, Coalition BOA, Tab 8 ["*Sauvé* #2"].
[19] See, for example, *Hutterian Brethren* at paras. 79-103, Coalition BOA, Tab 2.
[20] *Loyola* at para. 39, Coalition BOA, Tab 4.
[21] *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199 at para. 144, Coalition BOA, Tab 9; see also *R. v. Safarzadeh-Markhali*, 2016 SCC 14 at paras. 24-28, Coalition BOA, Tab 10. The BCSC's analysis of the statutory objective in this case can be found at paras. 300-304, AR, Tab 2.

needs to know what problem the government is targeting, and why it is so pressing and important that it warrants limiting a *Charter* right. Without this, it is difficult if not impossible to weigh whether the infringement of the right is justifiable or proportionate."[22] These concerns apply with equal force at the second stage of the *Doré* framework, which requires the same type of balancing and proportionality analysis as in *Oakes* (as discussed further below).

26. A statute requiring administrative decision-makers to exercise their discretion in furtherance of the "public interest", without more, does not allow for a meaningful proportionality analysis — and thus cannot survive the second stage of the *Doré* framework. Indeed, how can it be in the "public interest" to limit *Charter* rights or undermine constitutional values? These consequences cannot be justified by such vague statutory language, unless some clearer objective is discernable from the legislative scheme.

27. The case law applying the *Doré* framework demonstrates that the statutory objectives used for the proportionality inquiry are invariably framed in concrete and precise terms.[23]

28. To conclude that a real and identifiable infringement of *Charter*-protected rights and values is proportionate (and thus reasonable) because it serves some undefined "public interest" offends this Court's reminder in *Sauvé #2* that "*Charter* rights are not a matter of privilege or merit, but a function of membership in the Canadian polity that cannot lightly be cast aside".[24] This is all the more true where the impugned measures limit rights, such as the freedom of religion, which this Court has recognized as fundamental to our democracy.[25]

ii. All Constitutional Values Must Be Considered at the Balancing Stage

29. Under the *Doré* framework, even if the impugned decision infringes s. 2(a) no more than necessary to achieve a specific statutory objective, the administrative decision-maker (or reviewing court) must still assess whether its deleterious impact on *all* relevant constitutional

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[22] *Sauvé #2* at para. 24, Coalition BOA, Tab 8. See also paras. 16 and 23.

[23] See, for example, *Loyola* at para. 56, Coalition BOA, Tab 4 (Minister's role in the statutory scheme was to achieve objectives of "promoting respect for others and openness to diversity"); *Doré* at paras. 61, 66, Coalition BOA, Tab 1 (the Barreau's objective was to "ensure civility in the profession").

[24] *Sauvé #2*, at para. 14, Coalition BOA, Tab 8.

[25] *Bergevin* at paras. 37-39, Coalition BOA, Tab 3; *Loyola* at paras. 47-48, Coalition BOA, Tab 4.

rights and values outweighs its benefits.[26] If so, then the decision is disproportionate and unreasonable.

30. This kind of proportionality analysis is akin to the final, balancing stage of the s. 1 *Oakes* test.[27] In *Loyola*, this Court confirmed that "[a] *Doré* proportionality analysis finds analytical harmony with the final stages of the *Oakes* framework."[28] Such an approach properly recognizes that when constitutional rights are engaged, the benefits of *any* type of state conduct — whether it is the passing of a law or making a discretionary administrative decision — must be proportionate to its deleterious effects. That is why proportionality is the *sine qua non* of reasonableness in the *Doré* framework.[29]

31. One cannot assess proportionality without engaging in the final stage of the *Oakes* test. The inquiry "requires placing colliding values and interests side by side and balancing them according to their weight."[30] Simply put, even assuming the decision achieves the intended goal in the least drastic way possible, one must still ask: are the benefits of the decision worth its negative effects on constitutional rights and values?

32. In this case, the balancing inquiry requires examining the degree to which the Minister's approval decision interferes with the Appellants' sincerely held Indigenous religious practices and beliefs.[31] This examination must be culturally sensitive and religiously neutral, in order to take full stock of the impact of the impugned decision on the Appellants' constitutionally protected rights. In particular, it must be recognized that decisions undermining the vitality of a religious practice are not necessarily less harmful than those directly restricting the ability to physically engage in a religious practice. By depriving religious practices of their vitality, such decisions may, in fact, be far more damaging to s. 2(a) rights.

33. The extent of a decision's deleterious effects on the freedom of religion also requires an understanding and assessment of that decision's effects on *other* relevant constitutional values. As McLachlin CJC noted in *Hutterian Brethren*, "[t]he deleterious effects of a limit on freedom

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[26] The BCSC's balancing analysis in this case can be found at paras. 305-323, AR, Tab 2.
[27] *Hutterian Brethren* at paras. 74-76, Coalition BOA, Tab 2.
[28] *Loyola* at para. 40, Coalition BOA, Tab 4.
[29] *Loyola* at para. 38, Coalition BOA, Tab 4; *Doré* at para. 57, Coalition BOA, Tab 1.
[30] *Hutterian Brethren* at para. 76, Coalition BOA, Tab 2.
[31] Where the interference is severe, the impugned decision may be disproportionate (and vice-versa): see, e.g., *Loyola* at para. 6, Coalition BOA, Tab 4. See also *Hutterian Brethren* at paras. 88-90, Coalition BOA, Tab 2.

of religion require us to consider the impact in terms of *Charter* values, such as liberty, human dignity, equality, autonomy and the enhancement of democracy" (emphasis added).[32]

34. Thus, as part of the balancing analysis under the *Doré* framework, courts ought to consider how the impugned decision impacts the claimants' dignity, liberty, equality and autonomy. Administrative decisions that deprive religious practices and beliefs of their meaning can be expected to have serious deleterious effects on these rights, interests and values, given their close relationship to religious freedom.[33] These impacts may be heightened in the context of Indigenous religions, given the context and consequences of colonialism, including a history of Indigenous peoples having their language and cultural practices prohibited.[34]

35. One must also balance the implications of the impugned decision on the ongoing project of reconciliation between Indigenous and non-Indigenous Canadians. This is a key component of the "enhancement of democracy" in Canada (referenced in *Hutterian Brethren*). Without reconciliation, Canada's democracy will forever be stained by the historic wrongs committed against Indigenous peoples, and the myriad of resulting socio-economic disadvantages that Indigenous peoples still face today. Those historic wrongs included policies that were "based on the assumption that Indigenous cultures and spiritual beliefs were inferior and unequal."[35]

36. Reconciliation is so important to improving the design of Canadian democratic society that a provision of our Constitution was enacted specifically to achieve this objective: "[T]he grand purpose of s. 35 [of the *Constitution Act*] is the reconciliation of Aboriginal and non-Aboriginal Canadians in a mutually respectful long-term relationship".[36] Reconciliation can also be conceptualized as its own constitutional value — complementary to, but separate and apart from, the enhancement of democracy.[37]

37. The constitutional values of enhancing democracy and achieving reconciliation inform the Court's assessment of whether an infringement of Indigenous religious beliefs and practices under s. 2(a) is proportionate by highlighting the need to consider the broader negative

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[32] *Hutterian Brethren* at para. 88, Coalition BOA, Tab 2.
[33] *Hutterian Brethren* at para. 88, Coalition BOA, Tab 2; *Loyola* at paras. 44-45, Coalition BOA, Tab 4.
[34] *Ipeelee* at paras. 60-61, 83, Coalition BOA, Tab 5; *Fontaine v. Canada (Attorney General)*, 2016 ONCA 241, leave application before S.C.C. pending (37037), at para. 1, Coalition BOA, Tab 11.
[35] *Fontaine*, Coalition BOA, Tab 11 (citing State of Apology on behalf of the Government of Canada).
[36] *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12 at para. 34, Coalition BOA, Tab 12.
[37] See *Loyola* at para. 36, Coalition BOA, Tab 4 ("As Aharon Barak explained, the purpose of a constitutional right is the realization of its constitutional values.").

consequences of the impugned decision. In other words, the *Doré* framework must be sensitive to whether the impugned decision is promoting, or undermining, the "grand purpose" of s. 35.

38. Decision makers must also recognize the possibility that the deleterious effects of their decisions — on freedom of religion, reconciliation, the enhancement of democracy and other constitutional values — may outweigh any benefits, making the decision disproportionate and, therefore, unreasonable. In *Hutterian Brethren,* McLachlin CJC stressed the importance of making this inquiry in freedom of religion cases, as they often present decision-makers with "all or nothing" dilemmas (rather than a problem of minimal impairment).[38]

39. Decision-makers who fail to examine the negative consequences of their decision on *all* relevant constitutional rights and values have not engaged in the type of balancing required under the *Doré* framework. They have erred in law by failing to apply the proper test.

PART IV - SUBMISSIONS ON COSTS

40. The Coalition does not seek costs and requests that no order for costs be made against it.

PART V - ORDER SOUGHT

41. The Coalition requests permission to make oral submissions of no more than 10 minutes, and asks that its submissions be taken into account in the disposition of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of October, 2016

Nader R. Hasan / Justin Safayeni
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Counsel to the Coalition

[38] *Hutterian Brethren* at para. 61, Coalition BOA, Tab 2.

PART VI - TABLE OF AUTHORITIES

	AUTHORITY	REFERRING PARAGRAPH
1.	*Doré v. Barreau du Québec*, [2012] 1 S.C.R. 395	4, 27, 30
2.	*Mouvement laique Quebecois v. Saguenay (City)*, [2015] 2 S.C.R. 3	6
3.	*Alberta v. Hutterian Brethren of Wilson Colony*, [2009] 2 S.C.R. 567	8, 12, 22, 30, 31, 32, 33, 34, 38
4.	*Commission scolaire régionale de Chambly v. Bergevin*, [1994] 2 S.C.R. 525	10, 28
5.	*Loyola High School v. Quebec (Attorney General)*, [2015] 1 S.C.R. 613	10, 11, 15, 16, 23, 27, 28, 30, 32, 34, 36
6.	*R. v. Ipeelee*, [2012] 1 S.C.R. 433	18, 34
7.	*Chippewas of Nawash First Nation v. Canada (Minister of Fisheries and Oceans)*, 2002 FCA 485	18
8.	*Figueiras v. Toronto (Police Services Board)*, 2015 ONCA 208	22
9.	*Sauvé v. Canada (Chief Electoral Officer)*, [2002] 3 S.C.R. 519	22, 25, 28
10.	*RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199	24
11.	*R. v. Safarzadeh-Markhali*, 2016 SCC 14	24
12.	*Fontaine v. Canada (Attorney General)*, 2016 ONCA 241, leave application before S.C.C. pending (37037)	34, 35
13.	*Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12	36

PART VII - STATUTORY PROVISIONS

THE CONSTITUTION ACT, 1982

PART I

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

GUARANTEE OF RIGHTS AND FREEDOMS

Rights and freedoms in Canada

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

FUNDAMENTAL FREEDOMS

Fundamental freedoms

2. Everyone has the following fundamental freedoms:

- (*a*) freedom of conscience and religion;
- (*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (*c*) freedom of peaceful assembly; and
- (*d*) freedom of association.

PART II

RIGHTS OF THE ABORIGINAL PEOPLES OF CANADA

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Definition of “aboriginal peoples of Canada”

(2) In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada.

Land claims agreements

(3) For greater certainty, in subsection (1) “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.

Aboriginal and treaty rights are guaranteed equally to both sexes

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

SCC Court File No. 36664

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

B E T W E E N:

KTUNAXA NATION COUNCIL, ET AL

Appellants

- and -

MINISTER OF FORESTS, ET AL

Respondents

- and -

ATTORNEY GENERAL OF CANADA, ET AL

Interveners

FACTUM OF THE INTERVENERS, CANADIAN MUSLIM LAWYERS ASSOCIATION, SOUTH ASIAN LEGAL CLINIC OF ONTARIO, AND KOOTENAY PRESBYTERY (THE UNITED CHURCH OF CANADA)

(Pursuant to Rules 47, 55 and 56 of the *Rules of the Supreme Court of Canada)*

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