S.C.C. Court File No. 39094

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

BETWEEN:

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

APPELLANTS
(Respondents)

-and-

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

RESPONDENTS
(Appellants)

-and-

CANADIAN MUSLIM LAWYERS ASSOCIATION, ASSOCIATION FOR REFORMED POLITICAL ACTION CANADA, CANADIAN CIVIL LIBERTIES ASSOCIATION, EVANGELICAL FELLOWSHIP OF CANADA AND CATHOLIC CIVIL RIGHTS LEAGUE, WATCH TOWER BIBLE AND TRACT SOCIETY OF CANADA, BRITISH COLUMBIA HUMANIST ASSOCIATION, SEVENTH-DAY ADVENTIST CHURCH IN CANADA, CHRISTIAN LEGAL FELLOWSHIP, NATIONAL COUNCIL OF CANADIAN MUSLIMS, EGALE CANADA HUMAN RIGHTS TRUST, CANADIAN CENTRE FOR CHRISTIAN CHARITIES

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(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PART I: OVERVIEW

1. The ties that bind religious communities are inherently spiritual, not legal, in nature. They may be both in certain contexts, but the potential for overlap, as in the case of employment or property relations, does not erase the categorical distinction between religious and legal commitments. The latter are justiciable. The former – absent an underlying legal right – are not.[1]

2. In *Wall*, this Honourable Court confirmed that "religious groups are free to determine their own membership and rules; courts will not intervene in such matters save where it is necessary to resolve an underlying legal dispute."[2] Nonetheless, the present case questions whether this autonomy diminishes when a religious group expresses its membership and rules in its organizing documents.

3. The decision below seems to answer this question affirmatively, holding that when voluntary associations adopt written constitutions and bylaws, "they constitute a contract setting out the rights and obligations of members and the organization" and are therefore legally enforceable in civil courts.[3]

4. Applying this principle to voluntary religious communities (as opposed to commercial trade unions or real estate boards, for example), without further qualifications, appears irreconcilable with *Wall*.[4] At the very least, the implications of this approach have not been fully examined in Canadian law. European jurisprudence on religious group autonomy, however, helps explain why such an approach would be problematic, and affirms relevant, binding principles expressed in Canada's constitutional framework.

PART II: POSITION ON QUESTIONS IN ISSUE

5. Christian Legal Fellowship[5] takes no position on the facts or disposition of this appeal. However, as a general principle, CLF submits that a binding contract between a religious community and its members cannot be established without clear evidence of a specific "intention to form

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[1] *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall*, 2018 SCC 26 at paras 12, 24-26, 31 [*Wall*].
[2] *Wall*, *ibid* at para 39.
[3] *Aga v Ethiopian Orthodox Tewahedo Church of Canada*, 2020 ONCA 10 at paras 40-41, 45.
[4] *Wall*, *supra* note 1 at para 26.
[5] Christian Legal Fellowship (CLF) is Canada's national association of Christian lawyers, law students, retired judges, and legal scholars, and holds Special Consultative Status with the Economic and Social Council of the United Nations.

contractual relations".[6] To hold otherwise, such as by *inferring* a judicially-enforceable contractual relationship between members of an organized faith community, could drastically transform life within religious groups. Many aspects of a community's religious beliefs are expressed in its organizing documents, such as ecclesiastic procedures, membership requirements, and spiritual obligations. Without further clarification, these could now be construed as part of a 'church contract', with related disputes ostensibly within the purview of secular courts, unless parties prove they intended otherwise. According to *Wall*, however, the reverse onus of proof should apply.[7]

6. Addressing these concerns is about more than maintaining clarity in the law. Respecting the autonomy of religious groups is a core principle of our liberal democracy, rooted in the court's constitutionally appointed adjudicative role, the state's overarching duty of religious neutrality, and the fundamental freedoms of religion and association. Judicial regulation of religious disputes based on inferred contractual intentions — where no civil or property rights are at stake — would represent a profound departure from these principles.

PART III: STATEMENT OF ARGUMENT

A. The Constitution limits the court's jurisdiction to intervene in religious disputes

7. As affirmed in *Wall*, a court's jurisdiction is limited to questions that it has both the "institutional capacity and legitimacy" to answer.[8] This is not merely a matter of practicality or expedience. The bounds of justiciability are set by constitutional principles: "An inquiry into justiciability is, first and foremost, a normative inquiry into the appropriateness *as a matter of constitutional judicial policy* of the courts deciding a given issue or, instead, deferring to other decision-making institutions".[9]

8. This Court has also held: "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."[10]

9. The judiciary's proper role as the "adjudicative branch" within the constitutional

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[6] *Wall*, *supra* note 1 at para 29.
[7] *Wall*, *ibid* at para 29.
[8] *Wall*, *ibid* at para 34.
[9] *Canada (Auditor General) v Canada (Minister of Energy, Mines and Resources)*, [1989] 2 SCR 49 at 90-91 [*Canada (Auditor General)*] [emphasis added].
[10] *Reference Re Canada Assistance Plan (B.C.)*, [1991] 2 SCR 525 at 545 [*Canada Assistance Plan*] [emphasis added].

framework[11] is to resolve *legal* questions "within [the Court's] area of expertise: the interpretation of law".[12] Purely "moral and political considerations", on the other hand, are generally "not within the province of the courts to assess"[13] and are to be deferred "to other decision-making institutions of the polity."[14] Thus, for a question to be justiciable, a court must be satisfied that "it has a sufficient legal component to warrant the intervention of the judicial branch."[15]

10. Inferring an enforceable contract from the mere fact of membership in a religious organization with written bylaws short-circuits this justiciability analysis by automatically equating *religious codification* with an *intention to form a legal contract*. The fact that rules concerning church governance and membership are reduced to writing does not, in itself, render those rules legally enforceable. The appropriate analysis remains: is there a properly *legal* issue to be decided?

11. Again, this inquiry is not simply pragmatic; it is a constitutional requirement. As this Court summarized in the *Quebec Secession Reference*: "As a court of law, we are ultimately concerned only with legal claims."[16]

The constitutional duty of state neutrality requires judicial restraint in religious disputes

12. Canada's jurisprudence around justiciability has largely been informed by the constitutional separation of powers;[17] however, that is not the only relevant constitutional principle here. In delineating the judiciary's jurisdiction, the court is to account for the full "structure of our Constitution, which includes other fundamental principles, such as the rule of law".[18]

13. CLF submits that, in the context of religious associations, courts must also account for the state's constitutional duty of religious neutrality. This overarching duty requires the state and its

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[11] *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at 362.
[12] *Reference re Secession of Quebec*, [1998] 2 SCR 217 at para 26 [*Secession Reference*].
[13] *Operation Dismantle v The Queen*, [1985] 1 SCR 441 at para 52.
[14] *Canada (Auditor General)*, *supra* note 9 at 91.
[15] *Canada Assistance Plan*, *supra* note 10 at 545.
[16] *Secession Reference*, *supra* note 12 at para 144.
[17] *Ontario v Criminal Lawyers' Association of Ontario*, 2013 SCC 43 at paras 26-27 [*Criminal Lawyers' Association*]; *Nevsun Resources Ltd. v Araya*, 2020 SCC 5 at para 294 *per* Côté J. (dissenting).
[18] *Criminal Lawyers' Association*, *supra* note 17 at para 25, quoting a translation of Jonathan Desjardins Mallette, *La constitutionnalisation de la juridiction inhérente au Canada: origines et fondements*, unpublished LL.M. thesis, Université de Montréal (2007).

institutions – which include "the courts and the justice system"[19] – to remain neutral in religious matters and to abstain from "interfer[ing] in religion and beliefs".[20]

14. This means that courts must generally abstain from intervening in a doctrinal or theological dispute, such as the spiritual requirements for membership in a religious community.[21] To do otherwise violates the duty of religious neutrality, because it would "unjustifiably entangle the court in the affairs of religion."[22] Just as Canada's constitutional framework precludes the court's intervention in "*political* issues that lack a legal component",[23] so does state neutrality preclude intervention in *religious* issues "that lack a legal component".

15. This duty of neutrality not only defines the court's proper role as an impartial adjudicator, it also gives credence and legitimacy to its authority as such. If courts are seen to be favouring – directly or indirectly – a particular religious interpretation or precept by mediating a doctrinal dispute, they would lose the "legitimacy they need to play their role as arbiters in relation to the cohabitation of different religions"[24].

16. In this way, religious neutrality both defines and legitimizes the court's constitutional role as an impartial mediator of the space in which religious communities operate and interact with civil society[25] – rather than as a referee within those religious communities. Judicial restraint in refusing to hear religious disputes absent a legal right preserves this legitimacy. Conversely, inferring from the *existence* of written bylaws that religious groups intended civil courts to *enforce* them would undermine this legitimacy; it would insert the court into disputes where no legal right is at stake, and enlist the state in the enforcement of religious causes.

17. Judicial restraint in religious matters is consistent with the interpretation of state neutrality in international jurisprudence. For example, the European Court of Human Rights (ECtHR) has "frequently emphasised the State's role as the neutral and impartial organiser of the practice of religions, faiths and beliefs", and has affirmed that "this role is conducive to public order, religious

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[19] *R v N.S.*, 2012 SCC 72 at para 73 *per* Lebel J (concurring).
[20] *Mouvement laïque québécois v Saguenay (City)*, 2015 SCC 16 at para 72 [*Saguenay*].
[21] *Syndicat Northcrest v Amselem*, 2004 SCC 47 at para 55 [*Amselem*].
[22] *Amselem*, *ibid* at para 50.
[23] *Secession Reference*, *supra* note 12 at para 102 [emphasis added].
[24] *Bruker v Marcovitz*, 2007 SCC 54 at para 102 *per* Deschamps J (dissenting, but not on this point) [*Bruker*].
[25] *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v Lafontaine (Village)*, 2004 SCC 48 at para 67 *per* Lebel J (dissenting, but not contradicted by the majority on this point) [*Lafontaine*], cited in *Saguenay*, *supra* note 20 at para 71.

harmony and tolerance in a democratic society, particularly between opposing groups."[26] A core element of this "neutral and impartial" role is what the ECtHR describes as "[r]espect for the autonomy of religious communities".[27] This demands, among other things, that:

> the State should accept the right of [religious] communities to react, in accordance with their own rules and interests, to any dissident movements emerging within them that might pose a threat to their cohesion, image or unity. **It is therefore not the task of the national authorities to act as the arbiter between religious communities and the various dissident factions that exist or may emerge within them.**[28]

18. This concept of religious group autonomy is an outworking of the duty of religious neutrality and, according to the ECtHR, the state's obligations to respect freedom of religion and freedom of association.[29] The relationship between these protections, which are guaranteed under the *Canadian Charter of Rights and Freedoms* and various international instruments that Canada has agreed to uphold,[30] is still being explored in Canadian jurisprudence. This is particularly so concerning the scope of the court's jurisdiction in religious disputes.[31] As such, the ECtHR's rich jurisprudence on this subject provides a helpful guide and merits close examination.[32]

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[26] *Sindicatul "Păstorul cel bun" v Romania* [GC], No 2330/09, [2013] V ECHR 41 at para 165 [*Sindicatul*]; see also *Leyla Şahin v Turkey* [GC], No 44774/98, [2005] XI ECHR 173 at para 107.
[27] *Sindicatul*, *supra* note 26 at para 165.
[28] *Sindicatul*, *ibid* at para 165 [emphasis added].
[29] *Svyato-Mykhaylivska Parafiya v Ukraine*, No 77703/01 (14 June 2007) at paras 112-113 [*Svyato*], citing *Metropolitan Church of Bessarabia and Others v Moldova*, No 45701/99, [2001] XII ECHR 81 at paras 118, 123 [*Metropolitan Church*] and *Hasan and Chaush v Bulgaria* [GC], No 30985/96 [2000] XI ECHR 117 at para 62 [*Hasan*].
[30] *Canadian Charter of Rights and Freedoms*, ss 2(a), 2(d); *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71 at Articles 18, 20; *International Covenant on Civil and Political Rights*, GA Res 2200A (XXI), UNGAOR, 1966, Supp No 16, UN Doc A/6316 52 at Articles 18, 22 [*ICCPR*]; 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) at Articles III, XXII; Organization for Security and Co-operation in Europe, *Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-Operation in Europe* (1989) at para 16.4.
[31] *Wall v Judicial Committee of the Highwood Congregation of Jehovah's Witnesses*, 2016 ABCA 255 at paras 110-111 *per* Wakeling J (dissenting) [*Wall* (ABCA)].
[32] *Ontario (Attorney General) v Fraser*, 2011 SCC 20 at para 92; *R v Hape*, 2007 SCC 26 at paras 55-56.

B. International jurisprudence and the concept of religious group autonomy

19. Although Canada is not a party to the *European Convention on Human Rights*,[33] this Court has recognized international jurisprudence as a "relevant and persuasive", albeit non-determinative, source for the "interpretation of the *Charter*'s provisions".[34] It has looked to ECtHR decisions as a "very valuable guide"[35] in considering the *Charter*,[36] including the rights and freedoms of religious communities.[37] Furthermore, the ECtHR is a "scrupulous judicial body interpreting often-similar human rights protections".[38] In this case, the relevant provisions of the *European Convention* are closely aligned with those in the *International Covenant on Civil and Political Rights*, which Canada acceded to in 1976, prior to the adoption of the *Charter*.[39]

20. Religious group autonomy has been articulated by the ECtHR as requiring that government actors and courts[40] generally abstain from interfering with internal religious disputes or religious "associative life", including disputes about membership and/or doctrinal interpretation.[41] The task of the state and the courts is to ensure that "religious communities are entitled to their own opinion on any collective activities of their members that might undermine their autonomy" and that "this opinion must in principle be respected by the national authorities."[42]

21. The state is therefore "prohibited from obliging a religious community to admit new members or to exclude existing ones."[43] Interference with such decisions "would run counter to the

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[33] Council of Europe, *European Convention for the Protection on Human Rights*, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5 [*European Convention*].
[34] *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 SCR 313 at para 57; see also *Quebec (Attorney General) v 9147-0732 Québec inc.*, 2020 SCC 32 at para 43.
[35] *R v Nova Scotia Pharmaceutical Society*, [1992] 2 SCR 606 at 637.
[36] See *United States v Burns*, 2001 SCC 7 at para 53; *India v Badesha*, 2017 SCC 44 at para 47.
[37] *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12 at paras 45, 98; *Mounted Police Association of Ontario v Canada (Attorney General)*, 2015 SCC 1 at para 64 [*Mounted Police*]; *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at paras 128-129 *per* Abella J (dissenting).
[38] Benjamin J. Oliphant, "Interpreting the *Charter* with International Law: Pitfalls & Principles" (2014) 19 APPEAL 105 at 126.
[39] *European Convention*, *supra* note 33 at Articles 9, 11; *ICCPR*, *supra* note 30 at Articles 18, 22; *R v Oakes*, [1986] 1 SCR 103 at para 31.
[40] *Sindicatul*, *supra* note 26 at para 159.
[41] *Metropolitan Church*, *supra* note 29 at paras 117-118; *Svyato*, *supra* note 29 at paras 146, 150.
[42] *Sindicatul*, *supra* note 26 at para 159.
[43] *Sindicatul*, *ibid* at para 137.

freedom of religious associations to regulate their conduct and to administer their affairs freely."[44]

Religious group autonomy protects individual and collective religious freedom

22. In upholding religious group autonomy, the ECtHR has affirmed that freedom of religion is exercised not just individually, but "in community with others, in public and within the circle of those whose faith one shares."[45] Religious communities provide the necessary means by which individuals exercise their right to religious freedom: "Participation in the life of the community is thus a manifestation of one's religion".[46]

23. In this way, the autonomy of religious *groups* is a precondition to the realization of the religious autonomy of the *individual*. The ECtHR has affirmed that the autonomy for religious communities "directly concerns not only the organisation of the community as such but also the effective enjoyment of the right to freedom of religion by all its active members", emphasizing that, "[w]ere the organisational life of the community not protected […] all other aspects of the individual's freedom of religion would become vulnerable."[47]

24. Thus, as the ECtHR has explained, the fundamental freedoms of religion and association are intrinsically linked and must be interpreted together, along with the duty of state neutrality, to safeguard religious groups against unjustified interference in their internal affairs:

> Seen in this perspective, the believers' right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention. **Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords.**[48]

25. Membership decisions lie at the core of group autonomy, since the freedom to admit or expel members in accordance with their shared beliefs is essential to a religious community's self-definition.[49] Religious groups do not forfeit their autonomy merely by forming "organised structures" with written membership regulations – to the contrary, such rules are "often seen by

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[44] *Svyato*, *supra* note 29 at para 146.
[45] *Moscow Branch of the Salvation Army v Russia*, No 72881/01, [2006] XI ECHR 1 at para 58 [*Salvation Army*].
[46] *Hasan*, *supra* note 29 at para 62.
[47] *Hasan*, *ibid* at para 62.
[48] *Hasan*, *ibid* at para 62 [emphasis added]; see also *Metropolitan Church*, *supra* note 29 at para 118 and *Salvation Army*, *supra* note 45 at para 58.
[49] See *Svyato*, *supra* note 29 at paras 146, 150.

followers as being of a divine origin"[50] and are themselves a manifestation of protected religious beliefs:

> The internal structure of a religious organisation and the regulations governing its membership must be seen as a means by which such organisations are able to express their beliefs and maintain their religious traditions.[51]

26. If courts were to construct such regulations as a judicially-enforceable contract by default, the sphere of autonomy described by the ECtHR would collapse; it would ostensibly transform a religious group's composition itself into a justiciable issue, even where no civil rights are at stake.

C. Religious autonomy informs justiciability, even where the *Charter* does not apply

27. While the *Charter* does not directly apply to a dispute between private parties, the court's duty of religious neutrality is not so limited. State neutrality has been articulated most clearly in the context of *Charter* jurisprudence; however, its foundations extend beyond the *Charter* to the core of Canada's constitutional framework.[52] As reflected in ECtHR jurisprudence, state neutrality is an organizing principle of a pluralistic, democratic state.[53] As such, the duty of state neutrality should always be a relevant consideration in the exercise of the court's authority.

28. Irrespective of the *Charter*'s application, courts should not intervene in private disputes where their religious neutrality would be compromised, such as by purporting to determine the legitimacy of a religious procedural rule – or its proper interpretation and application – in the context of a membership dispute.[54] This is the case whether a religious group's rules are expressed in written bylaws or by oral tradition. As stated by the ECtHR, the duty of religious neutrality and the right to freedom of religion preclude "assessment by the State of the legitimacy of religious beliefs *or the ways in which those beliefs are expressed*".[55] Courts are no more competent to adjudicate the application of religious rules than they are to pronounce on their substance.

29. Religious freedom and religious association can be understood to reinforce this principle of religious group autonomy in Canadian law in a manner akin to that described by the ECtHR. The

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[50] *Hasan*, *supra* note 29 at para 62.
[51] *Svyato*, *supra* note 29 at para 150.
[52] See *Saguenay*, *supra* note 20 at paras 71-72, citing Lebel J in *Lafontaine*, *supra* note 25 at paras 66-67.
[53] *Salvation Army*, *supra* note 45 at paras 58-61; *Sindicatul*, *supra* note 26 at para 165.
[54] *Amselem*, *supra* note 21 at para 55. See also *Bruker*, *supra* note 24 at para 126 *per* Deschamps J (dissenting); *Wall* (ABCA), *supra* note 31 at para 122 *per* Wakeling J (dissenting).
[55] *Metropolitan Church*, *supra* note 29 at para 117 [emphasis added]; see also *Svyato*, *supra* note 29 at para 113.

need to consider freedom of association jointly with freedom of religion is consistent with domestic jurisprudence,[56] which requires that constitutional principles be interpreted and applied holistically, as interconnected protections, not as "insular and discrete" silos.[57] For example, this Court has explained that the "individual elements of the Constitution are linked to the others, and must be interpreted by reference to the structure of the Constitution as a whole";[58] similarly, this Court has confirmed that the "interrelationship between the *Charter*'s various rights and freedoms is a long-standing principle that informs *Charter* analysis."[59]

30. Although they may not be directly applicable in a private dispute, the fundamental freedoms of association and religion remain relevant considerations in the development of the common law.[60] Just as certain court orders based on common law rules would, "by their very definition, curtail the freedom of expression" in purely private disputes,[61] so too could certain court orders in private religious disputes, 'by their very definition, curtail the freedoms of association and religion'. This recognition must inform the development of the common law as it pertains to the law of contract, the doctrine of justiciability, and the proper scope and content of court declarations.

D. Religious group autonomy is not absolute, but it does afford freedom to self-define

31. Religious group autonomy does not immunize faith communities from the general application of the law. Religious adherents remain subject to civil authorities and legal requirements (which, in turn, are subject to the Constitution). Violations of the criminal or civil law within religious communities are properly subject to court sanction. Disputes between members engaging a legal or property right are properly justiciable. Religious entities must comply with applicable requirements of trusts law and/or their incorporating legislation. For example, a member aggrieved by a corporation's conduct may have access to certain statutory remedies – though this is a matter of corporate law, not contract. Even so, some corporate remedies will not interfere with certain decisions "based on a tenet of faith held by the members of the corporation".[62]

32. In short, the concept of religious group autonomy does not create a blanket legal shield or

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[56] *R v Skinner*, [1990] 1 SCR 1235 at 1250, *per* Wilson J, dissenting with L'Heureux-Dubé J.
[57] *R v Lyons*, [1987] 2 SCR 309 at para 21; *Baier v Alberta*, 2007 SCC 31 at paras 58-59 [*Baier*].
[58] *Secession Reference*, *supra* note 12 at para 50.
[59] *Baier*, *supra* note 57 at para 58.
[60] *RWDSU v Dolphin Delivery Ltd.*, [1986] 2 SCR 573 at para 39.
[61] *Dagenais v Canadian Broadcasting Corp.*, [1994] 3 SCR 835 at 878.
[62] See *e.g.* *Canada Not-for-profit Corporations Act*, SC 2009, c 23, ss 224(2), 251(3), 253(2).

veil. What it *does* afford is the freedom for groups to self-define, set their own voluntary rules and expectations for members, and apply them according to their own procedures and interpretations, all of which need not conform to majoritarian norms, values, or beliefs. ECtHR jurisprudence emphasizes that respecting this autonomy of religious associations is a prerequisite to the "proper functioning" of the democratic political model.[63] The same is true in the Canadian context, where freedom of association is "essential to the development and maintenance of the vibrant civil society upon which our democracy rests."[64]

33. Religious commitments, relationships, and requirements – including those expressed in writing through ecclesiastical documents – are inherently spiritual matters. They are premised on voluntary, religious beliefs.[65] In a free and democratic society, citizens must have the freedom to change or reject these beliefs at any time without fear of state enforcement or legal consequences; otherwise, they could be 'contractually' obligated to observe a religious belief they no longer hold, or to associate with a religious tradition they no longer accept. Thus, a court's proper role is simply to ensure that members may freely leave a religious group, rather than try to achieve a particular outcome by intervening in its affairs.[66]

34. For all of these reasons, CLF submits that a religious community's organizing documents must not be construed as a legally enforceable contract, absent clearly stated intentions to the contrary. The non-justiciability of such matters, where no legal rights are engaged, is rooted in more than a court's limited expertise; it is also a *constitutional* requirement, resulting from the court's proper adjudicative role, the state's overarching duty of religious neutrality, and the fundamental freedoms of religion and association.

35. As a result, and as ECtHR jurisprudence affirms, even if a civil court had the practical capacity and expertise to resolve religious disputes, it would still be inappropriate to do so.

PARTS IV & V: COSTS AND ORDER SOUGHT

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

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[63] *Salvation Army*, *supra* note 45 at paras 60-61; *Gorzelik and Others v Poland* [GC], No 44158/98, [2004] I ECHR 219 at paras 88-93.
[64] *Mounted Police*, *supra* note 37 at para 49.
[65] *Wall*, *supra* note 1 at para 29.
[66] *Sindicatul*, *supra* note 26 at para 137.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of November, 2020.

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PART VI: TABLE OF AUTHORITIES

Source | **Paragraph(s) in Factum**

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