SCC File No: 37273

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

BETWEEN:

JUDICIAL COMMITTEE OF THE HIGHWOOD CONGREGATION OF JEHOVAH'S WITNESSES (VAUGHN LEE – CHAIRMAN AND ELDERS JAMES SCOTT LANG AND JOE GURNEY) AND HIGHWOOD CONGREGATION OF JEHOVAH'S WITNESSES

APPELLANTS
(Appellants)

– and –

RANDY WALL

RESPONDENT
(Respondent)

– and –

SEVENTH-DAY ADVENTIST CHURCH IN CANADA, CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS IN CANADA, CANADIAN COUNCIL OF CHRISTIAN CHARITIES, ASSOCIATION FOR REFORMED POLITICAL ACTION CANADA, BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, CANADIAN CONSTITUTION FOUNDATION, CHRISTIAN LEGAL FELLOWSHIP, EVANGELICAL FELLOWSHIP OF CANADA, CATHOLIC CIVIL RIGHTS LEAGUE, WORLD SIKH ORGANIZATION OF CANADA AND JUSTICE CENTRE FOR CONSTITUTIONAL FREEDOMS, CANADIAN MUSLIM LAWYERS ASSOCIATION

INTERVENERS

FACTUM OF THE INTERVENER
JUSTICE CENTRE FOR CONSTITUTIONAL FREEDOMS
(Pursuant to Rule 42 of the Rules of the *Supreme Court of Canada*)

JUSTICE CENTRE FOR CONSTITUTIONAL FREEDOMS
Suite 253, 7620 Elbow Drive SW
Calgary AB T2V 1K2

Jay Cameron
Tel: (403) 475-3622
Fax: (587) 747-5310
Email: jcameron@jccf.ca

Counsel for the Intervener Justice Centre for Constitutional Freedoms

SUPREME ADVOCACY LLP
Suite 100, 340 Gilmour Street
Ottawa ON K2P 0R3

Eugene Meehan, Q.C.
Marie-France Major
Tel: (613) 695-8855
Fax: (613) 695-8580
Email: emeechan@supremeadvocacy.ca
mfmajor@supremeadvocacy.ca

Agent for the Intervener Justice Centre for Constitutional Freedoms

W. GLEN HOW & ASSOCIATES LLP
13893 Highway 7 PO Box 40
Georgetown, ON L7G 4T1

David M. Gnam
Jayden Macewan
Tel: (905) 873-4545
Fax: (905) 873-4522
Email: dgnam@wghow.ca
jmacewan@wghow.ca

Counsel for the Appellants

McCARTHY TÉTRAULT LLP
Suite 2400, 745 Thurlow Street
Vancouver, BC V6E 0C5

Michael A. Feder
Robyn Gifford
Tel: (604)-643-5983
Fax: (604)-622-5614
Email: mfeder@mccarthy.ca
rgifford@mccarthy.ca

Counsel for the Respondent

ASSOCIATION FOR REFORMED POLITICAL ACTION CANADA
Suite 1705, 130 Albert Street
Ottawa ON KIP 5G4

John Sikkema
Tel: (416) 992-9877
Fax: (613) 249-3238
Email: john@arpacanada.ca

Counsel for the Intervener Association for Reformed Political Action Canada

BLAKE, CASSELS & GRAYDON LLP
Suite 2600, Three Bentall Centre
595 Burrard Street, P.O. Box 49314
Vancouver BC V7X 1L3

Roy W. Millen
Ariel Solose

SUPREME ADVOCACY LLP
Suite 100, 340 Gilmour Street
Ottawa ON K2P 0R3

Eugene Meehan, Q.C.
Marie-France Major
Tel: (613) 695-8855
Fax: (613) 695-8580
Email: emeechan@supremeadvocacy.ca
mfmajor@supremeadvocacy.ca

Ottawa agent for counsel for the Appellants

BORDEN LADNER GERVAIS LLP
Suite 1100, 100 Ottawa Street
Ottawa, ON KIP 1J9

Nadia Effendi
Tel: (613)-787-3562
Fax: (613)-230-8842
Email: neffendi@blg.com

Agent for the Respondent

SUPREME ADVOCACY LLP
Suite 100, 340 Gilmour Street
Ottawa ON K2P 0R3

Eugene Meehan, Q.C.
Marie-France Major
Tel: (613) 695-8855
Fax: (613) 695-8580
Email: emeechan@supremeadvocacy.ca
mfmajor@supremeadvocacy.ca

Agent for the Intervener Association for Reformed Political Action Canada

JURISTES POWER LAW
Suite 1103,130 Albert Street
Ottawa ON KIP 5G4

David Taylor
Tel: (613) 702-5561
Fax: (613) 702-5561

Tel: (604) 631-3300
Fax: (604) 631-3309
Email: roy.millen@blakes.com

Counsel for the Intervener British Columbia Civil Liberties Association

OSLER, HOSKIN & HARCOURT LLP
P.O. Box 50, 1 First Canadian Place
Toronto ON M5Z 1B8

Mark A. Gelowitz
Karin Sachar
Tel: (416) 862-4743
Fax: (416) 862-6666
Email: mgelowitz@osler.com
ksachar@osler.com

Counsel for the Intervener Canadian Constitution Foundation

CANADIAN COUNCIL OF CHRISTIAN CHARITIES
1-43 Howard Avenue
Elmira ON N3B 2C9

Barry W. Bussey
Philip A.S. Milley
Tel: (519) 669-5137
Fax: (519) 669-3291
Email: barry.bussey@cccc.org
philip.milley@cccc.org

Counsel for the intervener Canadian council of Christian Charities

MILLER THOMSON LLP
3000, 700 - 9th Avenue SW
Calgary, AB T2P 3V4

Gerald Chipeur, Q.C.
Jonathan Martin
Tel: 403-298-2434
Fax: 403-262-0007
Email: gchipeur@millerthomson.com
Jomartin@millerthomson.com

Email: cetter@juristespower.ca

Agent for the Intervener British Columbia Civil Liberties Association

OSLER, HOSKIN & HARCOURT LLP
Suite 1900, 340 Albert Street
Ottawa ON K1R 7Y6

Geoffrey langen
Tel: (613) 787-1015
Fax: (613) 235-2867
Email: glangen@osler.com

Agent for the Intervener Canadian Constitution Foundation

SUPREME ADVOCACY LLP
Suite 100, 340 Gilmour Street
Ottawa ON K2P 0R3

Eugene Meehan, Q.C.
Marie-France Major
Tel: (613) 695-8855
Fax: (613) 695-8580
Email: emeechan@supremeadvocacy.ca
mfmajor@supremeadvocacy.ca

Agent for the Intervener Canadian Council of Christian Charities

SUPREME ADVOCACY LLP
Suite 100, 340 Gilmour Street
Ottawa, ON K2P 0R3

Eugene Meehan, Q.C.
Marie-France Major
Tel: 613-695-8855
Fax: 613-695-8580
Email: emeehan@supremeadvocacy.ca
mfmajor@supremeadvocacy.ca

Counsel for the Interveners, Seventh-day Adventist Church in Canada and Church of Jesus Christ of Latter-day Saints in Canada

CHRISTIAN LEGAL FELLOWSHIP
Suite 202 - 285 King Street
London ON N6B 3M6

Derek BM. Ross
Deina Warren
Tel: (519) 208-9200
Fax: (519) 601-4098
Email: execdir@christianlegalfellowship.org

Counsel for the Intervener Christian Legal Fellowship

OFFICE OF THE LEGAL COUNSEL
119 Flagstone Way
Newmarket ON L3X 2Z8

Balpreet Singh Boparai
Avnish Nanda
Tel: (416) 904-9110
Fax: (905) 796-7536
Email: balpreetsingh@worldsikh.org

Counsel for the Intervener World Sikh Organization of Canada

VINCENT DAGENAIS GIBSON LLP
Vincent Dagenais Gibson LLP
260 Dalhousie Street
Suite 400
Ottawa, Ontario
K1N 7E4

Albertos Polizogopoulos
Tel: (613) 241-2701
Fax: (613) 241-2599
E-mail: albertos@vdg.ca

Counsel for the Intervener, Evangelical Fellowship of Canada and Catholic Civil Rights League

Ottawa Agent for Counsel for the Interveners, Seventh-day Adventist Church in Canada and Church of Jesus Christ of Latter-day Saints in Canada

SUPREME ADVOCACY LLP
Suite 100, 340 Gilmour Street
Ottawa ON K2P 0R3

Eugene Meehan, Q.C.
Marie-France Major
Tel: (613) 695-8855
Fax: (613) 695-8580
Email: emeechan@supremeadvocacy.ca
mfmajor@supremeadvocacy.ca

Agent for the Intervener Christian Legal Fellowship

SUPREME ADVOCACY LLP
Suite 100, 340 Gilmour Street
Ottawa ON K2P 0R3

Marie-France Major
Tel: (613) 695-8855
Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

Agent for the Intervener World Sikh Organization of Canada

ABRAHAMS LLP
385 Silver Star Blvd.
Suite 215
Toronto, Ontario
M1V 0E3

Shahzad F. Siddiqui
Tel: (416) 291-6786
Fax: (416) 291-8784
E-mail: shahzad@abrahamsllp.com

Counsel for the Intervener, Canadian Muslim Lawyers Association

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PART I: OVERVIEW

1. This case involves the authority of the judiciary to interfere with the freedom to associate, a fundamental *Charter*[1] freedom that is enjoyed by both individuals and organizations.

2. In particular, this case asks whether Courts have the authority to review a decision of a private religious body not to associate with someone who does not meet the moral, spiritual or religious requirements of that body. This question is distinct and separate from an individual's right to sue a private religious body in contract or in tort, and in respect of the Courts' legitimate authority to determine questions about property.

3. This intervener submits that the Alberta Court of Appeal has erred twice in this matter. First, the courts below claim the authority to interfere with the freedom of a private religious body not to associate with a former member. The court then justified its first error with a second: by claiming the Respondent has a "property right" allowing him to insist that people who do not want to associate with him for religious purposes must associate with him for business purposes.

4. When the government prevents people from associating, or by contrast, attempts to compel their association without their mutual consent, the government profoundly interferes with personal freedoms in a manner that is antithetical to the free society. Government prevention or compulsion of association absent extraordinary circumstances, is therefore not only undemocratic, it is oppressive.[2]

PART II: QUESTIONS IN ISSUE

5. The Justice Centre for Constitutional Freedoms (the "Justice Centre") intervenes on the question of the impact to the freedoms of Canadians as enshrined in section 2(d) of the *Charter*, in regard to associations for both religious and business purposes. This factum also deals briefly with the subject of property rights as a justiciable issue in the context of this case. The Justice Centre takes no position on the facts or outcome of this appeal.

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[1] *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK),* 1982, c 11 (the "*Charter*")

[2] *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313 [*Alberta Reference*], at para. 143: "[Freedom of association] is a freedom that has been suppressed in varying degrees from time to time by totalitarian regimes."

PART III: STATEMENT OF ARGUMENT

a) Section 2(d) of the *Charter*

6. The freedom to associate is part of the of the bedrock foundation of the democratic state; it has been called "one of the most fundamental rights in a free society". [3] The intention to affiliate or confederate with someone else is deeply personal, and born out of one's own self-determination. Only when two or more persons form this intention mutually, and act on it, is a "free" or "voluntary" association created. Therefore, *both* personal intention and mutuality are indispensable criteria for the kinds of associations protected by the Constitution.

7. In contrast, the wish or desire of one person to associate with an unwilling person (or an unwilling group) is not a legal right of any kind. For a court, or the government, to support such a "right" violates the right of self-determination of the unwilling parties. The hallmark of associations protected by section 2(d) of the *Charter* is the voluntariness of all involved. This voluntariness is violated by prohibiting associations and by compelling associations.

8. Irrespective of whether associations are formed for spiritual, educational,[4] or economic purposes, the right to associate is constitutionally protected by section 2(d) of the *Charter*.

9. In *Mounted Police Mounted Police Association v. Canada (Attorney General),*[5] McLachlin C.J. and Lebel J. took guidance from the reasons of Chief Justice Dickson in the *Alberta Reference*, affirming that the guarantee of freedom of association under s. 2(d) protects, 1) the right to join with others and form associations, 2) the right to join with others in the pursuit of other constitutional rights, and 3) the right to join with others to meet on more equal terms the power and strength of other groups or entities.[6]

10. In the *Alberta Reference*, Justice McIntyre quoted philosopher Alexis de Tocqueville in *Democracy in America* to illustrate the primary import of associational rights:

> The most natural privilege of man, next to the right of acting for himself, is that of combining his exertions with those of his fellow creatures and of acting in

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[3] *Alberta Reference*, at para. 148.
[4] *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 SCR 772 [TWU 2001].
[5] *Mounted Police Association of Ontario v. Canada (Attorney General)*, [2015] 1 SCR 3 [*Mounted Police*].
[6] *Mounted Police*, at paras. 52, 53, 62 and 66.

> common with them. The right of association therefore appears to me almost as inalienable in its nature as the right of personal liberty. No legislator can attack it without impairing the foundations of society.[7]

11. In *Mounted Police*, McLachlin C.J. and Lebel J. held that s. 2(d) should be interpreted in "a purposive and generous fashion" and that "s. 2 (d) confers *prima facie* protection on a broad range of associational activity, subject to limits justified pursuant to s. 1 of the *Charter*."[8] They held that s. 2(d) must be interpreted in light of its context and historical origins,[9] and noted that "[t]he historical emergence of association as a fundamental freedom … has its roots in the protection of religious minority groups."[10] Of particular importance to this case, they held that s. 2(d) of the *Charter* protects the right to do collectively what an individual has a right to do alone.[11]

12. The test for finding an infringement of section 2(d) is whether state conduct (in this case the decision of the lower court, affirmed by the majority of the Alberta Court of Appeal) constitutes a substantial interference with freedom of association in either its purpose or its effects.[12]

13. If a group does not have the autonomy and the authority to make its own decisions as to who qualifies, and who does not qualify, for continued membership in the group, the group loses its ability to "to interact with, support and be supported by their fellow humans in the varied activities in which they choose to engage" and to "stand up to the institutionalized forces" that surround them.[13] Therefore, in the interest of freedom of association, courts and government should respect the authority and autonomy of voluntary groups to make their own decisions regarding who qualifies, and who does not qualify, for membership.

14. Undermining freedom of association cripples individuals in their struggle "to be independent of government control" as doing so attacks "the bulwark of political liberty," "the cornerstone of civil liberties and social and economic rights alike" and "community life, human

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[7] *Alberta Reference,* at para. 152.
[8] *Mounted Police,* at para. 60. Violent associations are an exception to s. 2(d) protection.
[9] *Mounted Police,* at para. 47 (quoting *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, at p 344).
[10] *Mounted Police,* at para. 56.
[11] *Mounted Police,* at para. 36.
[12] *Mounted Police,* at paras. 111, 72, 121.
[13] *Alberta Reference*, at paras. 91, 92, and 154.

progress and civilized society".[14] The breakdown of these hallmarks of freedom pushes Canada's free society one step closer toward a regime which does not respect religious and conscientious thought and associations, and instead seeks to impose its own ideals or those of the public.

b) <u>No Right to do Business While a Member, No Right to do Business When Not</u>

15. The Respondent, Mr. Wall, is a realtor by trade, and was a member of the Jehovah's Witness church for approximately 34 years.[15] Over the course of decades, Mr. Wall did business with many of his coreligionists. Mr. Wall complains that he lost business following his disfellowship. He asserts that being disfellowshipped impacted his property and civil rights, and that this engages the court's jurisdiction to hear his application for judicial review.[16]

16. For Mr. Wall to have *lost* a property or civil right by having been disfellowshipped, he must first have *possessed* an identifiable property or civil right prior to being disfellowshipped. A right must exist in order for it to be interfered with.

17. This intervener submits that no such property or civil right existed. Sitting in the same pew every week does not create a legal right to do business with the other people in the pew. While Mr. Wall was a member of the Congregation, he had no right, constitutional or otherwise, to compel anyone from the Congregation to conduct business with him. The same people who chose to associate with him for the purpose of worship were also free to associate (or not associate) with him for the purposes of doing business. The *Charter* cannot be used to compel unwilling people to associate, for worship or for business.

18. Both the Chambers Judge and that of the majority of the Court of Appeal appear to have overlooked the voluntary nature of freedom of association. "Everyone" has this freedom,[17] and "everyone" also includes the Appellants, the congregation that no longer associates with Mr. Wall. People are autonomous beings, and freedom of association deals with the ability to act "in common" with one's associates. "In common" denotes agreement or harmony of will.

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[14] *Ibid*, paras. 93, 154, and 90, respectively.
[15] *Wall v. Highwood Congregation of Jehovah's Witnesses (Judicial Committee)*, 2016 ABCA 255, at para. 3.
[16] *Ibid*.
[17] *Charter*, section 2: "**Everyone** has the following fundamental freedoms". [emphasis added].

19. Mr. Wall formerly enjoyed the benefit of his (then) coreligionists' business because each member of the Congregation that did business with him did so freely. As with every decision that an autonomous being makes, each of their reasons for doing so were personal. Their reasons for not doing so now are also personal. Apart from the context of a civil action in tort or in contract, which Mr. Wall has not commenced, these individual and voluntary business decisions and business relationships are not subject to state scrutiny.

20. Freedom of association is a "bilateral" right which includes the right not to associate. As Justice La Forest stated in *Lavigne v. Ontario Public Service Employees Union,*[18] "[i]t is clear a conception of freedom of association that did not include freedom from forced association would not truly be "freedom" within the meaning of the Charter."[19] The Learned Justice then unmistakably characterized the improper exercise of state authority thusly, stating "governmental tyranny can manifest itself not only in constraints on association, but in forced association."[20]

c) <u>The Right to Earn a Living as a Justiciable Issue</u>

21. The majority of the Court of Appeal found that the decision of the Chambers Judge was reasonable. The Chambers Judge concluded that there was an "economic interest" that engaged the court's jurisdiction in this case.[21] In regard to this issue, the Chambers Judge stated as follows:

> And I'll tell you in two ways, freedom to associate under the *Chartered* [*sic*] rights is a constitutional right here. It's not a fact about being a member of the Jehovah's Witness that has an impact upon him as a realtor. But the reality is, these people, like most people belonging to any religious ... organization, become close to each other. They know each other. And just like I would know if I was a member of the church and I needed some electrical work done and there's a member of the church who I got to know and he's an electrician, why would I not give him a call? Of course I would.
>
> And you generally go to your friends. You go to those you would have good relations with and you can understandably go to your church. The issue about shunning has phenomenal impact on this personal relationship, the freedom to associate.[22]

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[18] *Lavigne v. Ontario Public Service Employees Union*, [1991] 2 SCR 211 [*Lavigne*].

[19] *Lavigne*, at para. 237.
[20] *Lavigne*, at para. 238.
[21] *Wall*, at para. 11.
[22] *Wall*, at para. 62.

22. The Chambers Judge erred in concluding that the Appellant Congregation had somehow interfered with Mr. Wall's freedom of association. Only the government can violate a *Charter* freedom. In contrast, individuals and groups exercise *Charter* freedoms. Choosing not to associate with someone is an exercise of freedom of association, not a violation of it.

23. Nor did the Appellant Congregation interfere with Mr. Wall's right or freedom to earn a living. The source of Mr. Wall's ability to earn income is his realtor's license, not his membership in a Congregation. The decision to disfellowship had no impact on his license to sell real estate in Alberta, and no impact on his right to advertise his services. All licensed realtors have access to the Multiple Listings Service (MLS), so the Respondent continued to enjoy the same access to the real estate market as every other realtor in Alberta.

24. This Court recently held that legal certainty for commercial affairs is jeopardized "by adopting vague legal standards based on 'commercial morality' or by imposing liability for malicious conduct alone".[23] In the tort context, even malice has been rejected as a "sufficient basis for liability" because it is too vague a notion to be applied by the courts.[24] "Regulating commercial activity should not, it has been said, depend on the "idiosyncrasies of individual judges".[25]

25. Freedom of association includes the right to associate for business purposes, but such associations must be voluntary on the parts of the participants. Freedom of association is undermined by government measures that prevent people from voluntarily associating, and equally so by government action that compels association which either (or both) of the parties does not wish. The courts in Alberta in this matter were unwise to attempt to interfere, out of what could be termed "vague legal standards based on commercial morality," with either section 2(d) freedom of association, or the free market generally.

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[23] *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, [2014] 1 SCR 177 [*A.I. Enterprises*], at para. 33.
[24] *Ibid*.
[25] *Ibid*, quoting *Mogul Steamship Company v. McGregor, Gow, & Co.* (1889), 23 Q.B.D. 598, aff'd [1892] A.C. 25, at p. 51, per Lord Morris.

d) The Question of Compulsion

26. The Alberta courts may have been motivated by a sense of indignation at the perceived unfairness of the Jehovah's Witness Church's practice of shunning, and its consequences. Hence the Court found itself capable of compelling the Highwood Jehovah's Witnesses (the "Congregation") (or its members) to associate and do business with a disfellowshipped church member, against their wills. The Chambers Judge's references to some undefined "economic threat" and "economic impact" is not supported by reference to legal authorities:

> We've got -- this is a problem. We've actually got the business effect here, the shunning. Part of what the church teaches has, I am satisfied on the basis of his affidavit, established an economic threat here. You're right, people can come and go, but the reality is if you've got the shunning they are expected to leave. And if they're not following that tenet, they themselves are going to be in dutch with the church. So it does have an economic impact, my friend. I'm satisfied he can make out the case.[26]

27. Every voluntary association has beliefs, rules and practices that will be offensive to some. Such is the diversity enabled by a free society: not all opinions, religions and associations will meet with public approval. Disagreement with, or disapproval of, the Jehovah's Witness practice of shunning is not relevant to the fundamental freedom to associate or not associate as one chooses. The unpopularity of the rules or beliefs of another's private association is what makes the protection for association necessary. Our free society is predicated on the recognition of such rights, including the right to associate (and to cease to associate), without interference by government or by courts.

28. The Chambers Judge also erred by assuming that the Congregation had coerced its members not to associate with Mr. Wall, or had somehow co-opted their free will. This thinking fails to respect the freedom of the members of the Congregation to choose to be Jehovah's Witnesses, and choose to believe in the dogma and authority of the Watchtower Society. Further, Congregation members also choose the degree or extent to which they follow their church's teachings, whether regarding shunning or other matters.[27]

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[26] *Wall*, at para. 62.
[27] The *Charter*, sections 2(a), (b) and (d).

29. In this case, no government action compels the Congregation members to obey the Watchtower Society. No law prevents them from associating with Mr. Wall, or from using his services as a realtor. As Appeal Justice Wakeling noted in dissent, "the Highwood Congregation is not a public actor. It is a private actor and is not subject to judicial review. It has no statutory foundation of any kind. The Highwood Congregation makes no decisions that have any consequences for members of the public."[28] In consequence, the government has no interest in this dispute, nor should courts intervene.

30. The Chambers Judge implicitly accused the Congregation of coopting the free will of its members, but the courts have indicated an intention to be guilty of the same kind of coercion. State duress can only manufacture a semblance of actual interpersonal relations – the removal of voluntariness renders such relations a sham. These fundamental principles of law are reflected in the Latin maxim - *Nel consensui tam contrarium est quam vis atqui meus* – there can be no consent under force or duress.

31. The Court in *R v. Big M Drug Mart Ltd.* held: "Freedom can primarily be characterized by the absence of coercion or constraint.… Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct available to others."[29]

e) Conclusion

32. It is no more lawful to compel a church to grant or restore membership to an individual than it is to compel an individual to attend a given church, or to attend church at all.

33. In the same way that a Court could not compel an individual to attend church, the Court cannot compel the Congregation to accept Mr. Wall again as a member, nor can the Court compel unwilling people to retain his services as a realtor. The Court has no authority or expertise on repentance, to determine whether Mr. Wall was sufficiently repentant of his perceived "sin" to return to membership, or insufficiently repentant. The state has no authority,

[28] *Wall*, at para. 41.
[29] *R. v. Big M Drug Mart Ltd.*, [1985] 1. S.C.R. 295, at paras. 94-95 [emphasis added].

no expertise, and no right to engage in any of the foregoing.[30] As Justice Wakeling noted in quoting Justice Cardozo in a 1921 Storrs lecture given at the Yale Law School, a "judge ... is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness". A judge may only resolve justiciable issues."[31] No such issue presents itself in this case.

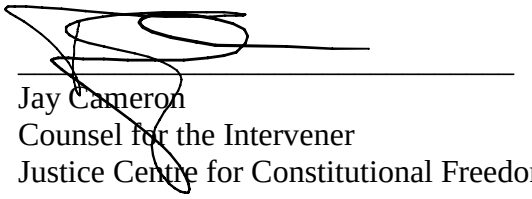
PART IV: SUBMISSIONS ON COSTS

34. The Justice Centre seeks no costs and asks that no order for costs be made against it.

PART V: ORDER SOUGHT

35. The Justice Centre is grateful for the opportunity to assist the Court in this matter and requests that its submissions, oral and written, be considered in the adjudication of this case.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of October, 2017.



Jay Cameron
Counsel for the Intervener
Justice Centre for Constitutional Freedoms

[30] *Wall*, at para. 121: "…civil judges are unlikely to have a satisfactory understanding of the religious entities' ecclesiastical law and underlying values. This disadvantage is not ameliorated by their legal training and their experience as judges. Courts have neither the mandate nor the expertise to resolve religious doctrinal disputes. The internal bodies religious associations assign to resolve these controversies are better equipped to make these decisions and have the support of the association's membership." Also see *Syndicat Northcrest v. Amselem*, [2004] 2 SCR 551, at para. 67: "It is not within the expertise and purview of secular courts to adjudicate questions of religious doctrine."

[31] *Wall*, at para. 77.

PART VI – TABLE OF AUTHORITIES

Cases ***Paragraph(s)***

Statutory Provisions

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

English Hyperlink : https://www.canlii.org/en/ca/laws/stat/schedule-b-to-the-canada-act-1982-uk-1982-c-11/latest/schedule-b-to-the-canada-act-1982-uk-1982-c-11.html?autocompleteStr=charter&autocompletePos=1

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