

**BOUCHERA CHELBI, LEGAL COMMITTEE OF THE
COALITION INCLUSION QUÉBEC, CANADIAN HUMAN
RIGHTS COMMISSION, LORD READING LAW SOCIETY,
WORLD SIKH ORGANIZATION OF CANADA, AMRIT KAUR,
PUBLIC SERVICE ALLIANCE OF CANADA, QUEBEC ENGLISH
SCHOOL BOARDS ASSOCIATION, WOMEN'S LEGAL
EDUCATION AND ACTION FUND, POUR LES DROITS DES
FEMMES DU QUÉBEC, MOUVEMENT LAÏQUE QUÉBÉCOIS,
ENGLISH MONTREAL SCHOOL BOARD, MUBEENAH
MUGHAL, PIETRO MERCURI**

INTERVENERS

MEMORANDUM OF ARGUMENT

British Columbia Humanist Association and Canadian Secular Alliance, Applicants
(Pursuant to Rules 47 and 55 of the *Rules of the Supreme Court of Canada*)

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PART I – OVERVIEW AND STATEMENT OF FACTS

1. This appeal raises questions about the constitutionality of sections 6 and 8 of the *Act respecting the laicity of the State*¹ (“Bill 21”).
2. The applicants, British Columbia Humanist Association (“BCHA”) and Canadian Secular Alliance (“CSA”) seek leave to intervene jointly to make submissions in the appeal of the Court

¹ *Act respecting the laicity of the State*, SQ 2019, c 12

of Appeal for Quebec's judgment in *Organisation mondiale sikhe du Canada c. Procureur général du Québec*, 2024 QCCA 254.

3. BCHA and CSA bring a perspective and position to this Court that is different from the parties as independent, non-partisan, not-for-profit organizations that provide a community for the non-religious and campaigns for progressive secular values. As set out in the respective affidavits of Ian Bushfield and Greg Oliver, BCHA and CSA intend to argue that:

- (a) State neutrality and religious freedom are separate and distinct legal concepts.
- (b) Bill 21 is not neutral toward religion and is not consistent with the state's duty of religious neutrality, which cannot be overridden by the application of section 33.
 - (i) Thus, while the state may adopt a law restricting religious freedom (provided s. 33 is invoked), it may not adopt a law making the state the arbiter of religious doctrine.
 - (ii) This Court's jurisprudence supports an interpretation of secularism free from state interference, which is entirely at odds with the impugned legislation.
- (c) Bill 21 poses inherent risks stemming from the government assuming the role of religious arbiter who defines the boundaries of religious belief, in violation of the court's existing approach to religious freedom, which is concerned with the sincerely held belief of an individual, not the state's or an organization's understanding of religious doctrine.

4. BCHA and CSA will expand on and develop these submissions if granted leave to intervene.

5. Rule 57(1) of the *Rules of the Supreme Court of Canada*² outlines the requirements for an affidavit in support of a motion for leave to intervene. The Rule states as follows:

57(1) The affidavit in support of a motion for intervention shall identify the person interested in the proceeding and describe that person's interest in the proceeding, including any prejudice that the person interested in the proceeding would suffer if the intervention were denied.³

i. The BCHA

6. Pursuant to this requirement, the BCHA has adduced an affidavit from Ian Bushfield, Executive Director of the BCHA. Mr. Bushfield sets out the BCHA's extensive history of work promoting progressive values, secularism, and works to end religious privilege and discrimination based on religion. The BCHA has been involved in the following public education and law reform initiatives in support of its mandate:

- (a) campaigning for the Province of BC to recognize humanist officiants as religious representatives for the purposes of the *Marriage Act*;
- (b) seeking to end symbolic religious privilege, including ending the practice of Parliament, the BC Legislature, and municipalities of beginning each day with a prayer;
- (c) opposing special tax treatment for clergy and religious organizations;
- (d) calling upon the BC government to enable secular recovery programs and refrain from publicly funding and promoting voluntary religious recovery programs, and not permitting publicly funded or licensed institutions to require entry into such programs; and
- (e) ending the funding of religious schools.⁴

7. In addition to public education and law reform initiatives, the BCHA has been actively involved in strategic litigation involving secularism and human rights. The BCHA has previously been granted leave to intervene at various levels of courts and tribunals in British Columbia to

² SOR/2002-156 [SCC Rules].

³ SCC Rules, Rule 57(1).

⁴ Bushfield Affidavit, para 20.

make submissions on related areas of law, including the parameters of religious belief when offering commercial services; the core values underlying both religious freedom rights and modern conceptions of privacy; and the government's duty of religious neutrality and the significance of this duty's extension to publicly funded service providers in relation to Medical Assistance in Dying.⁵

8. The BCHA has intervened before this Court on two occasions, in the following appeals:

- (a) *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32; and
- (b) *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v Aga*, 2021 SCC 22.⁶

9. The BCHA has also intervened in matters in lower courts and the British Columbia Human Rights Tribunal.

10. As an intervener with extensive experience in the areas of law engaged in this appeal, the BCHA is particularly well-positioned to assist the Court in the resolution of the appeal.

11. The BCHA's application to intervene in this appeal is in furtherance of the purposes set out in its constitution, including its goal of promoting secular humanism through education and communication.

ii. The CSA

12. Further pursuant to the rule 57(1) requirement, the CSA has adduced an affidavit from Greg Oliver, President of the CSA. Mr. Oliver details the CSA's history of work in favour of secularism and equal rights for all, regardless of religious belief. The CSA has been involved in the following public education and community initiatives:

- (a) conducting research and publishing policy papers on a range of issues relating to government neutrality toward religious matters;

⁵ Bushfield Affidavit, paras 21-26.

⁶ Bushfield Affidavit, paras 22 and 24.

- (b) co-founding One Public Education Now to advocate for the elimination of public funding of the Catholic separate school system in Ontario;
 - (c) petitioning the government to repeal blasphemous libel laws from the Criminal Code, and speaking, at separate times, before the Justice and Human Rights Committee and the Standing Committee on Justice and Human Rights with regard to this issue; and
 - (d) advocating to end advancement of religion as a ground for tax-exempt charity status and making submissions on this issue to the House of Commons Standing Committee on Finance.⁷
13. The CSA has also previously acted as an intervener in litigations involving the freedom of religion and the right to equality, namely:
- (a) *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16; and
 - (b) the companion cases *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, and *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33.⁸
14. The CSA also intervened in the underlying appeals before the British Columbia Court of Appeal, Ontario Court of Appeal, and Nova Scotia Court of Appeal in the Trinity Western University litigation.
15. The CSA's application to intervene in this appeal is in furtherance of its mandate of advancing the separation of religion and state and pursuing the neutrality of government in matters of religion.

PART II – QUESTIONS IN ISSUE

16. The issue is whether BCHA and CSA should be granted leave to intervene in this appeal.

⁷ Oliver Affidavit, paras 5-16.

⁸ Oliver Affidavit, paras 18-19.

PART III – ARGUMENT

17. Rule 57(2) requires an applicant seeking intervention to:

set out the submissions to be advanced by the person interested in the proceeding with respect to the questions on which they propose to intervene, their relevance to the proceeding and the reasons for believing that the submissions will be useful to the Court and different from those of the other parties.⁹

18. BCHA and CSA submit that they have met each of these criteria and will address each of these elements in turn.

i. BCHA and CSA's Proposed Submissions

19. As set out above, BCHA and CSA are committed to supporting a secular state where government institutions are separate from religious organizations in such a way that supports freedom of religion as well as freedom from religion.

20. BCHA and CSA intend to submit that Bill 21 fails to achieve the state's duty of religious neutrality.

21. This Court has previously recognized that the state must remain neutral in regard to religion and belief, and neither favour nor hinder any particular belief or non-belief.¹⁰ This Court has additionally held that the "true neutrality" demanded by the "secularism of the state" requires that the state neither promote nor discourage religious faith,¹¹ and "neither encourage nor discourage any form of religious conviction whatsoever."¹²

22. This duty of neutrality has been distinguished from the right to freedom of religion.¹³ Though the state's duty of religious neutrality and the right to freedom of religion under ss. 2 are certainly interconnected, BCHA and CSA nonetheless submit that they are two *separate and*

⁹ SCC Rules at Rule 57(2).

¹⁰ *Mouvement laïque québécois v. Saguenay (City)*, [2015 SCC 16](#) at 71-75 [*Saguenay*]; *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, [2004 SCC 48](#) at 65.

¹¹ *S.L. v. Commission scolaire des Chênes* [2012 SCC 7](#) at 32, 54.

¹² *Saguenay*, at 76-79.

¹³ *Saguenay*, at 71-72, 76.

distinct legal concepts. State neutrality is a duty of the state. Religious freedom is a right enjoyed by individuals.

23. The jurisprudence of this Court has been clear that the right to religious freedom is an individual right that protects one's sincerely held beliefs.¹⁴ The approach to religious freedom depends upon individuals determining when their religious beliefs or practices have been infringed, not a determination of an organizational religious doctrine or dogma. The threshold to engaging s. 2(a) is the identification of a sincere religious belief held by the *individual* claiming a breach of his or her s. 2(a) right.¹⁵

24. This Court has explicitly refrained from positioning the courts (who, themselves, are part of the state) as "the arbiter of religious dogma" and making determinations concerning the "content of a subjective understanding of religious requirement ... custom or ritual."¹⁶ Yet this seems to be precisely the role the state now grants itself through the prohibition of religious symbols under s. 6 of Bill 21. In contrast to the jurisprudential understanding of religious freedom, the determination of what constitutes a religious symbol is a determination by the state, not an individual.

25. Given the at times nebulous distinction between religion, culture and politics, how can the state determine if a symbol is religious, cultural, political, or simply a fashion choice? Is wearing a pin of the Israeli or Pakistani flag (both of which have symbols understood to be religious) religious, cultural, or political? Are images of Santa Claus religious? Is a wedding ring a religious symbol?

26. The duty of state neutrality precludes the state from answering these questions.

27. If granted leave to intervene, BCHA and CSA intend to expand on and develop their arguments as outlined in this memorandum.

ii. Relevance of BCHA and CSA's submissions to the appeal

28. The outcome of this appeal will determine the role of secularism within the *Charter* and determine the scope of the state's power to directly legislate about religious belief and practice, in

¹⁴ See for example *Syndicat Northcrest v. Amselem*, [2004 SCC 47](#) [*Amselem*] at 56-59.

¹⁵ *Amselem* at 56-59; *Saguenay* at 86.

¹⁶ *Amselem*, at 50.

contrast to legislation that is not about religious belief or practice, but may have an impact on an individual's religious beliefs or practices.

29. An analysis must begin with a proper understanding of state secularism and state neutrality. One cannot simply skip to the vigorous debate about the proper use of the notwithstanding clause.

30. BCHA and CSA's proposed submissions directly relate to this appeal in that they intend to highlight the risks posed to religious neutrality and freedom of religion by Bill 21.

iii. BCHA and CSA's submissions will be useful and different

31. BCHA and CSA's submissions will assist the Court by bringing a valuable perspective to the discussion of secularism and freedom of religion, namely the perspective of those who are profoundly concerned with properly pursuing state secularism.

32. The appellants submit several complex arguments with regard to the constitutional architecture of the *Charter* and the possible consequences on constitutional supremacy, but do not give sufficient attention to the state's duty of neutrality toward religion and how that duty is affected by Bill 21.

33. Furthermore, while the appellants' arguments address Canada's history of freedom of religion, they do not address the way in which Bill 21 supersedes this Court's existing approach to freedom of religion, understood in terms of an individual's sincerely held belief.

iv. BCHA and CSA will not challenge findings of fact nor the scope of issues before this Court

34. Although BCHA and CSA's proposed intervention will provide the court with a broader perspective on the arguments raised by parties to this appeal, it will do so within the scope of the legal issues that are already before the Court and form part of the existing record.

35. BCHA and CSA's joint decision to further explore the jurisprudence and practical applications of secularism as a constitutional imperative (as distinct from an infringement on freedom of religion), seeks to highlight a broader and relevant perspective of the same issue: the state's duty of religious neutrality. As such, the BCHA and CSA will make no attempt to raise matters unrelated to the appellants' arguments or expand the scope of this appeal.

PART IV – SUBMISSIONS REGARDING COSTS

36. If granted leave to intervene, BCHA and CSA will not seek costs, and will ask that no costs be awarded against them.

PART V – ORDER SOUGHT

37. BCHA and CSA jointly seek an order granting intervener status in this appeal, including the right to file a factum not to exceed 10 pages, and the right to make a five-minute oral submission at the hearing of the appeal.

All of which is respectfully submitted this 20th day of May, 2025

SIGNED BY:



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PART VI – TABLE OF AUTHORITIES

| AUTHORITY | PARAGRAPHS |
|--|---------------|
| <u>Act respecting the laicity of the State</u> , CQLR c L-0.3 | |
| <u>Loi sur la laïcité de l'État</u> , CQLR c L-0.3 | |
| <u>Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)</u> , 2004 SCC 48 | 65 |
| <u>Mouvement laïque québécois v. Saguenay (City)</u> , 2015 SCC 16 | 71-79, 86 |
| <u>Rules of the Supreme Court of Canada</u> , SOR/2002-156 | |
| <u>S.L. v. Commission scolaire des Chênes</u> 2012 SCC 7 | 32, 54 |
| <u>Syndicat Northcrest v. Amselem</u> , 2004 SCC 47 | 50, 56-59 |