Submission to the Special Senate Committee on the Charitable Sector
April 1, 2019

Executive Summary

Christian Legal Fellowship, Canada’s national association of Christian lawyers and law students, welcomes this opportunity to participate in the Special Senate Committee’s study of Canada’s charitable sector. Our submission focuses on the value and impact of religious charities in particular, and explains why Canadian law’s continued recognition of ‘advancing religion’ as a charitable purpose is both constitutionally sound and socially beneficial.

We appreciate that the Special Senate Committee has not indicated any intention to question or revise this aspect of charity law in any way. However, questions about the constitutional validity of ‘advancing religion’ as a charitable head have been raised in at least one other submission to this Committee. We therefore value this opportunity to provide our perspective and analysis in response to concerns that have been, or may be, raised in this regard.

Introduction

Canadian law recognizes “the advancement of religion” as a charitable purpose. Contrary to what some have suggested, this does not undermine any constitutional principle, including the state’s duty of religious neutrality. To the contrary, charity law’s approach to organizations which ‘advance religion’ is entirely consistent with Canada’s constitution. State neutrality does not prevent the government from creating social and legal conditions conducive to the flourishing of religious communities.

As Professor Richard Moon has observed:

“The state may also achieve a degree of neutrality by providing even-handed support to the different religious practices or institutions in the community, as well as to non-religious alternatives. Indeed, the Canadian courts have held that the Charter does not preclude the state from providing financial support to religious schools or acknowledging...
the practices or celebrations of different religious groups as long as it does so in an even-handed way.”

Similarly, Professor Bruce Ryder has noted that under the Charter, the state’s role is properly understood as “not just respecting the autonomy of faith communities, but also in nurturing and supporting them, as long as it does so in an even-handed manner”:

“The text of the Charter as a whole suggests that the Canadian state should aim to secure a religiously positive pluralism in an even-handed manner. This is best accomplished by a secular state that is neutral between religions but not neutral about religion.”

This concept of a “religiously positive pluralism” is supported by Canadian law’s longstanding recognition of ‘advancing religion’ as a charitable purpose. The Charter must be interpreted in a manner “consistent with the preservation and enhancement of the multicultural heritage of Canadians”. This includes preserving and enhancing Canada’s religious communities. As the Supreme Court has affirmed, “The diversity of Canadian society is partly reflected in the multiple religious organizations that mark the societal landscape”.

**Religious communities support self-definition and individual fulfillment**

The Constitution, read as a whole, affirms that religion is a public and social good. The Charter, for example, guarantees that everyone has a fundamental freedom to express and manifest their religion, and that no person shall be discriminated against based on their religion. Two of the values at the heart of these freedoms are self-definition and individual fulfillment. In the Supreme Court of Canada decision of Syndicat Northcrest v Amselem, for example, the majority described freedom of religion as being “integribly linked with an individual’s self-definition and fulfilment and is a function of personal autonomy and choice, elements which undergird the right.” Religious organizations provide the means by which this self-definition and fulfillment can be pursued. As Dr. Jane Calderwood Norton states:

> Without the infrastructure provided by religious organizations, a person cannot pursue a religious way of life. If a person does not have the option of a religious way of life then

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*This submission draws from a forthcoming paper co-authored by Derek Ross and Ian Sinke, “Advancing Religion in a ‘Neutral’ State”, which provides further discussion and analysis of the issues discussed in this brief.


3 Ibid at 177 [footnotes omitted] [emphasis added].


5 Trinity Western University v College of Teachers, [2001] 1 S.C.R. 772 at para 33.

6 Charter, ss. 2, 15. As the Supreme Court of Canada has affirmed, “The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination.” R. v Big M Drug Mart Ltd., [1985] 1 S.C.R. 295 at para 94.

7 Syndicat Northcrest v Amselem, 2004 SCC 47 at para 42.
they do not have an adequate range of options from which to live an autonomous life. Harm to religious organizations therefore results in harm to personal autonomy.\(^8\)

**Religious communities enrich democracy and the common good**

Religious organizations also enrich democracy and the common good by serving as “normative and authoritative communities that are profound sources of meaning in people’s lives that ought to be nurtured as counter-balances to state authority”.\(^9\) As Professor Kathleen Brady has noted, religious communities “develop and communicate new ideas that push the larger community forward”.\(^10\)

Religious groups speak to us not only about the divine but also about the social and civic concerns of the larger community, and our collective progress depends upon the range of insights that different traditions provide, including insights that may initially seem unorthodox and incorrect … Indeed, religious groups do more than speak to us about social and political truth. Religious communities seek to live out their social visions in their internal community life, and it is in this form of witness that the power of new ideas may be most evident.\(^11\)

Professor Brady continues: “History gives us many illustrations of religious groups that have promoted ideas that were initially unpopular and divisive and, yet, are now recognized as important advances. Abolitionism and the civil rights movement come to mind”.\(^12\) Religious groups “are foremost among the institutions in society that address these broader ethical issues” such as “our fundamental ethical responsibilities to one another as fellow humans and as members of a common social and political community.”\(^13\)

**Religious communities provide enormous social and practical benefits**

While a discussion of the tangible public benefits that religious communities provide is beyond the scope of this brief, that topic is dealt with more extensively in the submission of the Canadian Council of Christian Charities, which we endorse.\(^14\)

Other research and scholarship also highlight the contribution of religious communities to the common good. Professor Kathryn Chan provides a “wellspring” theory of the public benefit of

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\(^9\) Ryder *supra* at 177.


\(^11\) *Ibid* at 167.

\(^12\) *Ibid* at 169.

\(^13\) *Ibid* at 166.

religion. Researchers have measured the positive economic impact that religious congregations have on the cities in which they are located. Recent studies reveal that Canadians largely see religion as a positive force in their local communities. As just one example, religious groups play an important role in settling newcomers in Canada, with a large percentage of immigrants stating that they received material support from religious groups, or relied on them for community integration.

Religious communities provide much needed social and community services, including hospitals, shelters and hospices, support for the vulnerable, international aid, social assistance, education, low-income housing and health services, elder care, refugee resettlement, and much more. While some may argue that these services can be considered charitable under another head of charity, they would undoubtedly be curtailed if government were to withdraw support for the communities which provide their source and motivation. Indeed, charitable services provided by religious communities are not only motivated by, but manifestations of, their spiritual principles.

Advancement of religion is thus inextricably linked to the advancement of these deeply-valued social goods.

True neutrality does not require a public square devoid of belief

If the government were to withdraw support for religious charities, it would face not only practical questions about how to replace the many public and community services that religious communities provide, but philosophical questions about the proper scope of state neutrality.

If the state has a duty to “neither favour nor hinder any religious belief”, “including that of having no religious beliefs whatsoever”—as the Supreme Court observed in Saguenay and SL—it risks breaching duty if it discontinues support for religion categorically, thus favouring irreligion over any and all religions.

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17 Angus Reid Institute, “Canada at 150: Religion seen to have played a positive role in local communities, less so on the national stage” (2017), online: <http://angusreid.org/religion-in-canada-150-part-three/>.
19 As Kathryn Chan has observed, “the strong normative universes of religion tend to encourage the transfer of charitable resources to (religious and non-religious) charitable objects in ways that the weaker normative universe of the civic community does not.” (Chan supra at 124).
21 As Ravi Amarnath and Brian Bird have observed, “It is difficult to identify the distinction between the duty of neutrality as defined in Saguenay and a duty of irreligion on the part of the state. Regardless of its purpose, the unavoidable effect of the duty of neutrality is to favour atheism or agnosticism over theistic religion in the public...
The Supreme Court recognized, in both *Saguenay* and *SL*, that state neutrality must not be mistaken for state-advanced ‘unbelief’, noting Professor Moon’s observation that “the complete removal of religion from the public sphere may be experienced by religious adherents as the exclusion of their worldview and the affirmation of a non-religious or secular perspective.”22 The Supreme Court acknowledged in *Saguenay* that “there is a distinction between unbelief and true neutrality.”23

This distinction is an especially important one in the present context. To interpret “state neutrality” as denying government the ability to even-handedly support religious organizations would conflate “state neutrality” with state-preferred “unbelief”. It would also fail to take “into account the competing constitutional rights of the individuals affected” such as the freedoms of religious expression, association, and religion, discussed above.24 This is not how true neutrality is assured.25

“True neutrality” has been interpreted as preventing the “state’s profession of a clearly identified religious belief”26, but not the state’s support of initiatives designed to allow the flourishing of its citizens’ free religious exercise and belief. A notion of state neutrality which demands that religious organizations automatically be denied state support is not actually “neutral” at all: it is inherently anti-religious. This undermines a Constitution which, as a whole, clearly supports a “religiously positive pluralism”. Such pluralism, along with the “religious accommodation necessary to secure it,” is “inherently valuable”27 and “advances the public interest by promoting diversity”.28

“True neutrality” is honoured by Canada’s recognition that ‘advancing religion’ is a charitable purpose. This continued recognition serves to support, not undermine, Canada’s constitutional tradition, one which “supports and encourages even-handed state support of religious and conscientious freedoms.”29

The Christian Legal Fellowship therefore fully endorses the recommendation of the Canadian Council of Christian Charities: “That the Special Senate Committee affirm Advancing Religion as a charitable purpose with significant public benefit to Canadian society.”30

All of which is respectfully submitted,


23 *Saguenay* supra at para 134 [emphasis added].

24 *SL* supra at para 32.

25 Ibid.

26 *Saguenay* supra at para 134 [emphasis added].

27 *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32 at para 337, Côté and Brown JJ, dissenting.

28 Ibid at para 327.


30 CCCC Senate Submission *supra* at 1 [emphasis added, italics in original].
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Appendix A

About Christian Legal Fellowship

Christian Legal Fellowship (CLF) is a registered charity and Canada’s national association of Christian lawyers, law students, and jurists. CLF has over 700 members across Canada practicing in all areas of law and in every size of practice. It has chapters in cities across Canada and student chapters in most Canadian law schools. While having no direct denominational affiliation, CLF’s members represent more than 35 Christian denominations working in association together.

CLF is dedicated to advancing the public good by articulating legal and moral principles that are consistent with, and illuminated by, our Christian faith through court interventions and public consultations. Over nearly two decades, CLF has been granted intervener standing in almost 40 cases involving Charter issues—including 12 at the Supreme Court of Canada—seeking to advance justice, protect the vulnerable, promote equality, and advocate for freedom of religion, conscience, and expression.

CLF has appeared before Parliamentary committees and made representations to provincial governments on issues of conscience, religious freedom, inviolability of life, and human rights. CLF has also been granted Special Consultative Status as an NGO with the Economic and Social Council of the United Nations. As part of its NGO status, CLF has presented written submissions to the United Nations and has been invited to participate in consultations by the UN Office of the High Commissioner for Human Rights. CLF has also participated in proceedings before international courts, including the Inter-American Court of Human Rights and the Supreme Court of Sweden.

In 2012, CLF was recognized by the Quebec Superior Court as “possess[ing] an important degree of expertise in the areas of philosophy, morality, and ethics…”31

31 Leblanc v Canada (Attorney General), 2012 QCCS 3530 at para 45 [translation].