

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

BETWEEN:

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

APPELLANTS
(Applicants)

and

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

RESPONDENTS
(Respondents)

**NOTICE OF MOTION FOR LEAVE TO INTERVENE BY THE PROPOSED
INTERVENER AMNESTY INTERNATIONAL CANADA**

(Pursuant to Rules 47 and 55-57 of the *Rules of the Supreme Court of Canada*)

TAKE NOTICE THAT Amnesty International Canada (“AI Canada”) hereby applies to a Judge of this Honourable Court, pursuant to Rules 47 and 55-57 of the *Rules of the Supreme Court of Canada*, for:

- (a) an order granting AI Canada leave to intervene in the within appeal on the following terms and conditions:
- (i) AI Canada shall serve and file a factum, not exceeding 15 pages (or such other length as the said Judge may deem appropriate), within eight weeks of the issuance of this order;
 - (ii) AI Canada shall be permitted to make oral submissions at the hearing of the appeal,

not exceeding 10 minutes (or such other duration as the said Judge may deem appropriate);

- (iii) AI Canada shall not supplement the appeal record, file additional affidavits, or raise new issues in the within appeal;
- (iv) costs of this motion and the appeal shall not be awarded to or against AI Canada; and
- (v) any further or other order that the Judge may deem appropriate;

AND FURTHER TAKE NOTICE that the following documents will be referred to in support of such motion:

1. The affidavit Alex Neve, Secretary General of Amnesty International Canada, affirmed on the 4th day of August, 2016;

AND FURTHER TAKE NOTICE that the motion shall be made on the following grounds:

1. AI Canada seeks leave to intervene in this appeal to make submissions regarding how Canada's obligations and commitments under international law affect: (a) the scope of the guarantee of religious freedom under s. 2(a) of the Canadian Charter of Rights and Freedoms (the "*Charter*") as applied to decisions impacting sites considered sacred by Indigenous peoples; and (b) the duty to consult and accommodate under s. 35 of the *Constitution Act, 1982*.
2. Amnesty International ("AI") is a worldwide membership-based human rights movement founded in 1961 with over seven million members and supporters around the world, including 300,000 across Canada who are members of AI Canada. AI is impartial and independent of any government, political persuasion or religious creed, and is financed by subscriptions and donations from its worldwide membership.
3. AI Canada has a genuine and substantial interest in ensuring that Canadian protections for freedom of religion and human rights, including Indigenous peoples' human rights, are interpreted and developed in accordance with prevailing international legal norms and standards.

4. AI Canada brings a perspective distinct from those of the parties in this appeal because of AI Canada's status as a non-governmental human rights organization that represents a broad segment of Canadian society that is deeply concerned about Indigenous rights, including freedom of religion, and the need for true reconciliation.

5. If granted leave to intervene, AI Canada will make useful submissions distinct from those of the parties. In particular, AI Canada will draw upon its international human rights law expertise to make submissions on the following:

- a. rules of international law, and international and comparative authorities, concerning the human rights implications of land and resource development on the traditional lands of Indigenous people and the scope of Indigenous peoples' land-based religious rights and freedoms;
- b. the status of Indigenous sacred sites within the *United Nations Declaration on the Rights of Indigenous Peoples* ("UNDRIP")¹ and other international commitments and instruments; and
- c. the obligation to consult and accommodate to ensure rigorous protection of land-based religious rights and freedoms of Indigenous peoples as a matter of international law.

6. AI Canada's submissions will assist this Honourable Court's analysis of the issues in this appeal by providing the international legal framework in accordance with which section 2(a) of the *Charter* must be interpreted. This international law perspective will also assist the Court in determining whether Canada fulfilled its duties of consultation and accommodation under s. 35 the *Constitution Act, 1982*. AI Canada's submissions on comparative approaches to these international obligations will further assist this Court in its assessment of the issues in this appeal.

¹ GA Res 61/295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/61/49 (2008)15.

7. AI Canada's submissions will be grounded in its extensive knowledge of international human rights law and its experience dealing with issues of Indigenous rights, including land-based religious rights, before various international institutions.

8. Granting AI Canada leave to intervene in this appeal will not delay this appeal nor prejudice any party.

9. AI Canada will be prejudiced if it is not granted leave because no other party can represent its interest and perspective regarding the legal test for *Charter* protection of Indigenous land-based religious and spiritual beliefs in Canada and the international law context within which these rights are to be interpreted.

10. Rules 47 and 55 to 59 of the *Rules of the Supreme Court of Canada*.

11. Such further or other grounds as counsel may advise and may be permitted by the Judge.

Dated at Ottawa, Ontario, this 8th day of August, 2016.



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NOTICE TO THE RESPONDENT TO THE MOTION: A respondent to the motion may serve and file a response to this motion within 10 days after service of the motion. If no response is filed within that time, the motion will be submitted for consideration to a judge or the Registrar, as the case may be.

If the motion is served and filed with the supporting documents of the application for leave to appeal, then the respondent may serve and file the response to the motion together with the response to the application for leave.