FEDERAL AND PROVINCIAL LEGISLATION

Canada Elections Act
67 (4) The witness shall file with the returning officer, together with the nomination paper,..(c) if applicable, an instrument in writing, signed by the person or persons authorized by the political party to endorse prospective candidates that states that the prospective candidate is endorsed by the party.

Ontario Election Act
Nomination in one electoral district 27 Candidate's nomination paper (2) (h) if applicable, an instrument in writing, signed by the leader of a party that is registered or has applied for registration with the Chief Electoral Officer under the Election Finances Act, that states that the prospective candidate is endorsed by the party;

Quebec Election Act
241. A person offering himself as a candidate shall attach to his nomination paper.. (2) a letter from the leader of an authorized party recognizing him as a candidate of that party;

British Columbia Election Act
Endorsement of candidate by registered political party 60 (1) In order for a candidate to represent a registered political party in an election, a written endorsement of the candidate signed by at least 2 principal officers of the political party must be made by one of the following means: ..
(3) At any time up until the end of the nomination period, the status of a candidate as representative of a registered political party may be cancelled by (a) the candidate delivering to the district electoral officer or chief electoral officer a written request to this effect signed by the candidate, or (b) the registered political party delivering to the district electoral officer or chief electoral officer a written request to this effect signed by at least 2 principal officers of the political party.

Alberta Election Act
Filing nomination papers 61(1) A .. (d) the person being nominated confirms by affidavit …(iv) that the person is the officially endorsed candidate of a registered political party or is an independent candidate, and the confirmation is filed with the nomination paper, .. (2) If the person being nominated is to be the candidate of a registered political party, the person shall, at the time of filing the person's nomination paper, file a certificate in the prescribed form stating that the nominee is the candidate for that registered political party.

Manitoba Election Act
Party to provide names of endorsed candidates 58(1) Before the close of nominations, each registered political party and each political party that intends to become registered must provide the chief electoral officer with a written statement setting out the names of the prospective candidates it has endorsed and their electoral divisions. The statement must be signed by the president, leader or financial officer of the party.

Saskatchewan Election Act
Description and affiliation of candidate 45(1) If a candidate has been endorsed by a registered political party and wishes to have the name of the party or its abbreviation appear on the ballot paper and any election documents relating to him or her, the candidate shall file with the nomination paper a written document that: (a) is signed by the leader of the registered political party; .. (3) If a candidate files a written document signed by the leader of a registered political party in accordance with subsection (1), the political affiliation of the candidate must be stated on the ballot and the election documents relating to the candidate as being the registered political party that endorses that candidate.

Nova Scotia Elections Act

Nomination documents 65 (1) Nomination documents must be in the prescribed form and include (a) a signed statement by the prospective candidate containing ..(vi) the name of any registered party that has endorsed the prospective candidate or a statement that the prospective candidate is an independent candidate, .. (ix) where the prospective candidate is endorsed by a registered party, a statement by the prospective candidate consenting to the endorsement; and .. (2) The nomination documents must be accompanied by (a) where the prospective candidate is endorsed by a registered party, a statement signed by the leader that the prospective candidate is the endorsed candidate of the party; ..

New Brunswick Elections Act
51(3)A candidate of a recognized party shall deliver to the returning officer, at the same time as his nomination paper, a certificate, signed by the leader of such party in the presence of two witnesses, declaring that he is an official candidate of the party. … 51(5).. (c) the consent of the candidate, and the indication of his political party, or that he is an independent candidate, was signed by the candidate in the presence of a deponent; or the person nominated is absent from the Province and has authorized the deponent to give his consent to his nomination and to indicate the name of his political party or to declare that he is an independent candidate.

Newfoundland and Labrador Elections Act
Conditions to be met 70. .. (4) Before 2:00 p.m. on nomination day, a leader of a registered political party shall file with the Chief Electoral Officer a list containing the names of all the candidates who are endorsed by the party. (4.1) Where a candidate has the endorsement of a registered party and wishes to have the name of the party shown in the election documents relating to him or her, the name of the candidate must be included on the list filed under subsection (4) by the leader of the party which has given its endorsement to the candidate. … Party's endorsement 71. (1) A registered party may, with respect to an election, give its endorsement to only 1 candidate in each electoral district. (2) Where a candidate who has been given the endorsement of a registered party dies or withdraws, the party may give its endorsement to another candidate in that electoral district. Political affiliation 72. (1) Where an instrument is filed in accordance with subsection 70(4), the political affiliation of the candidate shall be stated as being the registered party named in the instrument.

Prince Edwards Island Elections Act
40 Certification of official candidate (2) The leader of the registered party designated in the nomination paper shall certify in Form 3 that the candidate named thereon is the official candidate of the registered party so designated; ..

SOME RELEVANT CASE LAW

Guergis v. Novak, 2013 ONCA449 "[90] Even if the allegation regarding the Prime Minister's involvement is read as proven, s. 67(4)(c) of the Canada Elections Act, S.C. 2000 c.9, gives the leader of a political party the authority to refuse to endorse a candidate. As it is statutorily allowed, it therefore cannot be an unlawful act"…

Pick v. Conservative Party of Canada, 2004 CanLII 38425 (SK QB) It is neither surprising nor offensive to the logic of the above candidate selection process that Article 3, subsection k of the Candidate Nomination Rules and Procedures, as well as Section 67(4)(c) of the Act should be compatible with one another. It makes no sense to me that an application for the position of a "nomination contestant" should have his application accepted in the first instance, proceed to the riding election and if duly elected, subsequently fail to receive the endorsement of the party under Section 67(4)(c)…

Grewal v. Conservative Party of Canada, 2004 CanLII 9568 (ON SC) [29] I cannot accept the plaintiff's position on the meaning of s. 67(4)(c) and the restrictive application of that section. [30]

Firstly, there is nothing in that section that stipulates that a leader must give reasons for not endorsing a candidate. In any event, in this case reasons were articulated and the plaintiff was advised of the reasons by the Interim Council. [31] Secondly, the Party, determines the candidates he wishes to have representing the Party. It is not for the Court to make those determinations. The Court should not interfere with a process that has been established by a Party or a process that has been established pursuant to a statute.

Figueroa v. Canada (Attorney General), 2003 SCC 37 (CanLII), 227 D.L.R. (4th) 1… the purpose of the right to vote enshrined in s. 3 of the Charter is not equality of voting power per se, but the right to "effective representation". Ours is a representative democracy. Each citizen is entitled to be represented in government. Representation comprehends the idea of having a voice in the deliberations of government as well as the idea of the right to bring one's grievances and concerns to the attention of one's government representative…… Put simply, full political debate ensures that ours is an open society with the benefit of a broad range of ideas and opinions: This…ensures not only that policy makers are aware of a broad range of options, but also that the determination of social policy is sensitive to the needs and interests of a broad range of citizens….

RWDSU v. Dolphin Delivery Ltd., [1986] 2 SCR 573, 1986 CanLII 5 (SCC) 39:…where no act of government is relied upon to support the action, the Charter will not apply. I should make it clear, however, that this is a distinct issue from the question whether the judiciary ought to apply and develop the principles of the common law in a manner consistent with the fundamental values enshrined in the Constitution. The answer to this question must be in the affirmative.

Alberta Soccer Association v. Charpentier, 2010 ABQB 715 "Hofer: First Test:….Did the society's rules (as applied) violate a law? Are the society's rules (as applied to individuals) unreasonable, arbitrary or capricious? or Do the society's rules jeopardize a matter of public policy so significant it has province-wide or national effect?….. does the society's breach under the second part of the First test violate a fundamental right under the Constitution of Canada (e.g. s.15 of the Canadian Charter of Rights and Freedoms)?"

University of Victoria Students' Society v. Canadian Federation of Students, 2011 BCSC 122 [34] … It is clear that the court is entitled to intervene in some circumstances to set aside decisions made within private associations. It necessarily follows that the court must also have the power to make ancillary or consequential directions.

Kaplan v. Canadian Institute of Actuaries, 1994 CanLII 9065 (AB QB), [1994] A.J. No. 868 (Q.B.); aff'd 1997 ABCA 310 (CanLII), [1997] A.J. No. 874 (C.A.), is decisive of this issue. Hunt J…. thoroughly reviewed the case law relating to availability of judicial review of consensual (domestic) tribunals. …It was argued by the Respondents that certiorari will not lie in relation to such a body…It seems to me that even if certiorari will not lie against a consensual tribunal, the court possesses broad enough powers … to grant the remedy it considers appropriate to the particular case, including the setting aside of an invalid decision or action.

Supreme Court of Canada in Lakeside Colony of Hutterian Brethren v. Hofer, 1992 CanLII 37 (SCC), [1992] 3 S.C.R. 165, wherein Gonthier J. held for the majority, at para.10: It is not incumbent on the court to review the merits of a decision to expel. It is, however, called upon to determine whether the purported expulsion was carried out according to the applicable rules, with regard to the principles of natural justice, and without mala fides.

B.C. Supreme Court …decision…National Hockey League as it re…coach Patrick Quinn.…[13] The review by the court of orders made by an unincorporated association such as the N.H.L. through its president and chief executive officer (a domestic tribunal as it were) is limited. The power in no way includes the right in the court to substitute its decision for that of the domestic tribunal. The court is not

a court of appeal. Rather, its power is narrow and it may only interfere If the order was made without jurisdiction (or against the rules) or if it was made in bad faith or contrary to the rules of natural justice.

Hanson v. Ontario Universities Athletic Association et al., 1975 CanLII 489 (ON SC) In determining whether a by-law of an association is invalid as being unreasonable the Court may consider the authority under which the by-law was made to see if it was in the power of the association. This is reasonableness in the wide sense and is the only proper way for a Court to consider a by-law in terms of reasonableness. Reasonableness in the narrow sense relates to merits of the policy and substance of the by-law. A Court should not direct its attention to reasonableness in the narrow sense when considering the validity of the by-law. Unless a contrary indication is provided, a body other than Parliament or the Legislature has no power to pass a by-law or other form of legislation which is unequal in its operation as between different classes, manifestly unjust, made in bad faith, or which involves oppressive or gratuitous interference with the rights of those subject to it.

J.R.S. v. Glendinning, 2000 CanLII 22641 (ON SC) All religious organizations are regarded by the common law as voluntary associations, equally protected in their enjoyment of property. The authority of a religious organization over its members rests upon their voluntary membership and mutual, contractual consent to the doctrine and discipline of the organization. Since contract is the legal basis for the authority of a religious organization over its members and affairs, the courts should interpret internal rules according to the principles for the interpretation of contracts, and should not interfere with them unduly; interference with such internal rules will be justified, however, where they interfere with civil rights.

Falk v Calgary Real Estate Board Co-operative Ltd, 2000 ABQB 296 (CanLII), 265 AR 60, [13] [22] Ms. Falk argued that a private organization, such as the Board, cannot rely upon such an exclusionary clause to oust the jurisdiction of the court.…. [23] I agree that it is against public policy to recognize clauses which purport to exclude entirely the jurisdiction of the court. This is confirmed in G.H.L. Fridman, The Law of Contract in Canada (3rd) (Scarborough, ON: Carswell, 1994) at 380-381: …In other words, if sued, a party cannot raise as a defence that the other party agreed that resort would not be had to the courts. [24] Alberta courts have also relied on this principle. Laycraft J. (as he then was) in Lambert v. A.T.A. (1978), 1978 CanLII 792 (AB QB), 17 A.R. 364 (S.C.T.D.), quoted with approval the following passage of Denning L.J. in Lee v. Showmen's Guild of Great Britain, [1952] 1 All E.R. 1175 at 1180-1181: Although the jurisdiction of a domestic tribunal is founded on contract, express or implied, nevertheless the parties are not free to make any contract they like. There are important limitations imposed by public policy. The tribunal must, for instance, observe the principles of natural justice…They can, of course agree to leave questions of law, as well as questions of fact, to the decision of the domestic tribunal. They can, indeed, make the tribunal the final arbiter on questions of fact, but they cannot make it the final arbiter on questions of law. They cannot prevent its decisions being examined by the courts

Houle v. Canadian national bank, [1990] 3 SCR 122, 1990 CanLII 58 (SCC) abuse of contractual rights is part of Quebec civil law. The doctrine serves the important social as well as economic function of controlling the exercise of contractual rights and is consistent with today's trend towards a just and fair approach to rights and obligations. Bad faith or malice in the exercise of a contractual right is no longer the only criterion for assessing whether such a right has been abused. The standard of the prudent and reasonable individual can also form the basis for liability resulting from an abuse of contractual rights. An abuse of rights may occur when the contractual right is not exercised in a reasonable manner, i.e. in accordance with the rules of equity and fair play. The abuse of a contractual right gives rise to contractual liability. This liability is based on art. 1024 C.C.L.C. and the underlying principle of good faith in the execution of contracts. …The fact that two parties have contracted, however, does not shield them from their extracontractual responsibilities to those outside the

contractual sphere. In order to find delictual liability between a contracting party and a third party, there must exist, independently of the contract, a legal obligation deriving from art. 1053 C.C.L.C. … The well-known maxim Neque malitiis indulgendum est (Digest, 6.1.38) seems to confirm it: malice would never be permitted, even if a right were being exercised…. paraphrasing the Latin maxim Summum jus summa injuria, is quoted as saying (Josserand, De l'esprit des droits et de leur relativité (2nd ed. 1939), at p. 5): A right taken too far becomes an injustice… Every right has a particular purpose: it is conferred to meet social imperatives or economic needs, not to assuage instincts of vengeance or spitefulness. The exercise of contractual rights has to be seen from this perspective. A legal order, which is a pale reflection of the moral order, unavoidably must accommodate egoism; in no case should it tolerate malice. Angus, op. cit., shares the same opinion, at p. 157: If one looks at the true spirit of our civil law, it is clear that contractual rights cannot be totally absolute. Contracting parties do not foresee all eventualities expressly and so their formal accord is limited to the essential… The Implicit Contractual Obligation of Good Faith Contractual obligations are not limited to those expressly mentioned in a contract, as enunciated in art. 1024 C.C.L.C.: 1024. The obligation of a contract extends not only to what is expressed in it, but also to all the consequences which, by equity, usage or law, are incident to the contract, according to its nature. …Good faith has been regarded as one such implicit, necessary obligation in all contractual relationships. Even in Roman law, an implicit obligation to execute contracts in good faith was found to exist.

Wabasso Ltd. v. National Drying Machinery Co., [1981] 1 SCR 578, 1981 CanLII 16 (SCC) It is true that the existence of contractual relations does in no way exclude the possibility of a delictual or quasi-delictual obligation arising out of the same fact.

Knox v. Conservative Party of Canada, 2007 ABQB 180[41] … Justice Acton of this Court stated as follows in International Association of Bridge Structural, Ornamental and Reinforcing Iron Workers, Local 720 v. International Brotherhood of Broilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, (2000) 272 A.R. 1, 2000 ABQB 586 (CanLII) at para. 33: As the courts have noted, a consensual tribunal's jurisdiction is founded on contract. The rationale underlying the courts' jurisdiction to review a tribunal protected by a privative clause is equally applicable to a contractual situation. Just as the courts have held that a legislature would not have intended to give a statutory tribunal the jurisdiction to make a patently unreasonable decision or to breach the rules of natural justice or to make a biased decision, it would be unreasonable to conclude that the parties in the consensual regime would have agreed that a domestic tribunal could do so…[44] Justice Martin went on at para. 51 to state: Therefore, in view of the nature of the decision at issue, I conclude that this court must have the authority to review the Nomination Committee's decision, particularly in the absence of an impartial "disciplinary " tribunal to review matters such as this and resolve them in accordance with procedural fairness and rules of natural justice.

Vriend v. Alberta, [1998] 1 SCR 493, 1998 CanLII 816 (SCC) 2 66 … submission has failed to distinguish between "private activity" and "laws that regulate private activity". The former is not subject to the Charter, while the latter obviously is. …to wait until someone is discriminated against … challenge the validity of the provision in each appropriate case… would not only be wasteful of judicial resources but also unfair in that it would impose burdens of delay, cost and personal vulnerability to discrimination for the individuals involved in those eventual cases…. provisions… do not depend on any particular factual context in order to resolve their constitutional status, there is really no need to adduce additional evidence…

Gosselin v. Québec (Attorney General), [2002] 4 SCR 429, 2002 SCC 84… By enacting the Social Aid Act, the Quebec government triggered a state obligation…C. Negative vs. Positive Rights and the Requirement of State Action [319] … rights include a positive dimension, such that they are not merely rights of non-interference but also what might be described as rights of "performance", then they may

be violable by mere inaction or failure by the state to actively provide the conditions necessary for their fulfilment… 320] … As a theory of the Charter as a whole, any claim that only negative rights are constitutionally recognized is of course patently defective. The rights to vote (s. 3), to trial within a reasonable time (s. 11(b)), to be presumed innocent (s. 11(d)), to trial by jury in certain cases (s. 11(f)), to an interpreter in penal proceedings (s. 14), and minority language education rights (s. 23) to name but some, all impose positive obligations of performance on the state and are therefore best viewed as positive rights (at least in part). … Finally, decisions like Schachter v. Canada, 1992 CanLII 74 (SCC), [1992] 2 S.C.R. 679, and Vriend, supra, confirmed that "[i]n some contexts it will be proper to characterize s. 15 as providing positive rights"…. [327]… Therefore, Blencoe … implies that such protection will sometimes be engaged by mere state inaction… [359] …whether a fundamental freedom can be infringed through the lack of government action was canvassed most recently in the case of Dunmore… underinclusive legislation might in some contexts constitute "affirmative interference with the effective exercise of a protected freedom" …we confirmed… in Haig v. Canada, 1993 CanLII 58 (SCC), [1993] 2 S.C.R. 995 …"a situation might arise in which, in order to make a fundamental freedom meaningful, a posture of restraint would not be enough, and positive governmental action might be required". [360] … Most obviously, they stand for the proposition that the Charter's fundamental freedoms can be infringed even absent overt state action. Mere restraint on the part of the government from actively interfering with protected freedoms is not always enough to ensure Charter compliance; sometimes government inaction can effectively constitute such interference."

Allard v. Canada, 2016-02-24, 2016 FC 236, T-2030-13 [125]….principles of fundamental justice. With respect to the principles of arbitrariness, overbreadth, and gross disproportionality, the specific questions are whether the law's purpose, taken at face value, is connected to its effects and whether the negative effect is grossly disproportionate to the law's purpose… whether the negative impact of a law on the rights of individuals is proportionate to the pressing and substantial goal of the law in furthering the public interest… [126]….weigh the negative impact of the law on people's rights against the beneficial impact of the law in terms of achieving its goal for the greater public good. The impacts are judged both qualitatively and quantitatively. …[255]…whether a law that takes away rights in a way that generally supports the object of the law, goes too far by denying the rights of some individuals in a way that bears no relation to the object:… [272]… gross disproportionality only applies in extreme cases where the seriousness of the deprivation is totally out of sync with the objective of the measure… It balances the negative effect on the individual against the purpose of the law, not against societal benefit that might flow from the law…gross disproportionality is not concerned with the number of people who experience grossly disproportionate effects; a grossly disproportionate effect on one person is sufficient to violate the norm.