JUL.
2024

ARPA CANADA'S LEGAL ARGUMENTS

IN

VABUOLAS ET AL. V. BRITISH COLUMBIA

THE CASE TO PROTECT CHURCH MEETING MINUTES AND OTHER RELIGIOUS RECORDS FROM UNNECESSARY GOVERNMENT OVERSIGHT

BRITISH COLUMBIA COURT OF APPEAL

ARPA CANADA

Court of Appeal File No. **CA49637**
Vabuolas vs. Information and Privacy Commissioner for British Columbia
Intervener's Factum

COURT OF APPEAL

ON APPEAL FROM the order of Justice Wilson of the Supreme Court of British Columbia pronounced on the 8th day of January, 2024.

BETWEEN:

John Vabuolas, Paul Sidhu, Grand Forks Congregation of Jehovah's Witnesses,
Coldstream Congregation Of Jehovah's Witnesses, and
Watch Tower Bible and Tract Society Of Canada

APPELLANTS
(Petitioners)

AND:

Information And Privacy Commissioner for British Columbia, Attorney General of British Columbia, Gabriel-Liberty-Wall And Gregory Westgarde

RESPONDENTS
(Respondents)

AND:

British Columbia Humanist Association

Intervener

AND:

The Association for Reformed Political Action (ARPA) Canada

Intervener

INTERVERNER'S FACTUM

The Association for Reformed Political Action (ARPA) Canada

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OPENING STATEMENT

Deciding who may become or remain a member of a religious community is at the core of a religious association's autonomy. The state must refrain from reviewing or overturning such decisions, and avoid interfering in the religious practices through which such decisions are made – unless it has a demonstrable justification for doing so. ARPA Canada's submissions highlight the importance of independent civil society associations to a free society. PIPA[1] gives the Commissioner the authority to review the internal practices of religious associations related to records created and used for exclusively religious purposes. It also grants the Commissioner authority to order that such records be corrected or that the association's record-keeping practices be changed. This risks the undue burdening of religious institutions and practices.

PIPA does not apply to individuals' collection and use of information about others for personal or domestic purposes, or to the collection and use of personal information for journalistic, artistic, or literary purposes by organizations.[2] This preserves a sphere of individual liberty and privacy free of state regulation and oversight, and protects the *Charter*[3] freedoms of expression and association. Yet PIPA contains no accommodation for records created for exclusively religious purposes.

PIPA also preserves the confidentiality of the deliberations of civil adjudicators and legislators by excluding personal information contained in related records.[4] But PIPA does not exclude from its reach the deliberations of religious authorities or ecclesiastical courts. PIPA thus fails to respect the freedom of religious bodies to govern their internal religious affairs without undue interference. The purported justification for the order to disclose religious records – and for the statutory scheme that grants that authority – is not to prevent or remedy a discrete threat to the applicants' privacy, but to pursue a broad, vague interest in "maintaining control over information about oneself." Conversely, disclosing the records in question to the Commissioner would appear to breach the Appellants' privacy.

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[1] *Personal Information Protection Act*, SBC 2003, c 63 [**PIPA**].
[2] Section 3 of PIPA sets out various circumstances in which the statute does not apply.
[3] *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, s 91(24) [***Charter***].
[4] At section 3(2)(e)-(f). Similarly, the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, excludes court and tribunal records in section 3(3).

PARTS 1 and 2: STATEMENTS OF FACTS and ISSUES ON APPEAL

1. ARPA accepts the facts as described by the Appellants. ARPA makes submissions regarding (a) the associational aspects of religious freedom, and (b) the justificatory burden for limiting this freedom, which requires a clear and pressing objective, and due consideration of the institutionally pluralist nature of "a free and democratic society."

PART 3: ARGUMENT

A. The *Charter* preamble and section 1 support institutional pluralism

2. "The preamble [to the *Charter*], including its reference to God, articulates the 'political theory' on which the Charter's protections are based."[5] Professor Bruce Ryder suggests the preamble signals "a kind of secular humility, a recognition that there are other truths, other sources of competing worldviews, of normative and authoritative communities that are profound sources of meaning in people's lives that ought to be nurtured as a counter-balance to state authority."[6] The political theory underlying the *Charter* sees state authority as structurally limited vis-à-vis civil society.[7]

3. In turn, section 1 of the *Charter* identifies "principles essential to a free and democratic society" including "accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society."[8] A "free and democratic society" is thus robustly pluralistic. It is, as the preamble to the *Canadian Bill of Rights* puts it, "a society of free men and free institutions."[9] The Supreme Court of Canada highlighted in the *Quebec Secession Reference* that legal protections for religious minorities were "clearly an essential consideration in the design of our constitutional structure even at […] Confederation."[10] And the Court noted that "a constitution may seek to ensure that

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[5] *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, ¶147 [***Saguenay***].
[6] Bruce Ryder, "State Neutrality and Freedom of Conscience and Religion" (2005), 29 SCLR (2d), ¶17.
[7] John Sikkema, "The First Division of Power: State Authority and the Preamble to the Charter," (2022) 105 SCLR (2d) 67-93.
[8] *R. v. Oakes*, [1986] 1 SCR 103 ¶64 (emphasis added). See also Dickson, C.J. in *R. v. Big M Drug Mart Ltd*, [1985] 1 SCR 295 ¶94.
[9] *Canadian Bill of Rights*, SC 1960, c 44 (emphasis added).
[10] *Reference re Secession of Québec*, [1998] 2 SCR 217, at ¶81.

vulnerable minority groups are endowed with the institutions and rights necessary to maintain and promote their identities against the assimilative pressures of the majority."[11]

4. In *Oakes*, Dickson C.J.C. identified the "principles essential to a free and democratic society" as including "accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society."[12] The *Charter* only permits limits on fundamental freedoms that can be demonstrably justified in a free and democratic society. Any interference with or significant burdening of religious practices are legitimate only to the extent that it is demonstrably justified, which requires evidence that the limit is necessary in order to achieve a pressing civil objective.

B. The *Charter*'s fundamental freedoms protect institutional pluralism

5. Dickson C.J.C. writes in *Big M* that a uniting feature of the fundamental freedoms is "the centrality of individual conscience and the inappropriateness of governmental intervention to compel or to constrain its manifestation."[13] Yet the Court recognizes that this individual right is manifested through religious communities and institutions.[14] *Loyola* emphasizes the "socially embedded nature of religious belief."[15] *Mounted Police* notes the "right to establish communities of faith, the autonomous existence of which is indispensable for pluralism in a democratic society."[16] Justice Rand in *Saumur* asserted that "the untrammeled affirmations of religious belief and its propagation, personal or institutional, remain as of the greatest constitutional significance […]."[17]

6. "Through association, individuals [can] participate in determining and controlling the immediate circumstances of their lives, and the rules, mores and principles which

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[11] *Ibid*, at ¶74.
[12] *R. v. Oakes*, [1986] 1 SCR 103, at ¶64. And *R v Big M Drug Mart Ltd*, [1985] 1 SCR 295, at ¶94: "a free society […] can accommodate a wide variety of beliefs [...] and codes of conducts". [***Big M***].
[13] *Big M, ibid*, at ¶121 - ¶122.
[14] See *Loyola High School v. Quebec (AG)*, 2015 SCC 12, at ¶60 [***Loyola***]; Mounted Police Association of Ontario v. Canada (Attorney General), 2015 SCC 1, at ¶64. [***Mounted Police***].
[15] *Loyola, ibid*, at ¶60.
[16] *Mounted Police, supra* note 14, at ¶64.
[17] *Saumur v. Quebec (City)*, [1953] 2 SCR 299 (SCC), at 327 (emphasis added).

govern the communities in which they live."[18] Freedom of association "recognize[s] the profoundly social nature of human endeavours and protect[s] the individual from state-enforced isolation".[19] This freedom "has its roots in the protection of religious minority groups" and it "permits the growth of a sphere of civil society largely free from state interference."[20] It is "essential to […] the vibrant civil society upon which our democracy rests."[21] Thus, "No legislator can attack it without impairing the foundations of society."[22]

7. The Court in *Mounted Police* rejects the argument that affirming the collective aspect of *Charter* fundamental rights or freedoms would undermine the rights of individuals.[23] Rather, protecting the collective aspect of fundamental rights supports the "autonomous existence of religious communities" and other associations that people may choose to join or leave. A diversity of healthy civil society institutions enhances pluralism, democracy, and individual freedom.[24] To preserve a free and democratic society, the state must refrain from interfering with the internal affairs of religious bodies (and other civil society organizations) absent a pressing civil objective.

8. The fundamental freedoms structurally limit state authority and preserve social space for civil society institutions. As Professor Schneiderman explains, "The guarantees of freedom of conscience and religion, the freedoms of expression, assembly, and association, all speak to the aim of dispersing power to civic and religious associations while bringing groups together in the generation of public policy outcomes."[25] In this way the fundamental freedoms help to sustain a free and democratic society.

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[18] *Reference re Public Service Employee Relations Act (Alberta)*, [1987] 1 SCR 313 (SCC), at ¶86 [***Reference re PSERA***], quoted with approval in *Mounted Police*, *supra* note 14, at ¶35.
[19] *Reference re PSERA*, *ibid*, at ¶86.
[20] *Mounted Police, supra* note 14, at ¶49, 56 (emphasis added).
[21] *Ibid*, at ¶49 (emphasis added).
[22] Dickson C.J. quoting Alexis de Tocqueville in *Reference re PSERA*, *supra* note 18, at ¶86. See also André Schutten, "Recovering Community: Addressing Judicial Blindspots on Freedom of Association", (2020) 98 SCLR (2d) 399-430.
[23] *Mounted Police*, *supra* note 14, at ¶65.
[24] *Ibid*, at ¶64.
[25] David Schneiderman, "Associational Rights, Religion, and the Charter" in Richard Moon, ed., *Law and Religious Pluralism in Canada* (Vancouver: UBC Press, 2008), at 73 .

C. Freedom of religion protects a sphere of religious self-governance

9. As Hinkson C.J. explained, "Religious bodies have a sphere of independent spiritual authority, at the core of which is the authority to determine their own membership, doctrines, and religious practices […]."[26] The Supreme Court of Canada has recognized this sphere of authority in *Amselem*, *Wall, Aga*, and other cases.[27] Adjudicating a dispute about a religious body's practices raises concerns about its identity, integrity, and autonomy. It also raises concerns about the adjudicator's competence in such matters, which may involve the interpretation of sacred texts and religious tradition.[28] As Iain Benson writes, "Law has practical and theoretical limits to its proper role and function in a society, and these limits determine its jurisdiction or proper scope."[29]

10. Thus, an Ontario court in *Dunnet* (1877)[30] declared that courts have no jurisdiction to inquire into a church's rules, "except so far as may be necessary for some collateral purpose." A "collateral purpose" could be: "If funds are settled […] amongst members," or "a right to enjoyment of any pecuniary benefit" such as "use of a house or land."[31] In such cases, courts avoid delving into doctrinal disputes or religious questions, but defer to the religious authority's decision – unless there is evidence that a purportedly religious decision was made in bad faith to deprive someone of property or civil rights.[32]

11. In *Ivantchenko*, Lauwers J. cautioned that "courts must be sensitive to the interplay between civil law and the internal law of the religious organization," and that:

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[26] *Beaudoin v. British Columbia*, 2021 BCSC 512, ¶199.
[27] *Syndicat Northcrest v. Amselem,* 2004 SCC 47, ¶50; *Highwood Congregation v. Wall*, 2018 SCC 26, ¶24 [***Wall***]; *Ethiopian Orthodox Tewahedo Church v. Aga*, 2021 SCC 22, ¶23 [***Aga***].
[28] *Wall v Judicial Committee of the Highwood Congregation of Jehovah's Witnesses*, 2016 ABCA 255, Wakeling J. in dissent, at notes 84, 90, 91, and 95 [***Wall ABCA***].
[29] Iain T Benson, "The Limits of Law and the Liberty of Religion Associations" in Iain T Benson and Barry W Bussey, eds, *Religion, Liberty and the Jurisdictional Limits of Law* (Toronto: LexisNexis Canada Inc, 2017), at xxiii, n 5.
[30] *Dunnet v. Forneri*, 1877 O.J. No 227 (Ch.), at ¶34 [***Dunnet***]. *Dunnet* was cited approvingly by the Manitoba Court of Appeal in *Re Morris and Morris*, 42 DLR (3d) 550, 1973 CanLII1200.
[31] *Dunnet*, *ibid*.
[32] *Lakeside Colony of Hutterian Brethren v Hofer*, [1992] 3 SCR 165 at 175 [***Lakeside Colony***]. See also *Wall ABCA*, *supra* note 28.

> [5] Courts are reluctant to become involved in the internal affairs of a religious organization. The invitation to do so comes invariably, as in this case, at the instance of a member who feels aggrieved by the actions of the organization. There are good reasons for this diffidence. First, the court recognizes that freedom of religion […] is very much implicated in such disputes and must be fulsomely respected. […]
>
> [6] Second, the court recognizes the real risk of misunderstanding the relevant tradition and culture, which could result in getting the decision wrong and saddling the religious organization with a bad decision.[33]

12. On its own, church membership is "purely ecclesiastical"[34] and, as the Supreme Court of Canada stated in *Wall*, "mere membership in a religious association […] should remain free from court intervention."[35] This approach protects religious institutions' independence and protects courts from getting entangled in disputes they are not well suited to resolve. In *Ukrainian Greek Orthodox Church*, the Supreme Court said that "unless some property or civil right is affected […], the civil courts of this country will not allow their process to be used for the enforcement of a purely ecclesiastical decree or order."[36] In *Cohen,* the applicants sought an injunction to prevent mixed seating of men and women as contrary to the purposes for which a synagogue was held in trust.[37] The judge concluded, "While […] courts have a role to play when congregations become dissentient in relation to property, contracts, or other civil rights, […] the issue is fundamentally an ecclesiastical issue which must be resolved outside the courts of law."[38]

13. In *Wall* and *Aga*[39] there was no applicable statute or civil right at stake and thus no justiciable claim. PIPA, however, grants the Commissioner supervisory authority and various powers in relation to ecclesiastical records, even those created for exclusively religious purposes. The fact that a statute applies here distinguishes this case from *Wall* and *Aga* and appears to make the matter justiciable. Justiciability involves questions of

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[33] *Ivantchenko, et al. v. The Sisters of Saint Kosmas Aitolos Greek Orthodox Monastery*, 2011 ONSC 6481, ¶4 [***Ivantchenko***].
[34] *Dunnet*, *supra* note 30.
[35] *Wall*, *supra* note 27, at ¶24.
[36] *Ukrainian Greek Orthodox Church v. Ukrainian Greek Orthodox Cathedral of St. Mary the Protectress*, [1940] SCR 586, at 591.
[37] *Cohen v. First Narayav Congregation,* [1983] O.J. No. 499 (Ct J).
[38] *Ibid*, at ¶11.
[39] *Supra* note 27.

constitutional propriety – ordinarily in relation to the proper role of civil courts.[40] Yet the question of whether a given matter is suitable for legal resolution matters for legislatures too. This case raises the issue of whether the government is justified in assuming a general supervisory authority over record-keeping for exclusively religious purposes.

14. Religious associations must be free to govern their internal religious affairs and decide membership – and to design and follow certain processes for that end. Civil judges' and adjudicators' notes taken during a hearing are protected by adjudicative privilege, for example, so that they can be "free from the fear that the notes could thereafter be subject to disclosure for purposes other than that for which they were intended."[41] Further, preserving their independence means they "must not fear that after issuance of [a] decision, [they] may be called upon to justify it to another branch of government."[42] Similarly, religious officials adjudicating purely religious matters should not have to fear that their notes may be disclosed to another kind of government (civil rather than ecclesiastical). At the very least, there must be a clear and pressing justification for compelling such disclosure, such as investigating a crime or protecting a property right or other civil right. An ill-defined or speculative privacy concern of a former member is inadequate.

D. Privacy laws are "quasi-constitutional" as they apply to governments

15. The right against unreasonable search and seizure protects reasonable expectations of privacy against *state* intrusion. It has been recognized in common law for centuries.[43] It appears in the 4th Amendment to the U.S. Constitution (1791), and in Article 12 of the *Universal Declaration of Human Rights* of 1948.[44] And it appears in section 8 of Canada's *Charter*. More recently, in response to the expansion of the administrative state, this constitutional right has been supplemented by "quasi-constitutional" laws regulating how *governments* may collect and use personal information.

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[40] *Canada (Auditor General) v. Canada (Minister of Energy, Mines and Resources),* [1989] 2 SCR 49, at 90- 91.
[41] *Canada (Privacy Commissioner) v. Canada (Labour Relations Board) (T.D.)*, 1996 CanLII 4084 (FC) 1996 CanLII 4084 (FC), [1996] 3 FC 609, at 672-673. See PIPA, s. 3(2)(e) and (f).
[42] *Ibid* at 674.
[43] See *Hunter v. Southam,* [1984] 2 SCR 145, at 157-159.
[44] U.S. Bill of Rights. U.S. Const. amend. I–X, amendment IV; UN General Assembly. (1948). Universal declaration of human rights (217 [III] A). Paris, Article 12.

16. Canada's *Privacy Act*,[45] which governs the federal government's collection and use of personal information, came into force in 1983. It replaced even earlier protections contained in the *Canada Human Rights Act*.[46] The *Personal Information Protection and Electronic Documents Act,*[47] the first such statute to apply to the private sector, was enacted in 2000. British Columbia's *Freedom of Information and Protection of Privacy Act* came into force in 1993,[48] whereas PIPA was enacted in 2003. PIPEDA was introduced in response to growing privacy concerns related to the ubiquity of computing, electronic records, the internet, and data collection.[49]

17. In *Lavigne v. Canada (Office of the Commissioner of Official Languages)* (2002), the Supreme Court commented on the origin of the need for the Privacy Commissioner:

> Within the last generation or two the size and complexity of government has increased immeasurably, in both qualitative and quantitative terms. Since the emergence of the modern welfare state the intrusion of government into the lives and livelihood of individuals has increased exponentially. Government now provides services and benefits, intervenes actively in the marketplace, and engages in proprietary functions that fifty years ago would have been unthinkable.[50]

18. In *Local 401* (2013), the Court noted that, as earlier cases had recognized:

> [L]egislation which aims to protect control over personal information should be characterized as 'quasi-constitutional' because of the fundamental role privacy plays in the preservation of a free and democratic society: *Lavigne v. Canada (Commissioner of Official Languages)*, 2002 SCC 53, at para. 24; *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403 (S.C.C.), at paras. 65-66; H.J. *Heinz Co. of Canada Ltd. v. Canada (Attorney General)*, 2006 SCC 13, at para. 28.[51]

19. All of the cases the Court cites in the passage above involved *government* as the holders of the relevant records (although *Local 401* itself did not). As the Court explained in *Heinz* just before noting the *Privacy Act*'s "quasi-constitutional" importance: "[T]he

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[45] RSC 1985, c P-21.
[46] Library of Parliament, *Canada's Federal Privacy Laws*, Pub. No. 2007-44-E, revised 2020-11-17.
[47] SC 2000, c 5 [**PIPEDA**].
[48] Office of the Information and Privacy Commissioner for British Columbia, "2002/2003 Annual Report", at 1.
[49] *Canada's Federal Privacy Laws*, *supra* note 47.
[50] *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53, at ¶39 (emphasis added).
[51] *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers*, *Local 401*, 2013 SCC 62, at ¶19 [***Local 401***].

purpose of the *Privacy Act* is to protect the privacy of individuals with respect to personal information about themselves that is held by a government institution."[52] Similarly, the Court said in *Dagg* that privacy merits constitutional protection "at least in so far as it is encompassed by the [*Charter*] right to be free from unreasonable searches and seizures" and that "privacy interests may also inhere in [section 7]."[53] The *Charter* does not use the term privacy, but a purposive interpretation of section 8 recognizes that it protects people's reasonable expectations of privacy against unreasonable *government* interference.

20. If preserving a free and democratic society depended on (a) preventing churches or other voluntary associations from collecting or using personal information without consent, or (b) giving a government agency oversight of such associations' record-keeping practices, even over records created for exclusively religious purposes, it would be surprising and disturbing that most provinces have no legislation applying to such records, while British Columbia adopted PIPA only twenty-one years ago.[54] It is also noteworthy that exercising control over one's personal information was not considered sufficiently important to justify extending the reach of PIPA to information collected and used for exclusively personal, domestic, journalistic, artistic, or literary purposes.

21. It is privacy law's role in (a) protecting persons from abuses *by the state* in collecting or using their personal information and (b) keeping governments accountable, which gives it a "fundamental role [in] the preservation of a free and democratic society"[55] – not its application to records created by a voluntary association for religious purposes.

E. PIPA's limits on fundamental freedoms must be demonstrably justified

22. "Privacy is a broad and somewhat evanescent concept," *Dagg* cautions: "It is thus necessary to describe the particular privacy interests protected by the *Privacy Act* with greater precision."[56] The Appellants appear to have a significant privacy interest in the

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[52] *Heinz Co. of Canada Ltd. v. Canada (A.G.)*, 2006 SCC 13, at ¶28 (emphasis added).
[53] *Dagg v. Canada (Minister of Finance)*, [1997] 2 SCR 403, at ¶66 [***Dagg***].
[54] Besides B.C.'s PIPA, there is also Alberta's *Personal Information Protection Act*, SA 2003, c P-6.5, and Quebec's *Act respecting the protection of personal information in the private sector*, CQLR c P-39.1 PIPEDA, *supra* note 47, applies in provinces that lack equivalent legislation, but it only applies to commercial activities, as per s. 4.
[55] *Local 401*, at ¶19.
[56] *Dagg*, *supra* note 53 at ¶67.

records in question.[57] Disclosing these records to a state agent would constitute a breach of that privacy interest, even if the Commissioner may not further disclose the records in question to anyone. Conversely, there appears to be no specific, credible threat to privacy that necessitates ordering the disclosure of religious records to the Commissioner. As the Court stated in *R v. Dyment*, "Quite simply, the constitution does not tolerate a 'low standard which would validate [government] intrusion on the basis of suspicion and authorize fishing expeditions of considerable latitude.'"[58]

23. The Supreme Court in *Local 401* concluded that Alberta's privacy legislation did not go far enough in accommodating a labour union's freedom to engage in picketing by recording *and publicly sharing* footage of picket line crossers *without their consent*.[59] It is difficult to see how keeping confidential records of ecclesiastical or religious deliberations is less important to freedom of religion and association than videorecording picket-line crossers without consent is to freedom of expression. Moreover, the activity at issue in *Local 401* was a direct threat to personal privacy, whereas the religious practice at issue in this case is keeping religious records strictly confidential.

24. PIPA limits the right to exercise control over one's personal information in many ways. For example, an organization may collect, use, and disclose personal information without consent to determine a person's suitability "to receive an honour" or "to be selected for an athletic or artistic purpose,"[60] but not to determine whether a person may become or remain a member of a religious community. Yet the latter determination is protected by freedom of religion and association. Forming, maintaining, and spiritually governing a religious community often involves formal rules, practices, decision-making, and record-keeping. As LeBel J. commented in *Hutterian Brethren*, "Religion is about religious beliefs, but also about religious relationships. […] [This appeal] raises issues about belief, but also about the maintenance of communities of faith."[61]

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[57] Order P22-03, 2022 BCIPC 35, at ¶154.
[58] *R. v. Dyment*, [1988] 2 SCR 417, at ¶35.
[59] *Local 401*, *supra* note 51.
[60] PIPA, *supra* note 1, at ss. 12(1)(f), 15(1)(f), and 18(1)(f).
[61] *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, at ¶183 (Lebel J. in dissent, but not on this point). Quoted approvingly in *Loyola*, *supra* note 14, at ¶93.

F. Applying PIPA too broadly would undermine both freedom and privacy

25. A legal right to exercise total control over information about oneself in a free and democratic society is inconceivable. Even the most intrusive state agency could hardly begin to enforce it. The freedom to form, maintain, and discontinue a variety of interpersonal relationships and associations is protected by the *Charter*. PIPA implicitly recognizes this by exempting the collection, use, or disclosure of personal information by individuals for personal or domestic purposes. PIPA allows individuals, for their own personal reasons, to collect, use and disclose information about other people without consent.

26. Extending PIPA to personal information recorded by individuals for personal purposes, for example, would be rationally connected to a broad objective of giving people greater control over information about themselves – but only at great cost to both freedom and privacy. The fact that PIPA excludes such records does not mean that people are left with no legal protections for their privacy or reputation. Depending on how personal information was obtained or how it has been used, they may have a tort claim for a violation of privacy under the *Privacy Act*, or a claim for defamation.

27. Similarly, were PIPA to exclude records created for religious purposes and no other purposes, (former) church members could still sue for defamation or under the *Privacy Act*, RSBC 1996 c 373. But PIPA goes much further in that it gives the Commissioner supervisory authority over religious records and record-keeping practices, even where there is no reasonable allegation of a privacy breach or a serious risk thereof.

28. This intervener respectfully asks this Court to preserve the freedom of religious associations to effectively govern their internal religious affairs without interference from the state absent a specific, pressing, demonstrable justification.

PART 4 – ORDERS SOUGHT

29. As an intervener, ARPA does not seek costs and asks that no costs be awarded against it. ARPA also takes no position regarding the outcome of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

July 12, 2024

John Sikkema
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APPENDICES: LIST OF AUTHORITIES

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