

JUN.
2026

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

SUPREME COURT OF CANADA

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

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
(Appellants)

AND:

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

RESPONDENTS
(Respondents)

AND:

Attorney General of Canada

INTERVENER

INTERVENER'S FACTUM

The Association for Reformed Political Action (ARPA) Canada

John Sikkema
Joel Persaud
ARPA Canada, 130 Albert St., Suite 1705
Ottawa, ON, K1P 5G4

**Counsel for the Intervener,
The Association for Reformed Political
Action (ARPA) Canada**

ORIGINAL TO:

THE REGISTRAR
SUPREME COURT OF CANADA
301 Wellington Street
Ottawa, ON K1A 0K1TO

AND TO:

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 <u>Jayden MacEwan / David M. Gnam</u> W. Glen How & Associates LLP PO Box 40 13893 Highway 7 Georgetown ON L7G 4T1 Phone: 905-873-4545	Supreme Advocacy LLP <u>Eugene Meehan</u> 100 - 340 Gilmour Street Ottawa, ON K2P 0R3 Phone: 613-695-8855 Email: emeehan@supremeadvocacy.ca Fax: 613-695-8580
Information and Privacy Commissioner for British Columbia <u>Taryn Urquhart / Alex Hudson</u> DLA Piper (Canada) LLP Suite 2700 1133 Melville Street Victoria BC V6E 4E5 Phone: 604-687-9444 Email: alex.hudson@dlapiper.com / taryn.urquhart@dlapiper.com	
The Attorney General of British Columbia <u>Robert Danay / Philip McLaughlin</u> Ministry of Attorney General PO BOX 9280, STN PROV GOVT 1001 Douglas Street Victoria BC V8W 9J7 Phone: 250-952-0122 Email: robert.danay@gov.bc.ca	Olthuis Van Ert <u>Olthuis Van Ert / Dahlia Shuhaibar</u> 66 Lisgar Street Ottawa, ON K2P 0C1 Phone: 613.501.5350 Email: dshuhaibar@ovcounsel.com

Gabriel-Liberty Wall and Gregory Westgarde <u>Megan Walwyn / Kevin Smith</u> Farris LLP 2500 – 700 West Georgia Street Vancouver, BC V7Y 1B3 Phone: 604-661-9302 Email: kwsmith@farris.com / mwalywn@farris.com	Supreme Law Group <u>Maira S. Dillon</u> 200 - 440 Laurier Avenue West Ottawa, Ontario K1R 7X6 Maira S. Dillon Phone: 613-691-1224 Email: mdillon@supremelawgroup.ca Fax : 613-691-1338
Attorney General of Canada Department of Justice Canada Ontario Regional Office <u>Joseph Cheng / Lindy Rouillard-Labbé</u> 400 – 120 Adelaide Street West Toronto, ON M5H 1T1 Phone: 647-407-9205 / 514-234-1048 Email: joseph.cheng@justice.gc.ca / lindy.rouillardlabbe@justice.gc.ca	Deputy Attorney General of Canada <u>Zoe Oxaal</u> 50 O’Connor Street Ottawa, ON K1A 0H8 Phone: 613-295-0765 Email: SCCAgentCorrespondentCSC@justice.gc.c a
British Columbia Civil Liberties Association <u>Sujit Choudhry / Mani Kakkar / Erica McLachlan</u> Circle Barristers 180 John Street Toronto, Ontario M5T 1X5 Phone: 416-436-3679 Email : sujit.choudhry@circlebarristers.com	

Christian Legal Fellowship <u>Derek B.M. Ross / André M. Schutten</u> 202 – 285 King Street London, Ontario N6B 3M6 Phone: 519-601-4099 Email: execdir@christianlegalfellowship.org Fax :519-601-4098	Supreme Advocacy LLP 100 – 340 Gilmour Street Ottawa, Ontario K2P 0R3 <u>Marie-France Major</u> Phone: 613-695-8855 ex 102 Email: mfmajor@supremeadvocacy.ca Fax: 613-695-8580
Evangelical Fellowship of Canada and Canadian Centre for Christian Charities <u>Garifalia C. Milousis / Deina Warren</u> Lionheart Law 10145 – 2210 Bank Street Ottawa, Ontario K1V 1J6 Phone: 647-557-6374 ex 1010 Email: lia@lionheartlaw.ca	
David Asper Centre for Constitutional Rights <u>Justin Safayeni / Olivia Eng</u> Stockwoods LLP TD North Tower, P.O. Box 140 4130 – 77 King Street West Toronto, Ontario M5K 1H1 Phone: 416-593-3494 Email: justins@stockwoods.ca Fax: 416-593-9345	Conway Baxter Wilson LLP 400 – 411 Roosevelt Avenue Ottawa, Ontario K2A 3X9 <u>David P. Taylor</u> Phone: 613-288-0149 Email: dtaylor@conwaylitigation.ca Fax: 613-688-0271

Canadian Civil Liberties Association

Lex Gill / Ana Qarri

Trudel Johnston & Lespérance
90 – 750 Côte de la Place-d'Armes
Montréal, Quebec H2V 2X8

Phone: 514-871-8385 ex 219

Email: lex@tjl.quebec

Fax: 514.871.8800

**Information and Privacy Commissioner
of Ontario**

Linda Hsiao-Chia Chen / Brendan Gray

1400 – 2 Bloor Street East Toronto, Ontario
M4W 1A8

Phone: 437-770-8216

Email: linda.chen@ipc.on.ca

British Columbia Humanist Association

John Trueman / Vivian Li / Noah Faust-
Robinson (articled student)

Allen / McMillan Litigation Counsel
1625 – 1185 West Georgia Street
Vancouver, BC V6E 4E6

Phone: 604-569-2652

Email: service@amlc.ca / john@amlc.ca
vivian@amlc.ca / noah@amlc.ca

TABLE OF CONTENTS

PART I – OVERVIEW	1
PART II – QUESTIONS IN ISSUE	2
PART III – ARGUMENT	2
A. The Charter preamble and section 1 support institutional pluralism.....	2
B. The Charter’s fundamental freedoms protect institutional pluralism.....	3
C. Freedom of religion protects a sphere of religious self-governance	4
D. Privacy laws are quasi-constitutional as they apply to governments	6
E. PIPA’s limits on fundamental freedoms must be demonstrably justified	9
F. Applying PIPA too broadly would undermine both freedom and privacy	10
PARTS IV & V – SUBMISSIONS RE. COSTS AND ORDERS SOUGHT.....	10
TABLE OF AUTHORITIES	11

PART I – OVERVIEW

1. Deciding membership in a religious body is at the core of that body’s autonomy. In a free and democratic society, the state must not interfere with such decisions or related religious processes absent demonstrable justification. PIPA¹ grants the Commissioner authority to review the practices of religious bodies related to records created and used for exclusively religious purposes, and to order that such records be disclosed or corrected, or that record-keeping practices be changed. This risks undue burdening of and interference with religious institutions and practices.
2. PIPA does not apply to individuals’ collection or use of personal information for personal or domestic purposes, or to organizations’ collection and use of personal information for journalistic, artistic, or literary purposes.² This preserves a sphere of liberty and privacy and protects freedom of expression.³ Accommodating record-keeping for religious purposes would similarly promote a free and democratic society. With respect, the Respondents should explain how extending PIPA to records created for solely religious purposes promotes a free society or advances quasi-constitutional purposes. It is privacy legislation’s role in relation to government that gives it its quasi-constitutional status (as Part III(D) of this Factum explains).
3. The Respondents say the disputed records relate “to an issue of fundamental importance to them, namely the circumstances in which they had been expelled from their faith community.”⁴ As in *Wall* and *Aga*, the underlying issue thus appears to be about fairness – in this case, the non-disclosure of reasons and records for disfellowshipping – rather than about privacy. But the degree of transparency appropriate here is itself a religious question.⁵ There is no freestanding right to procedural fairness here.⁶ There are, however, legal protections outside of PIPA both for persons’ reputation and privacy that apply against private actors, including religious associations.⁷

¹ [Personal Information Protection Act](#), SBC 2003, c 63 [PIPA].

² [Section 3](#) of PIPA sets out various circumstances to which the statute does not apply.

³ [Alberta \(Information and Privacy Commissioner\) v. United Food and Commercial Workers, Local 401](#), 2013 SCC 62, [paras 16-17](#) [*Local 401*].

⁴ Factum of the Respondents, Gabriel-Liberty Wall and Gregory Westgarde, at para 116.

⁵ [Highwood Congregation of Jehovah’s Witnesses \(Judicial Committee\) v. Wall](#), 2018 SCC 26, at [para 38](#) [*Wall*].

⁶ *Wall*, note 5, at [para 24](#); [Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga](#), 2021 SCC 22, [para 30](#) [*Aga*].

⁷ E.g. the [Privacy Act](#), RSBC 1996, c 373, and defamation law.

4. The purported justification for the disclosure order in this case – and the statutory scheme authorizing it – is a broad interest in maintaining some degree of control over information about oneself. Conversely, disclosure would appear to violate the Appellants’ privacy and conscience.

PART II – QUESTIONS IN ISSUE

5. ARPA makes submissions regarding the associational aspects of religious freedom and the justificatory burden for limiting this freedom – which requires a clear and pressing civil objective and due consideration of the institutionally pluralist nature of a free and democratic society.

PART III – ARGUMENT

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

6. “The preamble, including its reference to God, articulates the ‘political theory’ on which the *Charter*’s protections are based.”⁸ 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.”⁹ Canada is, as the *Canadian Bill of Rights* puts it, “a society of free men and free institutions.”¹⁰ The political theory underlying the *Charter* thus sees state authority as structurally limited vis-à-vis civil society.¹¹

7. Section 1 of the *Charter*, in turn, protects “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.”¹² A free and democratic society is thus robustly pluralistic. Legal protections for religious minorities were “an essential consideration in the design of our constitutional structure”.¹³ One function of constitutional rights is “to ensure that vulnerable minority groups are endowed with the institutions and rights necessary to maintain and promote their identities”.¹⁴

⁸ *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, [para 147](#).

⁹ Bruce Ryder, “State Neutrality and Freedom of Conscience and Religion” (2005), 29 SCLR (2d), para 17, Intervener’s Book of Authorities [ARPA BOA] at **Tab 1**.

¹⁰ *Canadian Bill of Rights*, SC 1960, c 44 (emphasis added), preamble.

¹¹ John Sikkema, “The First Division of Power: State Authority and the Preamble to the *Charter*,” (2022) 105 SCLR (2d) 67-93, ARPA BOA at **Tab 2**.

¹² *R. v. Oakes*, [1986] 1 SCR 103, at para 64 (emphasis added) [*Oakes*]. See also Dickson, C.J. in *R. v. Big M Drug Mart Ltd*, [1985] 1 SCR 295, at para 94 [*Big M*].

¹³ *Reference re Secession of Québec*, [1998] 2 SCR 217, at [para 81](#).

¹⁴ *Ibid*, at [para 74](#).

8. 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.”¹⁵ Any interference with or significant burdening of religious practices are legitimate only to the extent they are demonstrably justified in a free and democratic society – an institutionally pluralist society, wherein the state respects non-state institutions' autonomy.

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

9. 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.”¹⁶ Yet this Court’s jurisprudence also recognizes that this individual right is manifested through religious communities and institutions.¹⁷ *Loyola* emphasizes the “socially embedded nature of religious belief.”¹⁸ *Mounted Police* notes the “right to establish communities of faith, the autonomous existence of which is indispensable for pluralism in a democratic society.”¹⁹ Justice Rand in *Saumur* (1953) stressed that “the untrammelled affirmations of religious belief and its propagation, personal or institutional, remain as of the greatest constitutional significance [...]”²⁰

10. Freedom of association “recognize[s] the profoundly social nature of human endeavours and protect[s] the individual from state-enforced isolation”.²¹ It “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.”²² It is “essential to [...] the vibrant civil society upon which our democracy rests.”²³ Thus, “No legislator can attack it without impairing the foundations of society.”²⁴

¹⁵ *Oakes*, *supra* note 12, at [para 64](#). And *Big M*, *supra* note 12, at [para 94](#): “a free society [...] can accommodate a wide variety of beliefs [...] and codes of conduct”.

¹⁶ *Big M*, *ibid*, at [paras 121-122](#).

¹⁷ See *Loyola High School v. Quebec (AG)*, 2015 SCC 12, at [para 60](#) [*Loyola*]; *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1, at [para 64](#). [*Mounted Police*].

¹⁸ *Loyola*, *ibid*, at [para 60](#).

¹⁹ *Mounted Police*, *supra* note 17, at [para 64](#).

²⁰ *Saumur v. Quebec (City)*, [1953] 2 SCR 299 (SCC), at 327 (emphasis added).

²¹ *Reference re Public Service Employee Relations Act (Alta.)*, [1987] 1 SCR 313, at [para 86](#).

²² *Mounted Police*, *supra* note 17, at [para 49, 56](#) (emphasis added).

²³ *Ibid*, at [para 49](#) (emphasis added).

²⁴ Dickson C.J. quoting de Tocqueville in *Reference re PSERA*, *supra* note 21, at [para 86](#). See also André Schutten, “Recovering Community: Addressing Judicial Blindspots on Freedom of Association”, (2020) 98 SCLR (2d) 399-430, ARPA BOA at **Tab 3**.

11. Recognizing the collective aspect of *Charter* fundamental rights or freedoms does not undermine individual rights.²⁵ Rather, it 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.²⁶ 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.

12. The fundamental freedoms structurally limit state authority and preserve social space for civil society. As Professor Schneiderman explains, “The [fundamental freedoms] all speak to the aim of dispersing power to civic and religious associations while bringing groups together in the generation of public policy outcomes.”²⁷ The independence of religious and other civil society institutions is a well-recognized feature of a free and democratic society, while a statutory right to access records created and held by religious institutions for exclusively religious purposes is not.

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

13. “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 [...]”²⁸ This Court affirmed this sphere of authority in *Amselem*, *Wall*, and *Aga*.²⁹ Adjudicating a dispute about a religious body’s practices raises concerns about its identity, integrity, and independence. It also raises concerns about adjudicators’ competence in such matters, which may involve interpreting sacred texts and traditions. 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.”³⁰

14. Thus, an Ontario court in *Dunnet* (1877)³¹ declared that courts have no jurisdiction to

²⁵ *Mounted Police*, *supra* note 17, at [para 65](#).

²⁶ *Ibid*, at [para 64](#).

²⁷ David Schneiderman, “Associational Rights, Religion, and the Charter” in R. Moon, ed., *Law and Religious Pluralism in Canada* (Vancouver: UBC Press, 2008) at 73, ARPA BOA at **Tab 4**.

²⁸ *Beaudoin v. British Columbia*, 2021 BCSC 512, at [para 199](#).

²⁹ *Syndicat Northcrest v. Amselem*, 2004 SCC 47, at [para 50](#); *Wall*, *supra* note 5, at [para 24](#); *Aga*, *supra* note 6, at [para 23](#).

³⁰ 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, ARPA BOA at **Tab 5**.

³¹ *Dunnet v. Forneri*, 1877 O.J. No 227 (Ch.), at para 34 [*Dunnet*], cited in *Re Morris and Morris*, 42 DLR (3d) 550, 1973 CanLII1200 (MBCA).

inquire into a church's rules, "except so far as may be necessary for some collateral purpose." Such a purpose could be settling funds among members, or "enjoyment of any pecuniary benefit" such as "use of a house or land."³² 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.³³

15. 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:

[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.³⁴

16. On its own, church membership is "purely ecclesiastical"³⁵ and, as this Court stated in *Wall*, "membership in a religious association [...] should remain free from court intervention."³⁶ This approach both protects religious institutions' independence and protects courts from getting entangled in disputes they are not well suited to resolve. In *Ukrainian Greek Orthodox Church*, this 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 [to enforce] a purely ecclesiastical decree or order."³⁷

17. Justiciability involves questions of constitutional propriety – ordinarily in relation to the role of civil courts.³⁸ In *Wall* and *Aga* there was no statute or civil right at stake and thus no justiciable claim.³⁹ The fact that a statute applies in the present case distinguishes it on the issue of

³² *Dunnet*, *ibid.*

³³ *Lakeside Colony of Hutterian Brethren v Hofer*, [1992] 3 SCR 165 at 175.

³⁴ *Ivantchenko, et al. v. The Sisters of Saint Kosmas Aitolos Greek Orthodox Monastery*, 2011 ONSC 6481, [para 4](#). Cited in *Birhane v. Medhanie Alem Eritrean Orthodox Tewahdo Church*, 2023 ONCA 815, at [para 30](#).

³⁵ *Dunnet*, *supra* note 31; *Wall*, *supra* note 5, [para 29](#)

³⁶ *Wall*, *supra* note 5, at [para 24](#).

³⁷ *Ukrainian Greek Orthodox Church v. Ukrainian Greek Orthodox Cathedral of St. Mary the Protectress*, [1940] SCR 586, at 591.

³⁸ *Canada (Auditor General) v. Canada (Minister of Energy, Mines and Resources)*, [1989] 2 SCR 49, at 90- 91.

³⁹ *Wall*, *supra* note 5; *Aga*, *supra* note 6.

justiciability. 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.

18. PIPA protects the confidential deliberations of civil adjudicators and legislators by excluding personal information contained in related records.⁴⁰ But PIPA does not exclude from its reach the deliberations of religious authorities or ecclesiastical courts in deciding religious matters. Civil adjudicators' hearing notes are privileged, so adjudicators 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 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 religious matters should not fear their notes may be disclosed to another kind of government (civil rather than ecclesiastical). A clear justification for compelling disclosure is needed,⁴³ such as investigating a crime or protecting a property right or other civil right.

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

19. The right against unreasonable search and seizure protects against *state* intrusion into privacy. It has been recognized in common law for centuries.⁴⁴ It appears in the 4th Amendment to the U.S. Constitution (1791), and in Article 12 of the *Universal Declaration of Human Rights* of 1948.⁴⁵ And, of course, 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.

20. Canada's *Privacy Act*,⁴⁶ which governs the federal government's collection and use of personal information, came into force in 1983. It replaced earlier protections contained in the

⁴⁰ [PIPA](#), *supra* note 1, at section 3(2)(e)-(f). The [Freedom of Information and Protection of Privacy Act](#), RSBC 1996, c 165, excludes court and tribunal records in [section 3\(3\)](#).

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.

⁴² [Canada \(Privacy Commissioner\) v. Canada \(Labour Relations Board\) \(T.D.\)](#), *ibid*, at 674.

⁴³ See Factum of the British Columbia Humanist Association, para 22, for compelling examples.

⁴⁴ See [Hunter v. Southam](#), [1984] 2 SCR 145, at 157-159.

⁴⁵ 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.

⁴⁶ [Privacy Act](#), RSC 1985, c P-21.

Canada Human Rights Act.⁴⁷ Conversely, the *Personal Information Protection and Electronic Documents Act*,⁴⁸ 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 1993,⁴⁹ while 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.⁵⁰

21. In *Lavigne v. Canada (Office of the Commissioner of Official Languages)* (2002), this 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. [...] [T]he 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.⁵¹

22. In *Local 401* (2013), the Court noted, 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. 28.⁵²

23. All of the cases cited in the passage above involved *government* as the holder of the relevant records (though *Local 401* itself did not). As this Court explained in *Heinz*, just before noting the *Privacy Act*'s "quasi-constitutional" importance: "[T]he 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."⁵³ Similarly, this Court said in *Dagg* that privacy merits constitutional

⁴⁷ Library of Parliament, *Canada's Federal Privacy Laws*, [Pub. No. 2007-44-E](#), revised 2020-11-17 [**Library of Parliament**].

⁴⁸ *Personal Information Protection and Electronic Documents Act*, [SC 2000, c 5](#) [**PIPEDA**].

⁴⁹ Office of the Information and Privacy Commissioner for British Columbia, "2002/2003 Annual Report", at 1.

⁵⁰ [Library of Parliament](#), *supra* note 47.

⁵¹ *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53, at [para 39](#) (emphasis added).

⁵² *Local 401*, *supra* note 3, at [para 19](#).

⁵³ *Heinz Co. of Canada Ltd. v. Canada (A.G.)*, 2006 SCC 13, at [para 28](#) (emphasis added).

protection “at least in so far as it is encompassed by the [*Charter*] right to be free from unreasonable searches and seizures” by the state and that “privacy interests may also inhere in [section 7].”⁵⁴

24. It is primarily privacy law’s role in protecting persons from abuses by the state in collecting or using their personal information and keeping governments accountable that 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.

25. If preserving a free and democratic society depended on giving a government agency supervisory authority over records created and used for exclusively religious purposes, it would be troubling that only British Columbia does so.⁵⁶ The Attorney General of British Columbia highlights *Anglican Diocese of Calgary*⁵⁷ as an example of Alberta’s equivalent law⁵⁸ applying to religious records. Yet Alberta’s law provided an exclusion for such records (created by a non-profit for non-commercial purposes),⁵⁹ but the Diocese could not rely on it because of a technicality – the Diocese was not incorporated or registered in Alberta, and the Alberta government had not adopted regulations to determine what other organizations count as non-profits under the Act.⁶⁰

26. Consequently, the Anglican Archbishop was made to justify to the state why he shared his letter responding to an Anglican minister’s conduct with other Anglican ministers. The minister in question had shared his explanation for disregarding the Church’s policy (by blessing same-sex unions, in his capacity as an Anglican minister) with both the Archbishop and other ministers. The Commissioner opines, regarding the minister’s interpretation of Scripture on the issue, that, “In my view, discussions of conscience have a personal dimension [...]”⁶¹ But the communications had

⁵⁴ *Dagg v. Canada (Minister of Finance)*, [1997] 2 SCR 403, at [para 66](#) [*Dagg*].

⁵⁵ *Local 401*, *supra* note 3, at [para 19](#). Notably, in *Clearview AI Inc. v. British Columbia (Information and Privacy Commissioner)*, 2026 BCCA 67, the appellant corporation was selling its facial recognition services (and related personal data) to government agencies (see [para 2](#)).

⁵⁶ Cf. *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 48, applies in provinces with no equivalent legislation, but only to commercial activities, as per [s. 4](#).

⁵⁷ *Anglican Diocese of Calgary (Re)*, 2021 CanLII 27033 (AB OIPC).

⁵⁸ *Personal Information Protection Act*, SA 2003, c P-6.5.

⁵⁹ *Ibid*, at [section 56\(2\)](#).

⁶⁰ *Anglican Diocese of Calgary (Re)*, *supra* note 57, at para 14.

⁶¹ *Anglican Diocese of Calgary (Re)*, *ibid*, at para 24.

an obvious religious dimension, raising questions about church doctrine, a minister's public witness regarding the same, and how the Church should respond. The Commissioner compares the Archbishop's action to a regulatory body publishing information about the discipline of a regulated member – but notes that a regulatory body might have statutory authorization to publish such information without consent, which the Archbishop did not have.⁶² Thus the Diocese breached the Act in handling a religious controversy and was ordered to train its staff in the Act's requirements.

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

27. “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.”⁶³ The Appellants appear to have a significant privacy interest in the records in question.⁶⁴ Disclosing these records to a state agent would constitute a breach of that privacy interest, even if the Commissioner may not further disclose them to anyone. Conversely, there appears to be no specific, credible threat to the Respondents' privacy. As this Court stated in *R v. Dymment*, “[T]he constitution does not tolerate a ‘low standard which would validate [government] intrusion on the basis of suspicion and authorize fishing expeditions of considerable latitude.’”⁶⁵

28. This 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 recording and publicly sharing footage of picket line crossers without their consent.⁶⁶ It is difficult to see how keeping confidential records of ecclesiastical or religious deliberations is less important to freedom of religion and association than releasing video of picket-line crossers without consent is to freedom of expression. Moreover, the activity at issue in *Local 401* was a clear and direct threat to personal privacy, whereas the religious practice at issue in this case is keeping religious records strictly confidential.

29. 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,”⁶⁷ but not to determine whether a person may become or remain a member of a religious

⁶² *Anglican Diocese of Calgary (Re)*, *ibid*, at para 71.

⁶³ *Dagg*, *supra* note 54, at para 67.

⁶⁴ *Grand Forks Congregation of Jehovah's Witnesses (Re)*, 2022 BCIPC 35, at para 154.

⁶⁵ *R. v. Dymment*, [1988] 2 SCR 417, at para 35.

⁶⁶ *Local 401*, *supra* note 3.

⁶⁷ PIPA, *supra* note 1, at ss. 12(1)(f), 15(1)(f), and 18(1)(f).

community. Forming, maintaining, and spiritually governing a religious community often involves formal rules, practices, decision-making, and record-keeping. As LeBel J. explained 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.”⁶⁸

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

30. A legal right to exercise total control over information about oneself vis-à-vis fellow citizens and associations is inconceivable in a free and democratic society. Extending PIPA to personal information collected and used for personal, domestic, literary, artistic, or journalistic reasons, for example, would be rationally connected to the objective of giving people greater control over information about themselves – but only at great cost to both freedom and privacy. Extending PIPA to information used for exclusively religious purposes also has a cost, both to religious bodies’ freedom to decide religious matters and to their privacy vis-à-vis the state.⁶⁹

31. PIPA’s exclusions do not mean that people are left with no legal protections for their privacy or reputation. Depending on how information was obtained or shared, they may have a claim for violation of privacy under the *Privacy Act*, RSBC 1996, c 373, or a claim for defamation. But PIPA goes further, giving the Commissioner supervisory and investigative authority over religious records and record-keeping practices, even where there is no reasonable allegation of a privacy breach or damage to reputation or a serious risk thereof.

32. ARPA respectfully asks this Court to preserve religious associations’ freedom to govern their internal religious affairs without state interference, absent demonstrable justification for it.

PARTS IV & V – SUBMISSIONS RE. COSTS AND ORDERS SOUGHT

33. ARPA does not seek costs and asks that no costs be awarded against it.

RESPECTFULLY SUBMITTED BY THE INTERVENER,

Dated at Ottawa, Ontario, this 23rd day of June, 2026.

John Sikkema and Joel Persaud
Counsel for ARPA Canada

⁶⁸ *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, at [para 183](#) (Lebel J. in dissent, but not on this point). Quoted approvingly in *Loyola*, *supra* note 17, at [para 93](#).

⁶⁹ See *Anglican Diocese of Calgary*, *supra* note 57. Regarding the impact on privacy, see Factum of the Intervener, Christian Legal Fellowship.

TABLE OF AUTHORITIES

Authorities	Para # in factum
CASELAW	
<i>Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401</i> , 2013 SCC 62	3, 22-24, 28
<i>Alberta v. Hutterian Brethren of Wilson Colony</i> , 2009 SCC 37	29
<i>Anglican Diocese of Calgary (Re)</i> , 2021 CanLII 27033 (AB OIPC).	25, 26, 30
<i>Beaudoin v. British Columbia</i> , 2021 BCSC 512	13
<i>Birhane v. Medhanie Alem Eritrean Orthodox Tewahdo Church</i> , 2023 ONCA 815.	15
<i>Canada (Auditor General) v. Canada (Minister of Energy, Mines and Resources)</i> , [1989] 2 SCR 49	17
<i>Canada (Privacy Commissioner) v. Canada (Labour Relations Board) (T.D.)</i> , 1996 CanLII 4084 (FC) 1996 CanLII 4084 (FC), [1996] 3 FC 609	18
<i>Clearview AI Inc. v. British Columbia (Information and Privacy Commissioner)</i> , 2026 BCCA 67	24
<i>Dagg v. Canada (Minister of Finance)</i> , [1997] 2 SCR 403	22, 23, 27
<i>Dunnet v. Forneri</i> , 1877 O.J. No 227 (Ch.)	14, 16
<i>Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga</i> , 2021 SCC 22	3, 13, 17
<i>Grand Forks Congregation of Jehovah's Witnesses (Re)</i> , 2022 BCIPC 35	27
<i>Heinz Co. of Canada Ltd. v. Canada (A.G.)</i> , 2006 SCC 13	22-23
<i>Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall</i> , 2018 SCC 26	3, 13, 16, 17
<i>Hunter v. Southam</i> , [1984] 2 SCR 145	19
<i>Ivantchenko, et al. v. The Sisters of Saint Kosmas Aitolos Greek Orthodox Monastery</i> , 2011 ONSC 6481	15
<i>Lakeside Colony of Hutterian Brethren v Hofer</i> , [1992] 3 SCR 165	14

¹ <i>Lavigne v. Canada (Office of the Commissioner of Official Languages)</i> , 2002 SCC 53	21-22
<i>Loyola High School v. Quebec (AG)</i> , 2015 SCC 12	9, 29
<i>Mounted Police Association of Ontario v. Canada (Attorney General)</i> , 2015 SCC 1	9-11
<i>Mouvement laïque québécois v. Saguenay (City)</i> , 2015 SCC 16	6
<i>Re Morris and Morris</i> , 42 DLR (3d) 550, 1973 CanLII1200 (MBCA)	14
<i>R. v. Dymont</i> , [1988] 2 SCR 417	27
<i>R. v. Big M Drug Mart Ltd</i> , [1985] 1 SCR 295	7-9
<i>R. v. Oakes</i> , [1986] 1 SCR 103	7, 8
<i>Reference re Public Service Employee Relations Act (Alta.)</i> , [1987] 1 SCR 313	10
<i>Reference re Secession of Québec</i> , [1998] 2 SCR 217	7
<i>Saumur v. Quebec (City)</i> , [1953] 2 SCR 299 (SCC)	9
<i>Syndicat Northcrest v. Amselem</i> , 2004 SCC 47	13
<i>Ukrainian Greek Orthodox Church v. Ukrainian Greek Orthodox Cathedral of St. Mary the Protectress</i> , [1940] SCR 586	16
LEGISLATION	
<i>Act respecting the protection of personal information in the private sector</i> , CQLR c P-39.1	25
<i>Canadian Bill of Rights</i> , SC 1960, c 44	6
<i>Canadian Charter of Rights and Freedoms</i> , Part 1 of the <i>Constitution Act</i> , 1982, being Schedule B to the <i>Canada Act 1982 (UK)</i> , 1982, c 1	6, 7, 19, 23
<i>Freedom of Information and Protection of Privacy Act</i> , RSBC 1996, c 165	Opening Statement, 18
<i>Personal Information Protection Act</i> , SA 2003, c P-6.5	25
<i>Personal Information Protection Act</i> , SBC 2003, c 63	1, 2, 18, 29

<i>Personal Information Protection and Electronic Documents Act</i> , SC 2000, c 5	20
<i>Privacy Act</i> , RSBC 1996, c 373	3, 31
<i>Privacy Act</i> , RSC 1985, c P-21.	20
U.S. Bill of Rights. U.S. Const. amend. I–X, amendment IV	15
OTHER / SECONDARY SOURCES	
André Schutten, “Recovering Community: Addressing Judicial Blind Spots on Freedom of Association”, (2020) 98 SCLR (2d)	10
Bruce Ryder, “State Neutrality and Freedom of Conscience and Religion” (2005), 29 SCLR (2d)	6
David Schneiderman, “Associational Rights, Religion, and the Charter” in Richard Moon, ed., <i>Law and Religious Pluralism in Canada</i> (Vancouver: UBC Press, 2008)	12
Iain T Benson, “The Limits of Law and the Liberty of Religion Associations” in Iain T Benson and Barry W Bussey, eds, <i>Religion, Liberty and the Jurisdictional Limits of Law</i> (Toronto: LexisNexis Canada Inc, 2017).	13
John Sikkema, “The First Division of Power: State Authority and the Preamble to the Charter,” (2022) 105 SCLR (2d).	6
Library of Parliament, <i>Canada’s Federal Privacy Laws</i> , Pub. No. 2007-44-E , revised 2020-11-17.	20
Office of the Information and Privacy Commissioner for British Columbia, “2002/2003 Annual Report”, online: https://www.oipc.bc.ca/annual-reports/2162	20
UN General Assembly. (1948). Universal declaration of human rights (217 [III] A). Paris, Article 12 .	19