SCC File No.: 41816

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

AND:

INFORMATION AND PRIVACY COMMISSIONER FOR BRITISH COLUMBIA, THE ATTORNEY GENERAL OF BRITISH COLUMBIA, GABRIEL-LIBERTY WALL, AND GREGORY WESTGARDE

RESPONDENTS

AND:

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(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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TABLE OF CONTENTS

Page

PARTS I & II: OVERVIEW AND STATEMENT OF QUESTIONS IN ISSUE 1
PART III: STATEMENT OF ARGUMENT 2
I. The *Charter* protects the privacy of religious communications and relationships 2
II. The *Charter* protects the privacy of religious associations 6
III. International law supports religious communities' privacy rights 9
PARTS IV & V: SUBMISSIONS CONCERNING COSTS & ORDER SOUGHT 10
PART VI: TABLE OF AUTHORITIES 12

PARTS I & II: OVERVIEW AND STATEMENT OF QUESTIONS IN ISSUE

1. When can the government, without a warrant, examine the contents of our private prayers or religious reflections? Without further clarity from this Honourable Court, the reasoning of the decisions below suggest that the answer may be whenever (i) those reflections are created as part of a 'sacred ecclesiastical duty' between two or more co-religionists, (ii) they refer to another person, and (iii) that other person demands disclosure.[1]

2. This approach seems to incorrectly assume that only the third party *referenced* in a religious communication has a privacy interest in it, and not the people *making* it. It also runs counter to robust protections afforded to both religious freedom and the right to privacy entrenched in the *Canadian Charter of Rights and Freedoms* ("*Charter*") – perhaps because s. 2(a) and s. 8 have, to date, largely been analyzed in *isolation* of one another. However, Canadian and international authorities have long recognized religious freedom as a right exercised "in community with others and in public or private".[2] Religious freedom thus has important privacy and associational dimensions, and this case marks the first occasion for this Court to make a pronouncement on this interconnected relationship, and the right to practice religion privately in community.

3. In keeping with established jurisprudence that the meaning of each *Charter* right is informed by the meaning of other *Charter* rights,[3] Christian Legal Fellowship ("CLF")[4] submits that principles from s. 2(d) and s. 8 jurisprudence inform the s. 2(a) analysis of a question central to this appeal: Does the *Charter* protect a religious group's private spiritual communications from state examination? CLF submits that the answer is yes, unless the government can first demonstrate a specific and compelling reason for disclosure.

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[1] See *Grand Forks Congregation of Jehovah's Witnesses (Re)*, 2022 BCIPC 35 at para 32; *Personal Information Protection Act*, SBC 2003, c. 63, ss. 2, 3 ("*PIPA*").

[2] See *Ktunaxa Nation v British Columbia*, 2017 SCC 54, para 64, quoting the *Universal Declaration of Human Rights* and the *International Covenant of Civil and Political Rights*.

[3] *Dubois v The Queen*, [1985] 2 SCR 350, para 43: "[the] *Charter* must be construed as a system where 'Every component contributes to the meaning as a whole, and the whole gives meaning to its parts'[…] The courts must interpret each section of the *Charter* in relation to the others"; *R v Big M Drug Mart Ltd*, [1985] 1 SCR 295, para 117: "the purpose of the right or freedom in question is to be sought by reference to … [*inter alia*] the meaning and purpose of the other specific rights and freedoms with which it is associated within the text of the *Charter*." See also *R v Mills*, [1999] 3 SCR 668, para 61; *Taylor v Newfoundland and Labrador*, 2026 SCC 5, para 81.

[4] CLF is Canada's national association of over 800 Christian legal professionals and jurists.

PART III: STATEMENT OF ARGUMENT

4. Associational freedom and the right to privacy are important aspects of freedom of religion. The fact that these interests are more explicitly protected in ss. 2(d) and 8 does not mean that they are excluded from the ambit of s. 2(a).[5] To the contrary, they *inform* and *bolster* s. 2(a), including its protection of a religious community's spiritual communications from compelled disclosure:

> state-sponsored inquiries into any person's religion should be avoided wherever reasonably possible, since they expose an individual's most personal and private beliefs to public airing and testing in a judicial or quasi-judicial setting. The inquiry is all the worse when it is demanded only of members of a non-majoritarian faith, who may have good reason for reluctance about so exposing and articulating their non-conformity. […] a substantial measure of religious freedom can be achieved without mandating a state-conducted inquiry into personal religious convictions and the legislatures ought to be encouraged to do so, if a fair balance is struck.[6]

5. The state must therefore demonstrate that its interests in examining – and potentially ordering the disclosure of – a religious community's spiritual communications outweigh any harmful impacts on that community and its members, and that doing so interferes with their *Charter* rights no more than is necessary.

I. The *Charter* protects the privacy of religious communications and relationships

6. This Court has affirmed that "religion is about both religious beliefs and religious relationships".[7] Privacy, in turn, "is essential to maintaining relationships of trust" – including our spiritual relationships and communications within them.[8] This Court previously emphasized the relationship between privacy and religious freedom in *R v Gruenke*, recognizing that "communications made in confidence to a priest or ordained minister should be afforded a privilege", a question to be "determined on a case-by-case basis".[9] This determination properly

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[5] *Baier v Alberta*, [2007] 2 SCR 673, para 58; *R v Mills*, [1999] 3 SCR 668, para 61; *Lavigne v Ontario Public Service Employees Union*, [1991] 2 SCR 211, p 319: "that some aspects of [s. 2(d)] may be protected by ss. 7, 2(a) or 2(b) of the *Charter*… should not dissuade us from giving full meaning to s. 2(d). All of the liberties guaranteed by the *Charter* are particular aspects of the broader freedom we enjoy in Canada". See also J. Cameron, "Big M's Forgotten Legacy of Freedom", (2020) 98 SCLR (2d) 15, paras 41-44; Appellants' Factum, paras. 41-45, 48.

[6] *R v Edwards Books and Art Ltd.*, [1986] 2 SCR 713 at paras 142-143 (per Dickson CJC).

[7] *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32, para 64.

[8] See *R v Mills*, [1999] 3 SCR 668, paras 81-82.

[9] *R v Gruenke*, [1991] 3 SCR 263 at p 290, citing *Re Church of Scientology and The Queen (No. 6)*, (1987), 31 CCC (3d) 449 at p 540.

assesses a communication's *context* before deciding on the privilege (and disclosure) of its *contents*. *PIPA* inverses this by permitting state examination of the *contents* of religious communications *as of course*, deferring determinations of privilege until *after* they have been searched. This defeats privacy protections before they are even considered, and cannot be saved by the mere prospect of "case by case" state discretion.[10]

7. The general principle is that the contents of religious communications – created with an expectation of privacy and for an explicitly "religious or spiritual purpose" – should be protected from examination by a state actor and disclosure to a third party *unless compelling reasons warrant otherwise*.[11] This is reflected not only in *Gruenke*'s recognition that s. 2(a) "enhances"[12] protections for religious communications, but also in cases decided after *Gruenke*, particularly under s. 8 and s. 2(d) – *Charter* guarantees which were not considered in that case. Indeed, since *Gruenke*, this Court has consistently recognized that privacy and freedom are mutually reinforcing and interrelated, emphasizing that "privacy is at the heart of liberty in a modern state"[13] and that "[r]espect for individual privacy is an essential component of what it means to be 'free'".[14]

8. Privacy has thus often been characterized in terms of freedom, and v*ice versa*. This Court has emphasized that "freedom not to be compelled to share our confidences with others is the very hallmark of a free society",[15] and that "privacy concerns are at their strongest where aspects of one's individual identity are at stake, such as in the context of information 'about one's … religious opinions'".[16] Further, s. 8's privacy interests have long informed the interpretation of "liberty" and the "principles of fundamental justice" in s. 7,[17] and s. 2(b)'s guarantee of expressive freedom has also informed the interpretation of "reasonableness" in s. 8.[18]

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[10] See *R v Nur*, 2015 SCC 15, para 91; Appellants' Factum, paras. 2, 24, 46, 54.
[11] *R v Gruenke,* [1991] 3 SCR 263 at p 316, (per L'Heureux-Dubé, J., concurring). See also p 290.
[12] *Ibid.* at p 290.
[13] *R v Dyment*, [1988] 2 SCR 417 at p 427, aff'd in *R v Mills*, [1999] 3 SCR 668, para 79.
[14] *R v O'Connor*, [1995] 4 SCR 411, para 113: "[s.8] has been identified as having as its fundamental purpose 'to protect individuals from unjustified state intrusions upon their privacy'… [s. 8] plays a pivotal role in a document [i.e. the *Charter*] that purports to contain the blueprint of the Canadian vision of what constitutes a free and democratic society … As a corollary, the infringement of this right undeniably impinges upon an individual's 'liberty'".
[15] *R v Duarte*, [1990] 1 SCR 30 at p 53, aff'd in *R v Mills*, [1999] 3 SCR 668, para 80.
[16] *R v Mills*, [1999] 3 SCR 668, para 80.
[17] *R v O'Connor*, [1995] 4 SCR 411, para 113; *R v Mills*, [1999] 3 SCR 668, para 88.
[18] *R v National Post*, 2010 SCC 16, para 79; *R v Vice Media Canada Inc.*, 2018 SCC 53, para 13.

9. For example, when considering the privacy of journalists' internal records in *R v Vice Media Canada*, this Court held that s. 8 and s. 2(b) principles need to be *considered together*, particularly because a free press "plays a special role in a free and democratic society".[19] Interfering with the internal deliberations of media institutions raises "unique concerns", including for members of the public who rely on a free press to exercise their own freedoms of opinion, thought, and expression.[20] Authorizing state examination of press records requires a rigorous approach, one that considers such interests "in addition to the important baseline standards established under s. 8".[21]

10. Like press institutions, religious communities fulfill a unique and important institutional role in a free and democratic society.[22] Protecting religious groups against undue state interference similarly benefits the rights and interests of members who depend on them to exercise their own freedoms,[23] and to navigate "issues which may significantly affect their lives and well-being".[24] Thus, just as this Court developed a "framework to assess s. 8 reasonableness in a s. 2(*b*) context"[25] when the *expressive* freedoms of the press (and the people they serve) are engaged, it is also appropriate to assess s. 8 reasonableness in a s. 2(a) context when the *religious* privacy of religious groups (and the members they serve) are engaged. Indeed, s. 8 "has consequences for various parties entirely outside any narrow conception of the criminal justice context".[26] CLF submits, then, that three principles from s. 8 jurisprudence should inform the s. 2(a) analysis.

11. First, the *Charter* protects "how much information about ourselves and activities we are entitled to shield from the curious eyes of the state" and that protection is not only for individuals

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[19] *Vice Media, supra* note 18, paras 13, 19 per Moldaver J.; paras 111-112, 141-143 per Abella J.
[20] See *Canadian Broadcasting Corp. v Lessard*, [1991] 3 SCR 421 at p 444.
[21] *Vice Media, supra* note 18, para 142 (per Abella J., concurring).
[22] See, e.g, LeBel J., in *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v Lafontaine (Village)*, 2004 SCC 48, para 67 (in dissent, but not on this point): "churches and their members …play an important role in the public space". See also *Big M Drug Mart, supra* note 3, paras 122-123; *Ontario v Trinity Bible Chapel et al,* 2022 ONSC 1344, paras 85-88.
[23] See J. Calderwood Norton, *The Freedom of Religious Organizations* (Oxford: OUP, 2016), 38 [**Book of Authorities** ("**BOA**") **Tab 1**]: "Without the infrastructure provided by religious organizations, a person cannot pursue a religious way of life…Harm to religious organizations therefore results in harm to personal autonomy."
[24] *Canadian Broadcasting Corp. v New Brunswick (Attorney General)*, [1991] 3 SCR 459, p 475, quoted with approval in *R v Vice Media Canada Inc.*, 2018 SCC 53, para 14.
[25] *R v National Post*, 2010 SCC 16, at para 79.
[26] Guy Régimbald & Dwight Newman, *The Law of the Canadian Constitution*, 2nd ed (LexisNexis Canada, 2017) at 697 [**BOA Tab 2**].

but also for "groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others".[27]

12. Second, the right to privacy is a preventative protection: it "seeks to prevent breaches of privacy, rather than to condemn or condone breaches based on the state's ultimate use of that information. Privacy, once breached, cannot be restored."[28] Therefore, a regime such as *PIPA* that pre-emptively empowers a state actor to examine – *on demand* – internal, spiritual communications to ascertain their contents at the behest of a record-seeking claimant, requires careful judicial oversight because this is *itself* a search.[29] *PIPA* even contemplates such information being disclosed by the privacy commissioner to other state authorities for potential criminal prosecutions, further highlighting the process as *investigative,* not just *adjudicative*, and heightening *Charter* concerns.[30]

13. Third, one of the purposes of the right to privacy is "to protect a particular relationship – which society values as worthy of s. 8's protection – from state intrusion."[31] This Court specifically affirmed relationships with "religious advisors" as one such constitutionally valued relationship,[32] and has recognized that the right to privacy is concerned with preserving *trust* and *responsibilities* within such relationships.[33] For example, in *R v Dyment*, this Court held that a person who provides a blood sample to a physician does not relinquish *all* privacy interests in that sample. Certain duties within the relationship must be respected, and the *Charter* prevents the police from taking something so "intimately personal" from "a person who holds it subject to a duty to respect the

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[27] *R v Tessling*, 2004 SCC 67, para 23 [citations omitted, underlining added].
[28] *R v Bykovets*, 2024 SCC 6, para 6 [underlining added].
[29] See *R v Cole,* 2012 SCC 53, para 34: "An inspection is a search, and a taking is a seizure, where a person has a reasonable privacy interest in the object or subject matter of the state action and the information to which it gives access".
[30] *PIPA,* supra note 1, s. 41(4); see also *Canada (Privacy Commissioner) v Blood Tribe Department of Health*, 2008 SCC 574, paras 21-23; *Alberta (Information and Privacy Commissioner) v University of Calgary*, 2016 SCC 53, paras 35-36.
[31] *R v Mills*, 2019 SCC 22, para 26.
[32] *R v Mills*, 2019 SCC 22, para 24. See also *R v Gruenke,* [1991] 3 SCR 263 at p 303, 309 (per L'Hereux-Dubé J., concurring): "the individual seeks out the religious leader for spiritual guidance and assistance. This religious element in the relationship promotes special values of privacy characteristic of that relationship… there is a human need for a spiritual counsellor, a need which, in a system of religious freedom and freedom of thought and belief, must be recognized" [emphasis in the original].
[33] *R v Mills*, [1999] 3 SCR 668, paras 81-82.

dignity and privacy of that person".[34] This commitment to human dignity is at the heart of both religious freedom and the right to privacy, and their compound violation through "state-conducted inquiries into religious beliefs" is, in the words of Dickson CJC, an "indignity" to the person.[35]

14. Canadians must have confidence that their communications within *religious* relationships will remain private, just as they do within their *medical* relationships. Privacy is thus an important aspect of s. 2(a), which protects against undue state intrusion into religious relationships – including unreasonable search and seizure of private, spiritual communications. *Associational* religious freedom, which protects private participation in a religious community, bolsters this conclusion.[36]

II. The *Charter* protects the privacy of religious *associations*

15. Just as principles from s. 8 jurisprudence inform the scope and meaning of religious privacy under s. 2(a), principles from s. 2(d) jurisprudence inform the *collective* dimensions of privacy interests within religious communities.[37] Associational freedom is concerned with "interpersonal relationships"[38] which, in a religious context, must include the right to pray, deliberate, and share spiritual expressions freely. Compelled disclosure of such religious communications undermines associational freedom and, by extension, the integrity of faith communities.[39] Justice LaForest further elucidated this nexus between privacy and religious association:

> the *mere possibility* of the intervention of the eyes and ears of the state can undermine the security and confidence that are essential to the meaningful exercise of the right to [choose "what persons or groups he or she will associate with"] … information about one's lifestyle, intimate relations … or religious opinions … deal with those aspects of individual identity which the right of privacy is intended to protect from the overbearing influence of the state.[40]

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[34] *R v Dyment*, [1988] 2 SCR 417, p 432 [emphasis added].
[35] *Edwards Books, supra* note 6 at para 142; Blair Major, "The Dignity of Religious Freedom" (2024) 2 SCLR (3rd) 3 at pp 22-24.
[36] See *Hillier v Ontario*, 2025 ONCA 259, para 28: "one's right to freedom of religion (s. 2(a)) includes one's right to worship collectively in association with others (s. 2(d))"; *LSBC v TWU, supra* note 7, para 122 (per McLachlin CJC, concurring): "associational freedoms [are] also part of freedom of religion".
[37] *Société des Acadiens v Association of Parents*, [1986] 1 SCR 549 at para 28. See also *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 SCR 313 at para 143 (per Le Dain J.): "Freedom of association is particularly important for the exercise of other fundamental freedoms, such as … freedom of conscience and religion".
[38] *Dunmore v Ontario (Attorney General)*, 2001 SCC 94 at paras 16-17.
[39] See *Mounted Police Assn of Ontario v Canada (Attorney General)*, 2015 SCC 1, paras 47-65.
[40] *Thomson Newspapers Ltd. v Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 SCR 425 at 517-518 [emphasis in original].

16. Similarly, this Court has emphasized that:

> Association has always been the means through which …religious groups …have sought to attain their purposes and fulfil their aspirations … [associational rights] are not merely a bundle of individual rights, but collective rights that inhere in associations … freedom of religion is not merely a right to hold religious opinions but also … to establish communities of faith [41]

17. Associational freedom, including collective privacy rights that inhere in associations, protects "the freedom of individuals to interact with, support, and be supported by, their fellow humans".[42] This freedom is essential to "the vibrant civil society upon which our democracy rests".[43] Thus, "State actors must be attentive to the capacity of the state to harm associational life."[44]

18. Compelling disclosure of private communications under a statute like *PIPA* can harm associational life because it can place a *chill* on the inter-personal activities that Canadians cherish in diverse associations across the country – groups which "so often bring to the individual a sense of self-worth and dignity".[45] Privacy protects our *confidence* in how we conduct our lives and relationships with others. Associational life may be severely impeded under a looming threat that private communications are subject to disclosure (even if "only" to a single state actor) – whether in the context of spiritual discipleship or confession within religious groups, candid discussions of life challenges and addictions in support circles, or sharing sacred knowledge within Indigenous spiritual communities.[46] These issues thus have far-reaching implications for many groups, religious or otherwise, and for society as a whole.

19. Moreover, it cannot be assumed that the privacy interest at stake in this context is limited to that of a third party *requesting* or *referred to* in a group's internal communications: the privacy

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[41] *Mounted Police, supra* note 39, paras 57, 62, 64 [emphasis added].
[42] *Reference re Public Service Employee Relations Act (Alberta)*, [1987] 1 SCR 313 at para 88.
[43] *Mounted Police, supra* note 39 at para 49.
[44] David Schneiderman, "Associational Rights, Religion, and the *Charter*" in Richard Moon, ed., *Law and Religious Pluralism in Canada* (Vancouver: UBC Press, 2008) 65, at 72 [**BOA Tab 3**]; see also at 80. And see D. Ross, "Pluralism and Freedom from Assimilation: A Foundation for a 'Free and Democratic Society'" (2022) 105 SCLR (2d) 153, esp. at pp. 178-9, 186-7 [**BOA Tab 4**].
[45] *Delisle v. Canada (Deputy Attorney General)*, [1999] 2 SCR 989, para 68 (per Cory and Iacobucci JJ).
[46] See, e.g. *Yahey v British Columbia*, 2021 BCSC 1287, paras 1898-99; *Malii v British Columbia*, 2025 BCSC 242.

interests of those making the communications, and the community within which (and for whose benefit) they are made, are also engaged and protected by the *Charter*. This is consistent with constitutional principles protecting internal communications in other contexts, despite demands from third parties who may be referenced in them – such as in lawyer-client communications, an internal peer review of an academic article, or the internal deliberations of a court. The fact that such records contain information *about* a third party does not make them the personal information *of* (nor belonging *to*) that third party. Any statute compelling disclosure of such communications would remain subject to, and potentially nullified by, constitutional protections for parties making confidential communications of this nature.[47]

20. Likewise, access to information claims made in relation to religious associations must not place singular focus on a record-seeking claimant. To do so undermines the collective privacy rights of the association and its members, and a decision purporting to uphold one party's *statutory* rights to a document may violate the *constitutional* rights of a religious association.

21. Statutes do not dictate the scope of these constitutional protections – the Constitution dictates the scope of statutory authority. Just as litigants have no right to access the internal deliberations of a secular s. 96 court containing information about them (even though such cases are justiciable), neither do individuals have such a right to the internal, spiritual deliberations of a purely religious decisionmaker.[48] To accept otherwise would "entangle the [state] in the affairs of religion", prying into information outside its "institutional capacity and legitimacy".[49]

22. Finally, as this Court has recognized, there is a spectrum of associations,[50] some of which are more intimately connected to our personal identity, and engage a greater degree of privacy interests,

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[47] *PIPA* expressly exempts some of these records (*PIPA*, *supra* note 1, s. 3) but even if it did not, compelled disclosure of such communications would engage the *Charter*, as it does here.

[48] See *MacKeigan v Hickman*, [1989] 2 SCR 796 at p 830 (per McLachlin J): "To entertain the demand that a judge testify … on how and why he or she made his or her decision would be to strike at the most sacrosanct core of judicial independence"; see also at 841 (per Cory J.): "It is vital to the preservation of our system of justice that a judge not be required to answer any questions as to how a decision was reached."

[49] *Syndicat Northcrest v Amselem*, 2004 SCC 47, para 50; *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall*, 2018 SCC 26, para 34; see also paras 12 and 35-39. See also the factums of the EFC/CCCC and the Association for Reformed Political Action.

[50] *Gould v Yukon Order of Pioneers*, [1996] 1 SCR 571, para 14.

than others. Religious organizations are where we engage in some of "our most intimate and private activities", heightening our privacy expectations, and meriting heightened protection.[51] Religious activities are different in kind from business, trade, or professional ventures.[52] Human rights codes reflect this reality with specific associational protections for religious groups.[53] And privacy statutes in other jurisdictions contain explicit protections for religious or spiritual communications.[54] These provisions are not rights *exemptions* but *protections* of our associational relationships.[55]

III. International law supports religious communities' privacy rights

23. The recognition of a religious community's right to privacy is supported by relevant international law instruments, which "recognize the communal character of religion and support the extension of constitutional protection to the organizations through which congregants worship and teach their faith."[56] Religious freedom, freedom of association, and the right to privacy are all protected by the *International Covenant of Civil and Political Rights* (which Canada has ratified).[57] Article 18 of the ICCPR expressly protects freedom of religion "in community with others and in public or private" and has been relied upon by this Court in elucidating the content of the *Charter*.[58]

24. The UN Human Rights Committee has emphasized the important link between freedom of association, freedom of religion, and the right to privacy of associations, noting that state authorities "must ... respect the right of associations to privacy as stipulated in article 17 of the [ICCPR]",[59] and have positive obligations to create an enabling environment for associations to

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[51] *R v Tessling*, 2004 SCC 67, para 22; see also *R v Grant*, 2009 SCC 32, para 78: "An unreasonable search that intrudes on an area in which the individual reasonably enjoys a high expectation of privacy, or that demeans his or her dignity, is more serious than one that does not."
[52] *Yukon Order of Pioneers*, *supra* note 50, para 14 (per Iacobucci J); para 67 (per La Forest J).
[53] See *Caldwell v Stuart*, [1984] 2 SCR 603, at 626-627; *Brossard (Town) v Québec (Commission des droits de la personne)*, [1988] 2 SCR 279, para 100.
[54] See Appellants' Factum, paras 115-120.
[55] *Caldwell* and *Brossard, supra*, note 53; André Schutten, "Recovering Community: Addressing Judicial Blindspots on Freedom of Association" (2020) 98 SCLR (2nd) 399, pp 416-419 [**BOA Tab 5**].
[56] *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12, para 96 (per McLachlin CJC and Moldaver J).
[57] *International Covenant on Civil and Political Rights*, GA Res 2200A (XXI), UNGAOR, 1966, Supp No 16, UN Doc A/6316 52., ss. 17, 18, 22 ["ICCPR"].
[58] *Ktunaxa*, *supra* note 2, paras 64-65; *Loyola*, *supra* note 56, para 96. See also *Health Services and Support – Facilities Subsector Bargaining Assn v British Columbia*, 2007 SCC 27 at para 70.
[59] UN HRC, *First Thematic Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, UN Doc. A/HRC/20/27, 21 May 2012, paras 64, 65.

carry out their activities, protected by the right to practice religion and the right to privacy.[60]

25. The US Supreme Court[61] and the European Court of Human Rights[62] have also affirmed the privacy elements of associational freedom. This protects a right to religious group autonomy:

> [Freedom of religion] must be interpreted in the light of [Freedom of association], which safeguards associative life against unjustified State interference. Seen in that perspective, the right of believers to freedom of religion, which includes the right to manifest one's religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society.[63]

26. These principles risk being obscured if a s. 2(a) claim is analyzed without explicit consideration of its privacy and associational dimensions.[64] Taken together, these "interdependent and interrelated"[65] protections require the state to demonstrably justify that its interests in examining – and potentially ordering disclosure of – a religious community's internal information outweigh any harmful impacts on that community and its members, and interfere with their *Charter* rights no more than necessary.[66]

PARTS IV & V: SUBMISSIONS CONCERNING COSTS & ORDER SOUGHT

27. Christian Legal Fellowship requests that no costs be awarded either for it or against it.

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[60] UN HRC, *Draft General Comment No. 38 - Article 22: Freedom of Association*, paras 13, 33. See also OSCE Office for Democratic Institutions and Human Rights & Venice Commission of the Council of Europe, *Joint Guidelines on Freedom of Association* (OSCE/ODIHR Legis-Nr: GDL-FOASS/263/2014): "All regulations and practices on oversight and supervision of associations should take as a starting point the principle of minimum state interference in the operations of an association. … the right to privacy applies to an association and its members".

[61] See *NAACP v Alabama ex rel. Patterson*, 357 U.S. 449 (1958) at p 462: "the vital relationship between freedom to associate and privacy in one's associations"; "[i]nviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs".

[62] *Convention for the Protection of Human Rights and Fundamental Freedoms*, 213 U.N.T.S. 221, Art. 8; *Grande Oriente d'Italia v Italy*, No. 29550/17, Judgment (ECtHR, 19 Dec 2024), referral to the Grand Chamber granted 28 April 2025.

[63] *Metropolitan Church of Bessarabia v Moldova*, No. 45701/99, ECtHR 2001-XII (First Section), para 118 (cited in *Mounted Police*, *supra* note 39, para 64).

[64] See Dwight Newman & Kenechukwu Aneke, "Associational Freedom in the Contexts of Religion and Sports" [forthcoming in 14 SCLR (3d)] at 17.

[65] *Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights*, UN Doc. A/CONF157/24 (1993), Art. 5.

[66] *R v Vice Media Canada Inc*, 2018 SCC 53, para 143; *R v Oakes*, [1986] 1 SCR 103, para 64.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of June, 2026.

Derek B.M. Ross & André M. Schutten
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PART VI: TABLE OF AUTHORITIES

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Canadian Charter of Rights and Freedoms *Charte canadienne des droits et libertés*	2(a), 2(d), 8 2(a), 2(d), 8
Personal Information Protection Act, SBC 2003, c 63	2, 3, 41

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Caldwell v Stuart, [1984] 2 SCR 603.	22
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Canadian Broadcasting Corp v New Brunswick (Attorney General), [1991] 3 SCR 459.	10
Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v Lafontaine (Village), 2004 SCC 48.	10
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Dunmore v Ontario (Attorney General), 2001 SCC 94.	15
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Hillier v Ontario, 2025 ONCA 259.	14

Ktunaxa Nation v British Columbia, 2017 SCC 54.	2, 23
Lavigne v. Ontario Public Service Employees Union, [1991] 2 SCR 211	4
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Loyola High School v Quebec (Attorney General), 2015 SCC 12.	23
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Re Church of Scientology and The Queen (No. 6), (1987), 31 CCC (3d) 449.	6
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R v Bykovets, 2024 SCC 6.	12
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R v Duarte, [1990] 1 SCR 30.	8
R v Dyment, [1988] 2 SCR 417.	6, 13
R v Edwards Books and Art Ltd., [1986] 2 SCR 713.	4, 13
R v Grant, 2009 SCC 32	22
R v Gruenke, [1991] 3 SCR 263.	6, 7, 13
R v Mills, [1999] 3 SCR 668.	3, 4, 6, 7, 8, 13
R v Mills, 2019 SCC 22.	13
R v National Post, 2010 SCC 16.	8, 9
R v Nur, 2015 SCC 15.	6
R v Oakes, [1986] 1 SCR 103.	26
R v O'Connor, [1995] 4 SCR 411.	7, 8
R v Tessling, 2004 SCC 67.	11, 22
R v Vice Media Canada Inc, 2018 SCC 53.	7, 8, 9, 26

Reference Re Public Service Employee Relations Act (Alta.), [1987] 1 SCR 313.	15, 17
Société des Acadiens v Association of Parents, [1986] 1 SCR 549.	15
Syndicat Northcrest v Amselem, 2004 SCC 47.	21
Taylor v Newfoundland and Labrador, 2026 SCC 5.	3
Thomson Newspapers Ltd v Canada (Director of Investigation and Research, Restrictive Trade Practices Commission), [1990] 1 SCR 425.	15
Yahey v British Columbia, 2021 BCSC 1287.	18

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Convention for the Protection of Human Rights and Fundamental Freedoms, 213 UNTS 221.	25
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