COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Vabuolas v. British Columbia (Information and Privacy Commissioner),* 2025 BCCA 83

Date: 20250321
Docket: CA49637

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, and The Association for Reformed Political Action (ARPA) Canada

Interveners

Before: The Honourable Justice Dickson
The Honourable Madam Justice Horsman
The Honourable Justice Fleming

On appeal from: An order of the Supreme Court of British Columbia, dated January 8, 2024 (*Vabuolas v. British Columbia (Information and Privacy Commissioner)*, 2024 BCSC 27, Vancouver Docket S226203).

Counsel for the Appellants:	D.M. Gnam J. MacEwan A.C. Cantler
Counsel for the Respondent, Information and Privacy Commissioner for British Columbia:	T. Urquhart A.R. Hudson
Counsel for the Respondent, Attorney General of British Columbia:	J.G. Penner P. McLaughlin

2025 BCCA 83 (CanLII)

Counsel for the Intervener, British Columbia Humanist Association:	J. Trueman C. Trudel
Counsel for the Intervener, The Association for Reformed Political Action (ARPA) Canada, appearing via videoconference:	J. Sikkema
Place and Date of Hearing:	Vancouver, British Columbia October 29, 2024
Place and Date of Judgment:	Vancouver, British Columbia March 21, 2025

Written Reasons by:
The Honourable Madam Justice Horsman

Concurred in by:
The Honourable Justice Dickson
The Honourable Justice Fleming

2025 BCCA 83 (CanLII)

Summary:

Two of the respondents applied, pursuant to s. 23(1) of the Personal Information Protection Act ("PIPA"), for disclosure of their personal information from two Jehovah's Witnesses congregations. In response, the congregations withheld certain information on the basis that it was privileged and confidential religious communication.

An adjudicator acting as a delegate of the commissioner under PIPA reviewed the congregations' decisions to withhold information. She ultimately ordered that the information must be disclosed to her under s. 38(1)(b) of PIPA so that she could determine whether it needed to be provided to the respondents. The adjudicator considered the congregations' argument that PIPA breached their right to freedom of religion protected in s. 2(a) of the Charter. She found that while ss. 23(1)(a) and 38(1)(b) of PIPA infringed s. 2(a) of the Charter, the infringement was justified under s. 1. On judicial review, the chambers judge dismissed the appellants' petition, expressing substantial agreement with the reasons of the adjudicator.

Held: Appeal dismissed. The adjudicator erred in finding that ss. 23(1)(a) and 38(1)(b) of PIPA infringed the Charter. Properly interpreted, these provisions empower the commissioner to consider the appellants' Charter rights in deciding whether to order production of records for the commissioner's review. To the extent that a production order made under s. 38(1)(b) unjustifiably infringes the Charter rights of an organization, the source of the infringement is the order itself and not the provisions of PIPA. In this case, the production order proportionately balanced the appellants' Charter rights with statutory objectives, and therefore the decision to issue the order was reasonable.

2025 BCCA 83 (CanLII)

Table of Contents

2025 BCCA 83 (CanLII)

Reasons for Judgment of the Honourable Madam Justice Horsman:

[1] The appellants challenge an order issued by an adjudicator acting as a delegate of the commissioner (the "Adjudicator") under the *Personal Information Protection Act*, S.B.C. 2003, c. 63 [*PIPA*], as well as the provisions of *PIPA* that authorized the order. The order directed that records in the possession of certain congregations of Jehovah's Witnesses be produced to the Adjudicator for review in the context of information requests made by the individual respondents, Gabriel-Liberty Wall and Gregory Westgarde (collectively, the "Applicants").

[2] The Applicants are former Jehovah's Witnesses. The individual appellants, John Vabuolas and Paul Sidhu, are members and elders of the Grand Forks Congregation and the Coldstream Congregation of Jehovah's Witnesses, respectively (collectively, the "Congregations"). The Applicants made a request under *PIPA* for the Congregations to provide them with their personal information. Section 23 of *PIPA* requires an organization, on request, to provide an individual with their personal information which is under the organization's control.

[3] In response to the Applicants' requests, the Congregations withheld certain information on the basis that it was privileged and confidential religious communication (the "Disputed Records"). The Applicants were not satisfied with the Congregations' response to their requests, and they asked the commissioner to review the Congregations' decisions to deny them access to the Disputed Records.

[4] Before the Adjudicator, the appellants argued that certain provisions of *PIPA* were unconstitutional to the extent that they mandated the disclosure of confidential religious records. The appellants contended that the compelled production of the Disputed Records would infringe various sections of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"), namely s. 2(a) (freedom of religion), s. 2(b) (freedom of expression), s. 2(d) (freedom of association), and s. 8 (freedom from unreasonable search and seizure).

[5] The Adjudicator held that ss. 23(1)(a) and 38(1)(b) of *PIPA* infringed s. 2(a) of the *Charter*, but that the infringement was justified under s. 1. She issued an order

2025 BCCA 83 (CanLII)

that the Congregations produce the Disputed Records to her so that she could determine what, if any, information the Congregations were required to disclose to the Applicants. The appellants sought judicial review of the Adjudicator's decision. The chambers judge dismissed the appellants' petition, expressing substantial agreement with the reasons of the Adjudicator.

2025 BCCA 83 (CanLII)

[6] For the reasons that follow, I would dismiss this appeal. In my view, the Adjudicator erred in finding that ss. 23(1)(a) and 38(1)(b) of *PIPA* infringed s. 2(a) of the *Charter*. Properly interpreted, these provisions empower the commissioner to consider the appellants' *Charter* rights in deciding whether to order production of records for the commissioner's review. To the extent that a production order unjustifiably infringes the *Charter* rights of an organization, the source of the infringement is the production order itself and not the provisions of *PIPA*. In this case, the production order proportionately balanced the appellants' *Charter* rights with statutory objectives, and therefore the decision to issue the order was reasonable.

The statutory framework

[7] The purpose of *PIPA*, as set out in s. 2 of the Act, is:

> …to govern the collection, use and disclosure of personal information by organizations in a manner that recognizes both the right of individuals to protect their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.

PIPA applies to private sector "organizations", as that term is defined in s. 1:

> **"organization"** includes a person, an unincorporated association, a trade union, a trust or a not for profit organization, but does not include:
>
> (a) an individual acting in a personal or domestic capacity or acting as an employee,
>
> (b) a public body,
>
> (c) the Provincial Court, the Supreme Court or the Court of Appeal,
>
> (d) the Nisga'a Government, as defined in the Nisga'a Final Agreement, or

> (e) a private trust for the benefit of one or more designated individuals who are friends or members of the family of the settlor;

[8] Section 3(1) of *PIPA* states that the Act applies to every organization, subject to the exceptions listed in s. 3(2). Those exceptions include "the collection, use or disclosure of personal information…for journalistic, artistic or literary purposes and for no other purpose": s. 3(2)(b). There is no exception in s. 3(2) of *PIPA* for religious organizations, nor for the collection, use, or disclosure of communication for a religious purpose.

[9] Section 23 of *PIPA* creates a general right of access on the part of an individual to personal information about them that is in the control of an organization. Section 23 is central to the issues on appeal. In relevant respects, s. 23 provides:

> **Access to personal information**
>
> **23** (1) Subject to subsections (2) to (5), on request of an individual, an organization must provide the individual with the following:
>
> (a) the individual's personal information under the control of the organization;
>
> […]
>
> (3) An organization is not required to disclose personal information and other information under subsection (1) or (2) in the following circumstances:
>
> (a) the information is protected by solicitor-client privilege;
>
> (b) the disclosure of the information would reveal confidential commercial information that if disclosed, could, in the opinion of a reasonable person, harm the competitive position of the organization;
>
> (c) the information was collected or disclosed without consent, as allowed under section 12 or 18, for the purposes of an investigation and the investigation and associated proceedings and appeals have not been completed;
>
> (d) [Repealed 2004-67-23.]
>
> (e) the information was collected or created by a mediator or arbitrator in the conduct of a mediation or arbitration for which he or she was appointed to act
>
> (i) under a collective agreement,
>
> (ii) under an enactment, or
>
> (iii) by a court;

2025 BCCA 83 (CanLII)

> (f) the information is in a document that is subject to a solicitor's lien.
>
> […]
>
> (4) An organization must not disclose personal information and other information under subsection (1) or (2) in the following circumstances:
>
> (a) the disclosure could reasonably be expected to threaten the safety or physical or mental health of an individual other than the individual who made the request;
>
> (b) the disclosure can reasonably be expected to cause immediate or grave harm to the safety or to the physical or mental health of the individual who made the request;
>
> (c) the disclosure would reveal personal information about another individual;
>
> (d) the disclosure would reveal the identity of an individual who has provided personal information about another individual and the individual providing the personal information does not consent to disclosure of his or her identity.
>
> (5) If an organization is able to remove the information referred to in subsection (3) (a), (b) or (c) or (4) from a document that contains personal information about the individual who requested it, the organization must provide the individual with access to the personal information after the information referred to in subsection (3) (a), (b) or (c) or (4) is removed.
>
> [Emphasis added.]

[10] As the appellants emphasize on appeal, ss. 23(3) and (4) of *PIPA* prescribe limited exceptions to the general duty of an organization to provide an individual with access to their personal information. However, there is no express exception in s. 23 applicable where the disclosure of personal information may reveal confidential religious communications.

[11] In order to access their personal information, an individual must make a written request to the organization pursuant to s. 27 of *PIPA*. Under s. 28, an organization must make a reasonable effort to assist the applicant, and to respond to the applicant "as accurately and completely as reasonably possible". If the organization's response includes its refusal to grant access to certain information, then s. 30(1)(a) requires the organization to tell the applicant "the reasons for the refusal and the provision of [*PIPA*] on which the refusal is based".

2025 BCCA 83 (CanLII)

[12] *PIPA* is administered by the commissioner, who is defined in s. 1 of the Act as "the commissioner appointed under section 37(1) or 39(1) of the *Freedom of Information and Protection of Privacy Act*", R.S.B.C. 1996, c. 165 (the "Commissioner"). Pursuant to s. 46(1) of *PIPA*, an individual applying for access to their personal information may request that the Commissioner conduct a review of an organization's refusal to provide access. Section 48(1) provides that on receiving a request for review, the Commissioner must give a copy of the request to: "(a) the organization concerned, and (b) any other person that the commissioner considers appropriate".

[13] Pursuant to s. 49 of *PIPA*, the Commissioner may refer a dispute over access to a mediator to investigate, and potentially settle. If the dispute is not settled, then s. 50(1) empowers the Commissioner to conduct an inquiry "and decide all questions of fact and law arising in the course of the inquiry". During the inquiry, the individual who makes a request, the organization concerned, and any person given a copy of the request must be given an opportunity to make representations. The Commissioner has discretion to decide whether the representations are to be made verbally or in writing.

[14] Section 38 of *PIPA*, which sets out the powers of the Commissioner in conducting an inquiry, is also critical to the issues raised on appeal. In relevant respects, s. 38 provides:

> **Powers of commissioner in conducting investigations, audits or inquiries**
>
> **38** (1) For the purposes of conducting an investigation or an audit under section 36 or an inquiry under section 50, the commissioner may make an order requiring a person to do either or both of the following:
>
> (a) attend, in person or by electronic means, before the commissioner to answer questions on oath or affirmation, or in any other manner;
>
> (b) produce for the commissioner a document in the custody or under the control of the person, including a document containing personal information.
>
> […]

2025 BCCA 83 (CanLII)

> (2) The commissioner may
>
> (a) examine any information in a document, including personal information, and obtain copies or extracts of documents containing information
>
> (i) found in any premises entered under paragraph (c), or
>
> (ii) provided under this Act, …
>
> […]
>
> (7) Subject to subsection (8), after completing a review, investigating a complaint, or conducting an audit, the commissioner must return a document, or a copy of a document, produced by the individual or organization.
>
> (8) On request from an individual or an organization, the commissioner must return a document, or a copy of a document, produced by the individual or organization within 10 days of the date on which the commissioner receives the request.
>
> [Emphasis added.]

[15] Section 41 of *PIPA* places restrictions on the Commissioner, and anyone acting under their direction, in relation to the disclosure of information obtained under the Act. Records may be disclosed only for one of the purposes listed in s. 41.

[16] Section 52(1) of *PIPA* provides that on completing an inquiry under s. 50, the Commissioner must dispose of the issues by making an order under s. 52. Section 52(2) provides:

> (2) If the inquiry is into a decision of an organization to give or to refuse to give access to all or part of an individual's personal information, the commissioner must, by order, do one of the following:
>
> (a) require the organization
>
> (i) to give the individual access to all or part of his or her personal information under the control of the organization,
>
> (ii) to disclose to the individual the ways in which the personal information has been used,
>
> […]
>
> if the commissioner determines that the organization is not authorized or required to refuse access by the individual to the personal information;
>
> (b) either confirm the decision of the organization or require the organization to reconsider its decision, if the commissioner determines that the organization is authorized to refuse the individual access to his or her personal information;

2025 BCCA 83 (CanLII)

> (c) require the organization to refuse the individual access to all or part of his or her personal information, if the commissioner determines that the organization is required to refuse that access.
>
> [Emphasis added.]

[17] The Commissioner may specify any terms or conditions in an order made under s. 52: *PIPA*, s. 52(4).

Procedural history

The requests for a review of the Congregations' decisions refusing access

[18] Each of the Applicants requested their personal information from the Congregations several years after leaving Jehovah's Witnesses. The Congregations refused to provide some of the information sought on the basis that it contained private and confidential religious communications. Each of the Applicants filed a request that the Commissioner review the Congregations' decisions to refuse access. The Commissioner referred the matters to mediation, but the disputes did not settle.

[19] On May 26, 2021, the Commissioner issued Notices of Written Inquiry in relation to the Applicants' review requests (the "Notices"). The Notices indicated that at the inquiries, the Commissioner, or his delegate, would consider the following issues:

> i) whether *PIPA* unjustifiably infringes upon the *Canadian Charter of Rights and Freedoms*;
>
> ii) whether *PIPA* applies to the organization; and
>
> iii) whether the organization is required to refuse to disclose information under sections 23(4)(c) and/or 23(4)(d) of *PIPA*.

[20] The Notices were delivered to the Applicants and the Congregations. In light of the constitutional issues raised, notice was also given to the Attorney General of British Columbia (the "AGBC") and the Attorney General of Canada. The AGBC participated in subsequent proceedings before the Commissioner, while the Attorney General of Canada did not.

2025 BCCA 83 (CanLII)

2025 BCCA 83 (CanLII)

[21] On April 1, 2021, as the proceedings before the Commissioner were underway, the appellants filed a notice of civil claim in the Supreme Court of British Columbia. The relief sought included a declaration that *PIPA* violated their *Charter* rights of freedom of religion, freedom of expression and freedom of association because the Act failed to protect confidential religious communications and records from compelled disclosure. Competing interlocutory applications were brought in the action: the appellants applied to stay the inquiries before the Commissioner pending the outcome of the civil action, while the AGBC applied to stay the civil action pending the outcome of the inquiries. In a judgment issued on September 20, 2021, Justice Winteringham (then of the Supreme Court) granted the AGBC's application, and stayed the action: *Watch Tower Bible and Tract Society of Canada v. British Columbia (Attorney General)*, 2021 BCSC 1829.

[22] Notably, Justice Winteringham found that the Commissioner was competent to decide the *Charter* issues raised: at para. 73. No party challenges this finding on this appeal.

[23] In subsequent correspondence with the Commissioner, the appellants requested procedural orders: (1) adding the Watch Tower Bible and Tract Society of Canada, Mr. Vabuolas, and Mr. Sidhu as parties to both inquires; (2) joining the inquiries into one proceeding; and (3) directing that the inquiry proceed by way of an oral, rather than written, hearing. The Adjudicator granted the first two requests but not the third. She concluded that there was unlikely to be contested issues of material fact that would require oral testimony and cross-examination. A schedule was set for the exchange of written submissions and evidence between the parties, with the appellants to provide the first set of materials.

The exchange of evidence and submissions

[24] The appellants' written submissions further particularized the nature of their constitutional challenge. The appellants asserted that ss. 1, 3, and 23 of *PIPA* unjustifiably infringed ss. 2(a), (b), and (d) of the *Charter*. They contended that in combination, these provisions compelled the production of records of spiritual deliberations by elders in the Congregations that are, according to Jehovah's

Witnesses' canon law, private and confidential. While the appellants did not appear to directly challenge the constitutionality of s. 38 of *PIPA*, they did note that in the course of an inquiry, an Adjudicator has the power under this provision to compel the production of records for review. The appellants argued that disclosing the Disputed Records, even to an Adjudicator, would constitute a serious violation of the elders' *Charter* rights.

[25] In their reply submissions, the appellants raised an additional issue: that an order for the production of the Disputed Records under s. 38(1)(b) of *PIPA* would constitute an unreasonable search and seizure contrary to s. 8 of the *Charter*.

[26] The appellants' evidence included affidavits from Mr. Vabuolas and Mr. Sidhu, as well as an affidavit from Kevin Knaus, a member of the Watch Tower Bible and Tract Society of Canada who deposed that he had been a full-time religious minister with Jehovah's Witnesses since October 2007.

[27] In his affidavit, Mr. Knaus described the general structure and religious practices of Jehovah's Witnesses. He deposed that Jehovah's Witnesses are a Christian-based religious denomination who meet in small congregations for community worship. Each congregation has a group of elders that function as the "spiritual shepherds". Congregation elders are bound by ecclesiastical duty not to divulge confidential religious communications. As explained by Mr. Knaus:

> 23. Maintaining confidential and sensitive religious communications and information is essential to the elders in carrying out their spiritual role and for the Christian congregation to function on the basis of principles found in the Bible. The elders must be able to share confidential information among themselves, as required, in order to assess needs and concerns of the congregation and to protect it from potentially divisive or disruptive influences.
>
> 24. The elders, as a matter of canon law, adhere very strictly to the admonition at Proverbs 11:13: "A slanderer goes about revealing confidential talk, but the trustworthy person keeps a confidence." It is viewed as a sacred ecclesiastical duty, and therefore revealing "confidential talk," including the spiritual deliberations of the elders, would violate this duty. It would jeopardize the integrity of the pastoral process by exposing the private spiritual deliberations and discussions to those not sharing in spiritual assessments and decision-making.

2025 BCCA 83 (CanLII)

[28] Mr. Knaus deposed that the ecclesiastical duty to maintain strict confidentiality applies to a range of internal religious records and communications. They include records that relate to hearing personal confessions of sin, providing spiritual comfort and personal scriptural counsel to congregants, internal scriptural discipline, and recommending congregants to serve as elders.

[29] Elders may also engage in confidential spiritual communications in the course of "disfellowshipping" an individual who no longer wishes to adhere to scriptural standards required for congregants, or "disassociation" by an individual who wishes to formally renounce their status as a member of Jehovah's Witnesses. In such cases, a committee of three elders is appointed to meet with the individual to attempt to restore them spiritually. In accordance with longstanding religious practice, the committee of elders will keep a confidential written record of the efforts, which reflects a summary of their spiritual deliberations. The record is then placed in a sealed envelope under lock and key, and cannot be viewed by any other member of the congregation.

[30] The affidavits of Mr. Vabuolas and Mr. Sidhu confirmed that personal information sought by Mr. Wall and Mr. Westgarde was contained in the record of the spiritual deliberations of elders in the Congregations following their requests to disassociate from Jehovah's Witnesses. Mr. Vabuolas deposed that he is the only surviving member from the original group of three elders of the Grand Forks Congregation that deliberated on Mr. Wall's request. The elders created a confidential record of their deliberations through the process described by Mr. Knaus. In his affidavit, Mr. Vabuolas set out a bullet-point list of the personal information about Mr. Wall that is contained in the record: his name, gender, birth date, baptism date, and the date and method of his disassociation. Mr. Vabuolas then stated:

> 23. The remainder of the confidential religious summary is our spiritual deliberations and handling of the matter as elders on the committee with respect to [Mr. Wall's] oral request to no longer formally be identified as one of Jehovah's Witnesses and to record the elders' religious decision with regard to [Mr. Wall]. The summary is an expression of my private deliberations and expressions as an elder. I prepared this summary with the expectation that this internal religious record should and would remain

2025 BCCA 83 (CanLII)

> confidential and read by no one else, except, potentially, for a fellow elder who may eventually be appointed to view the information for a necessary religious purpose, most notably a future request for reinstatement.
>
> […]
>
> 28. …it would violate our canon law to disclose the religious summary our committee of elders prepared in connection with [Mr. Wall's] decision to no longer be known as one of Jehovah's Witnesses. It is an internal confidential religious record over which we, as elders, claim religious privilege. Disclosing this record to [Mr. Wall] or even to the OIPC Adjudicator would severely violate our religious practice and my personal conscience as an elder.

[31] Mr. Sidhu provided similar evidence about the spiritual deliberations of elders of the Coldstream Congregation regarding Mr. Westgarde's request to leave Jehovah's Witnesses. A record of the elders' efforts was sealed and placed under lock and key. Mr. Sidhu's affidavit also set out a bullet-point list of the basic personal information about Mr. Westgarde that is contained in the record: his name, gender, birthdate, and the date and method of his disassociation. Mr. Sidhu stated that beyond this information, the record contained a summary that was "an expression of the elders' individual and collective deeply-held religious convictions and conscience" that must be kept strictly confidential according to canon law.

[32] In their response material, the Applicants each provided a written submission, along with affidavit evidence. Collectively, the Applicants tendered eight non-party affidavits from former members of Jehovah's Witnesses, which related their personal experiences and their view of the doctrine and practices followed by Jehovah's Witnesses. The Adjudicator ultimately found that the evidence in these eight affidavits was not relevant or material to the issues, and would not be given any weight. There is no challenge to this ruling on the appeal, and therefore it is unnecessary to review the content of these affidavits.

[33] Mr. Westgarde also provided his own affidavit speaking to his experience of becoming either disfellowshipped or disassociated from Jehovah's Witnesses, as he deposed that he remains unaware of the exact decision that was made about him. Mr. Westgarde stated that while he did meet with elders to discuss his departure, the conversations were not confessional in nature, but rather concerned Jehovah's Witnesses' belief and policy.

2025 BCCA 83 (CanLII)

[34] The AGBC also provided a written submission, maintaining that the impugned provisions of *PIPA* did not infringe the *Charter*, or alternatively that any infringement was justified under s. 1. As the appellants emphasize, the only evidence provided by the AGBC consisted of the affidavit of a legal assistant, which attached Jehovah's Witnesses Policy on the Use of Personal Information for the United Kingdom.

The decision of the Commissioner's delegate: 2022 BCIPC 35, [2022] B.C.I.P.C.D. No. 35

[35] The Adjudicator issued written reasons for decision on June 20, 2022.

The application of PIPA

[36] The Adjudicator first addressed the appellants' argument that the legislature intended *PIPA* to apply only to commercial activities, and therefore it did not apply to the Congregations and the elders. The Adjudicator found that this narrow interpretation was not supported by the wording of *PIPA*, the indications of legislative intent in the legislative debates, or by the case law interpreting *PIPA*. As unincorporated associations, the Congregations fell within the definition of "organization" in s. 1 of *PIPA*. In creating the records, the elders were not acting in a personal capacity, but rather as ecclesiastical appointees of the Congregations. As the records did not fall within any exception listed in s. 3(2) of *PIPA*, the Adjudicator concluded that *PIPA* applied to the elders' and Congregations' collection, use, and disclosure of personal information.

[37] The Adjudicator next addressed the issue of whether the Disputed Records contained personal information about the Applicants. The Adjudicator noted that while the Congregations had not produced the Disputed Records for her review, their affidavit evidence did provide information about their content. This evidence suggested that the Disputed Records contained personal information about each of the Applicants, as well as about the elders, and possibly others. Based on this information, the Adjudicator stated:

> [43] The challenge I face, however, is that the [appellants] have refused to produce the disputed records for my review. I have concluded that, without seeing them, it is not possible to decide whether they contain personal information or whose personal information may be included. This also means

2025 BCCA 83 (CanLII)

> I cannot make any finding about whether the disclosure prohibitions in ss. 24(c) or (d) apply or if severing under s. 23(5) is possible. In my view, it is not possible to decide any of these issues without having access to the disputed records.
>
> [Emphasis added.]

[38] Accordingly, the Adjudicator concluded it was necessary to order the appellants to produce the Disputed Records for her review pursuant to s. 38(1)(b) of *PIPA*.

Section 2(a) of the Charter

[39] The Adjudicator then turned to the appellants' arguments that the impugned provisions of *PIPA* infringed their right to freedom of religion under s. 2(a) of the *Charter*. The Adjudicator took analytical guidance from the decision of the Supreme Court of Canada in *Syndicat Northcrest v. Amselem*, 2004 SCC 47 [*Amselem*]. She accepted the appellants' evidence that Mr. Sidhu and Mr. Vabuolas each held a sincere belief that allowing anyone other than an elder to see the Disputed Records "would be contrary to their personal understanding of the rules governing their religious practices and contrary to their personal religious beliefs and conscience": at para. 87. Accordingly, the Adjudicator concluded that the right of access in s. 23(1)(a) of *PIPA*, and the power given to the Commissioner under s. 38(1)(b) to order the production of documents, infringed the appellants' s. 2(a) *Charter* rights. In rejecting the AGBC's argument that any interference with religious freedom was trivial and insubstantial, the Adjudicator stated:

> [93] The AGBC also argues that the impact on religious freedoms would be trivial because *PIPA* only requires disclosure of the applicants' personal information and no one else's personal information. It also submits that the [appellants'] own evidence is that the records were unsealed and reviewed by elders for these legal proceedings. While both may be true, I do not see how that means *PIPA's* requirement that the records be disclosed, in whole or in part, is a trivial or insubstantial infringement. As I understand their evidence, the sincerely held religious belief of [Mr. Sidhu, Mr. Vabuolas] and the other elders in their congregations is that no part of the records should be accessed by anyone other than authorized elders. The impact of *PIPA* requires the elders to do the exact opposite with the parts of the records that contain the applicants' personal information and, in the case of disclosure to the commissioner, all parts of the records.

2025 BCCA 83 (CanLII)

[40] Having found that ss. 23(1)(a) and 38(1)(b) of *PIPA* infringed s. 2(a) of the *Charter*, the Adjudicator then addressed the issue of whether the infringement was justified under s. 1, applying the test from *R. v. Oakes*, [1986] 1 S.C.R. 103, 1986 CanLII 46.

[41] The Adjudicator found that the purpose of the infringing measures was pressing and substantial. She adopted the statement of objective set out in the following passage from the Supreme Court of Canada's decision in *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401*, 2013 SCC 62 [*UFCW Local 401*]:

> [19] There is no dispute that *PIPA* has a pressing and substantial objective…The focus is on providing an individual with some measure of control over his or her personal information: Gratton, at pp. 6 ff. The ability of individuals to control their personal information is intimately connected to their individual autonomy, dignity and privacy. These are fundamental values that lie at the heart of a democracy. As this Court has previously recognized, legislation 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: [citations omitted].

[42] For their part, the appellants accepted that *PIPA* as a whole served the objective identified in *UFCW Local 401*, but argued that the AGBC had not established that the objective was served by the infringing measures to the extent they captured confidential religious records. The Adjudicator rejected this argument. She drew a link between the statutory objectives set out in *UFCW Local 401* and the infringing measures, holding that: "[t]he ability for an applicant to access their personal information under the control of organizations, and the ability of the commissioner to access records for adjudicative purposes, are integral parts of *PIPA's* statutory scheme": at para. 104.

[43] The Adjudicator also found that the impugned provisions were rationally connected to the purpose of "providing the applicants with a mechanism to protect their personal information under the control of [Mr. Vabuolas, Mr. Sidhu] and the congregations": at para. 110.

2025 BCCA 83 (CanLII)

[44] At the minimal impairment stage of the s. 1 analysis, the appellants maintained that the impugned provisions of *PIPA* were not carefully tailored to minimize the infringement of their rights. They argued that the AGBC had failed to explain why *PIPA* did not exempt religious organizations, and provided no evidence to justify the failure to exempt religious communications from the scope of s. 23. The Adjudicator rejected these arguments. She found that the provisions of *PIPA* were tailored because they provided a right of access only to an applicant's own personal information. The personal information of individuals other than the applicant is protected by ss. 23(4)(c) and (d) of *PIPA*. The Adjudicator stated:

> [117] These protections are, I find, tailored in a way that minimizes the impact on the confidentiality of the elders' spiritual deliberations, prayers or opinions and, thus, the exercise of their freedom of religion.

[45] The Adjudicator further reasoned that it appeared "overly broad" to exclude religious organizations from the scope of *PIPA* altogether, as it was apparent that not all of an applicant's personal information under such organizations' control will necessarily involve private spiritual deliberations: at para. 119.

[46] The Adjudicator also concluded that the Commissioner's authority under s. 38(1)(b) of *PIPA* to order the production of records for review was minimally impairing, because the Commissioner's review would be for the limited purpose of deciding questions of fact and law arising in an inquiry. She found this conclusion was bolstered by the restrictions on the Commissioner's ability to disclose information gathered under the Act that are set out in s. 41 of *PIPA*.

[47] At the final stage of the s. 1 *Charter* analysis, the Adjudicator found that the salutary effects of the impugned provisions of *PIPA* outweighed their deleterious effects. She reiterated the point that *PIPA* protects the confidentiality of all personal information, including the type of religious and spiritual information described by the elders in their evidence:

> [136] …Thus, *PIPA* protects the confidentiality of elders' spiritual and religious views, thoughts and beliefs just as it protects the confidentiality of [Mr. Westgarde] and [Mr. Wall's] personal information. It protects an individual's personal information from disclosure to third parties, whether or not the information is spiritual or religious in nature. This protection for

2025 BCCA 83 (CanLII)

> religious and spiritual personal information reduces the seriousness of the negative impact *PIPA's* disclosure obligations have on the religious belief and practice that mandates that only authorized elders may view such information.

[48] As for the deleterious effects on the appellants of having to comply with an order for the production of records under s. 38(1)(b) of *PIPA*, the Adjudicator found that these were outweighed by the salutary effects of the Commissioner's power to access records where necessary to conduct an independent review.

[49] Accordingly, the Adjudicator held that while ss. 23(1)(a) and 38(1)(b) of *PIPA* infringed s. 2(a) of the *Charter*, the infringement was justified under s. 1.

Sections 2(b) and (d) of the Charter

[50] The appellants argued that the impugned provisions of *PIPA* infringed their freedom of speech protected in s. 2(b) of the *Charter*. However, the Adjudicator described their submissions as "so brief and lacking in explanatory detail that [they do] not show how *PIPA* limits or interferes with the elders' or Jehovah's Witnesses' ability to express themselves": at para. 144. As such, she found they had not met their burden to show that the impugned provisions of *PIPA* infringed s. 2(b) of the *Charter*.

[51] The appellants also argued that the impugned provisions of *PIPA* infringed their rights under s. 2(d) of the *Charter*, which protects freedom of association. The appellants maintained that s. 2(d) protected the elders' ability to determine an individual's spiritual status within the congregation, and to exclude or reinstate them if necessary. They further said that maintaining strict confidentiality over the Disputed Records was critical to protecting their associational rights. The Adjudicator dismissed these arguments. She was not persuaded that the application of *PIPA* would interfere with the elders' authority to decide matters of spiritual status, and found the appellants did not show an infringement of s. 2(d) of the *Charter*.

Section 8 of the Charter

[52] Finally, the Adjudicator addressed the appellants' argument that requiring them to produce the Disputed Records to the Commissioner through an order under

2025 BCCA 83 (CanLII)

s. 38(1)(b) of *PIPA* would infringe their right to freedom from unreasonable search and seizure under s. 8 of the *Charter*. The Adjudicator accepted that the issuance of a production order under s. 38(1)(b) arguably amounted to a "seizure" under s. 8. However, she found that any such seizure was not unreasonable in the circumstances of this case.

[53] The Adjudicator accepted, as a starting point, that religion is very close to an individual's core sense of identity, and therefore the appellants' privacy concerns were strong. She also accepted that the elders had an objectively reasonable expectation of privacy over the Disputed Records. However, in the Adjudicator's view, the Congregations' compliance with *PIPA* could only be ascertained by reviewing the records. Such a review would ensure that the Commissioner could make an independent decision rather than relying on the appellants' summary. The Adjudicator expressed the concern that she was "not confident that the [appellants'] description of the records is accurate": at para. 155. She stated:

> [155] …Further, what the [appellants] say in their submissions and affidavit evidence about the records is simply not detailed enough for the type of line-by-line review and analysis that must be conducted in order to decide what information in the records is the applicants' personal information and what information is protected third-party personal information excepted from disclosure under s. 23(4). Deferring to the [appellants'] broad description of the records and the information they contain is not a reasonable alternative in this case to deciding the issues based on my own examination of the records.
>
> [Emphasis added.]

[54] Thus, the Adjudicator concluded it was necessary to order, pursuant to the express statutory authority in s. 38(1)(b) of *PIPA*, that the Congregations produce to her all records in their custody or under their control that contained the Applicants' personal information (the "Production Order").

Decision of the Chambers Judge: 2024 BCSC 27 ("Reasons")

[55] The appellants filed a petition for judicial review of the Adjudicator's decision. In their petition, the appellants sought orders quashing the Production Order, and declaring that ss. 1, 3, 23, and 38 of *PIPA* unjustifiably infringed the *Charter*.

2025 BCCA 83 (CanLII)

2025 BCCA 83 (CanLII)

Preliminary issues: prematurity, scope of the challenge, and standard of review

[56] The AGBC raised a preliminary objection that the petition was premature, arguing that the Commissioner had not yet decided whether *PIPA* requires the disclosure of the Disputed Records to the Applicants. The judge dismissed this objection on the basis that the appellants were arguing that the compelled disclosure of the confidential religious records to anyone, including the Commissioner, violated their s. 2(a) *Charter* rights. The appellants' constitutional concern was not only about disclosure to the applicants. Further, the Production Order was premised on the Adjudicator's conclusions that the impugned provisions of *PIPA* infringed s. 2(a), but were justified under s. 1. The judge reasoned that the Adjudicator's conclusions were final in nature, thus it could not be premature for a court to review her decision.

[57] The parties agreed that the correctness standard of review applied to the Adjudicator's decision on the appellants' constitutional challenge to the provisions of *PIPA*. They disagreed on the standard of review applicable to the Adjudicator's discretionary decision to issue the Production Order. The judge concluded that the petition raised a question about whether the Adjudicator's exercise of discretion reflected a proportionate balancing of *Charter* values against *PIPA's* statutory mandate. He found the applicable standard of review on this issue was reasonableness.

[58] As to the scope of the petition proceeding, the appellants argued that their constitutional challenge was to the entirety of the legislative scheme, and that the Adjudicator had unduly narrowed her focus to ss. 23(1)(a) and 38(1)(b) of *PIPA*. The judge disagreed:

> [72] While I have concluded that the petition is not premature because the [appellants] have argued that any production, even to the Adjudicator, constitutes a breach of their s. 2(a) *Charter* rights, it does not follow that the Court is in a position to entertain a challenge to the entirety of the *PIPA* legislative scheme. Given the record upon which the Adjudicator made her decision—pertaining only to the elders' ecclesiastical discussions at issue—and its interlocutory nature, I am not persuaded that consideration of the entirety of *PIPA* is appropriate.

[59] The judge noted that in this case, the Adjudicator issued the Production Order because she did not have the Disputed Records before her, and therefore was unable to determine whether they ought to be disclosed to the applicants. He concluded that the scope of the constitutional challenge must be limited to those sections of *PIPA* that gave rise to the Production Order.

Section 2(a) of the *Charter*

[60] The judge agreed with the Adjudicator's analysis and conclusion that ss. 23(1)(a) and 38(1)(b) of *PIPA* interfered with the sincerely held religious beliefs of Mr. Vabuolas and Mr. Sidhu in a manner that was not trivial or insubstantial. Thus, the appellants had established an infringement of s. 2(a) of the *Charter*. Notably, the appellants did not make discrete arguments to the judge regarding ss. 2(b) and (d) of the *Charter*, but rather asserted that their expressive and associational rights were subsumed within the analysis of s. 2(a). The judge found that the rights protected by ss. 2(b) and (d) of the *Charter* did not play a significant role in the appellants' arguments, and he indicated his intention to analyze the impugned provisions of *PIPA* solely with regard to the protection for freedom of religion in s. 2(a): Reasons at para. 111.

[61] Turning to the s. 1 stage of the *Charter* analysis, the judge did not accept the appellants' argument that the provisions were not minimally impairing because the legislature could have added an exemption to s. 3(2) of *PIPA* for personal information collected and used for religious purposes. First, the judge was not satisfied that reading in such an exemption would address the infringement of the appellants' religious freedoms because a production order may still be necessary to allow the Commissioner to determine whether the information was, in fact, collected and used for a religious purpose. Second, and alternatively, to the extent that the appellants maintained that a production order could not be issued once an organization invoked the exemption, this would impede legislative objectives.

[62] The judge further noted that the Adjudicator had not yet made an order compelling the appellants to produce the Disputed Records to the Applicants, and that such an order might never be made. The judge stated:

2025 BCCA 83 (CanLII)

> [142] I am similarly persuaded that the OIPC is competent to decide what, if anything, from the Disputed Records should be produced to the Applicants, having regard to *Charter* values and the congregation elders' s. 2(a) *Charter* rights in particular. Moreover, if the [appellants] are dissatisfied with the Adjudicator's decision after her review of the Disputed Records, the [appellants] have the right to apply for judicial review, at which time the court would have the benefit of a complete record.
>
> [143] As I said earlier, there is no doubt that *PIPA* applies to a wide range of organizations, including religious organizations. It is also apparent that not every record that includes personal information under the control of a religious organization was necessarily prepared for a religious purpose. Some mechanism is required in order to balance the rights of individuals to control their personal information on the one hand and the religious freedoms of those such as the congregational elders on the other.
>
> [Emphasis added.]

[63] For these reasons, the judge rejected the appellants' submission that a blanket exemption would be a less impairing option which would also meet legislative objectives.

[64] At the third, and final, stage of the proportionality analysis, the judge identified the salutary effect of the impugned provisions: providing individuals with a right of access to their personal information "in furtherance of the fundamental values in society such as individual autonomy, dignity and privacy": Reasons at para. 150, citing *UFCW Local 401* at para. 19. The deleterious effects of the Production Order on the appellants were, by contrast, relatively minimal:

> [156] I am not satisfied that disclosure of the Disputed Records by the congregational elders to the Commissioner for review for the purpose of determining whether disclosure to the Applicants will be required would preclude the elders from continuing to follow their religious practices when weighing the rights of individuals to control over their personal information on the one hand and the religious freedom of the elders on the other. The Production Order represents a balancing of the competing interests, and I conclude that the infringement on the congregational elders' religious freedoms that results from the Production Order is proportionate.
>
> [157] While production of the Disputed Records to the Commissioner is not an insubstantial breach of the congregation elders' right to religious freedom under s. 2(a) of the *Charter*, it nonetheless furthers the interests of society as a whole by ensuring access to their personal information. Since the Disputed Records would be reviewed only by the Adjudicator or the Commissioner's delegate, the impairment of the elders' rights is minimized. The Adjudicator or Commissioner's delegate is prohibited from disclosing those documents to anyone, except in the limited circumstances enumerated in ss. [41](2)–(6), in the course of their review. Moreover, the Adjudicator's decision clarifies that

2025 BCCA 83 (CanLII)

> once the review is complete, the parties will have the opportunity to make further submissions and if a disclosure order is made pursuant to s. 52 of *PIPA*, the [appellants] would be entitled to apply for a judicial review of that decision.
>
> [Emphasis added.]

[65] The judge therefore concluded that the "limit on the [appellants'] freedom of religion imposed by the Production Order has been shown to be justified under s. 1 of the *Charter*": Reasons at para. 158.

Section 8 of the *Charter*

[66] The judge noted that the appellants' arguments that a production order would infringe s. 8 of the *Charter* were premised on the assumption that s. 38(1)(b) of *PIPA* constituted an unjustified infringement of religious rights under s. 2(a) of the *Charter*. Given the judge's conclusion that the Adjudicator was correct to find that the infringement of s. 2(a) was justified, in his view it followed that the Production Order did not infringe s. 8. The judge also found that the Adjudicator's case-specific exercise of discretion to order the production of the Disputed Records under s. 38(1)(b) was reasonable, as it reflected a proportionate balancing of *Charter* rights and statutory purposes.

The Adjudicator's decision to issue the Production Order

[67] The focus of the appellants' submissions on the judicial review was whether *PIPA* was constitutional, rather than the manner in which the Adjudicator exercised her discretion in issuing the Production Order. Accordingly, the chambers judge's analysis on the latter point was brief. He was satisfied that the Adjudicator's decision reflected a proportionate balancing of the appellants' *Charter* rights and statutory objectives. Therefore, he found it was reasonable.

[68] The judge dismissed the petition.

On appeal

[69] The appellants allege that the judge erred in concluding that:

2025 BCCA 83 (CanLII)

a) the infringement of the appellants' s. 2(a) *Charter* rights by ss. 23(1)(a) and 38(1)(b) of *PIPA* was justified under s. 1; and

b) there was no infringement of the elders' rights under s. 8 of the *Charter*.

[70] The AGBC raises two additional preliminary issues:

a) the appellants' challenge to the constitutionality of s. 23(1)(a) of *PIPA* is premature because no decision has yet been made that any personal information must be disclosed to the Applicants pursuant to this provision; and

b) the appellants' challenge to the constitutionality of s. 38(1)(b) of *PIPA* is misconceived because the source of the alleged infringement is not the statute, but rather the Adjudicator's case-specific exercise of discretion.

Standard of review

[71] The standard of review that applies to the decision of the chambers judge is not contentious. A reviewing judge's selection and application of the standard of review involve questions of law that are reviewable for correctness on appeal. In effect, the appellate court steps into the shoes of the reviewing judge and conducts a *de novo* review of the administrative body's decision: *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at para. 10.

[72] The identification of the standard of review that applies to the Adjudicator's decision is more challenging due to the manner in which the parties' arguments have evolved over time, including over the course of this appeal hearing, and their disagreement over the proper subject of the appellants' constitutional challenge. Generally speaking, the issue of whether an administrative decision-maker's enabling statute violates the *Charter* is reviewable for correctness, whereas an allegation that the decision itself has unjustifiably limited *Charter* rights is reviewable on the deferential standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*] at para. 57. I will address the nuances of the standard of review analysis later in the course of these reasons.

2025 BCCA 83 (CanLII)

Analysis

The preliminary issues

Is the challenge to s. 23(1)(a) of PIPA premature?

[73] I can briefly dispose of the AGBC's argument that the appellants' constitutional challenge to s. 23(1)(a) of *PIPA* is premature.

[74] The AGBC invokes the general rule that courts should only decide constitutional issues when doing so is actually necessary: *Rain Coast Water Corp. v. British Columbia*, 2019 BCCA 201 at para. 176, leave to appeal to SCC ref'd, 38791 (16 January 2020). It argues that determining the constitutionality of s. 23(1)(a) of *PIPA* is not necessary in this case, as the appellants' *Charter* rights have not yet been infringed by s. 23(1)(a) because the Adjudicator has not yet ordered production of the Disputed Records to the Applicants. The AGBC says that the constitutional challenge to s. 23(1)(a) is therefore premature because, if the Adjudicator does not order production of the Disputed Records, there would be no basis to challenge this section at all.

[75] Here, the chambers judge already considered and dismissed the AGBC's prematurity objection. As the chambers judge pointed out, the appellants' argument is that the disclosure of the Disputed Records to anyone, including the Adjudicator, constitutes an infringement of s. 2(a) of the *Charter*. Further, the chambers judge found that it could not be premature for the appellants to challenge the Adjudicator's final determination of the constitutionality of s. 23(1)(a).

[76] As this Court has stated, "[p]rematurity is not an absolute bar to judicial review, but a discretionary one": *ICBC v. Yuan*, 2009 BCCA 279 at para. 24. Unless an error in principle is demonstrated, this Court will not interfere with the exercise of discretion to dismiss a prematurity argument on a judicial review: *Diaz-Rodriguez v. British Columbia (Police Complaint Commissioner)*, 2020 BCCA 221 at para. 29. As I see no error in principle in the reasoning of the chambers judge, there is no basis for appellate interference here.

2025 BCCA 83 (CanLII)

[77] Furthermore, I note that the AGBC's submissions on the prematurity issue, and more generally on appeal, propose to isolate the interpretation of the Commissioner's scope of discretion under s. 38(1)(b) of *PIPA* from the other relevant provisions of the statute, especially s. 23(1)(a). I do not agree that the statutory interpretation issues that arise in this case can be siloed in this way. As I will explain, the appellants' position that *PIPA* does not permit consideration of their *Charter* rights is heavily dependent on the proposition that an organization's mandatory duty to provide access in s. 23(1)(a) does not leave room for any exceptions other than those expressly enumerated. If, as the appellants argue, s. 23(1)(a) of *PIPA* prohibits the Commissioner from considering *Charter* protections, this would impact the Commissioner's scope of discretion under s. 38(1)(b). I will elaborate on this point in addressing the second preliminary issue identified by the AGBC: whether this case is properly understood as a challenge to legislation, or to a case-specific exercise of discretion by an administrative decision-maker.

What is the proper framework?

[78] It is evident that the parties have fundamentally different views of the proper characterization of the appellants' constitutional challenge. The AGBC maintains that the appellants have wrongly framed their case as a challenge to the provisions of *PIPA*. The AGBC says that the appellants were not, in fact, aggrieved by the provisions of *PIPA*, but rather by the Adjudicator's case-specific exercise of discretion under s. 38(1)(b) to order the production of the Disputed Records. As administrative decision-makers must always consider *Charter* rights and values in their exercise of statutory discretion, the AGBC says that the Adjudicator was permitted, and indeed compelled, to balance the appellants' *Charter* rights against statutory purposes. If the Adjudicator's decision does not reflect a proportionate balancing of *Charter* protections, this may be remedied on judicial review. However, the AGBC says that provisions in *PIPA* are not rendered constitutionally invalid simply because a case-specific exercise of statutory powers may not constitute a proportionate balancing of *Charter* rights and values.

2025 BCCA 83 (CanLII)

[79] In contrast, the appellants contend that it was not open to the Adjudicator to consider *Charter* rights at all in exercising discretion under s. 38(1)(b) of *PIPA* because of the mandatory nature of an organization's duty under s. 23(1)(a) to provide an individual with their personal information on request. The appellants note that s. 23 does not contain any express exemption from this duty where a request for personal information covers confidential religious records. More generally, they say the mandatory duty in s. 23(1)(a) implicitly prohibits the Commissioner from accounting for an organization's *Charter* rights in deciding what information must ultimately be disclosed to an applicant. To the extent that the chambers judge assumed otherwise, the appellants say he was in error. They argue that if *Charter* rights cannot influence the Commissioner's ultimate decision about what information must be disclosed to an applicant, then necessarily the Commissioner cannot consider *Charter* rights and values in deciding whether to order the production of records on an interlocutory basis under s. 38(1)(b) of *PIPA*. As a result, the appellants say their constitutional challenge necessarily, and rightly, focusses on the provisions of *PIPA*—specifically ss. 23(1)(a) and 38(1)(b)—rather than the manner in which the Adjudicator exercised her discretion in this particular case.

[80] Accordingly, the parties present starkly different visions of the proper interpretation of the scope of the Commissioner's discretion under s. 38(1)(b) of *PIPA*. The AGBC maintains that not only is the Commissioner permitted to consider the *Charter* in deciding whether to order the production of information for the purpose of an inquiry, the Commissioner must exercise the discretion in a manner that proportionately balances *Charter* protections. The appellants counter that the relevant provisions of *PIPA*—in particular the mandatory disclosure duty in s. 23(1)(a)—implicitly prohibit the Commissioner from considering *Charter* protections in deciding what information has to be disclosed to an applicant. As such, the appellants argue, the fact that the power in s. 38(1)(b) of *PIPA* is discretionary is not an answer to their constitutional challenge to the legislation.

[81] Perhaps due to the manner in which the parties' submissions have evolved over time, the Adjudicator did not address the question of statutory interpretation that has been framed on this appeal. However, in my view it is a necessary starting point.

2025 BCCA 83 (CanLII)

Before determining the constitutionality of impugned provisions of a statute, it is first necessary to interpret them: *R. v. J.J.*, 2022 SCC 28 at para. 17. In this case, the answer to the constitutional question may well depend on whether *PIPA*, properly interpreted, either allows for or prohibits a proportionate balancing of *Charter* protections in specific cases. The evolution of the law as it relates to the role of the *Charter* in administrative law provides a necessary backdrop to this statutory interpretation issue, so I will begin there.

Charter rights and values in administrative decision-making

[82] The starting point is the decision of the Supreme Court of Canada in *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038, 1989 CanLII 92 [*Slaight*], in which the Court confirmed the applicability of the *Charter* to administrative decisions. At issue in this case were remedial orders issued by a labour arbitrator following his finding that an employee had been unjustly dismissed. The orders required the employer to provide a letter of recommendation with content prescribed by the arbitrator, and to provide the letter (and nothing more) in response to any future inquiries about the employee. The orders were said to be authorized by s. 61.5(9)(c) of the *Canada Labour Code*, R.S.C. 1970, c. L-1, which provided the arbitrator with discretion to require the employer to "do any other like thing that it is equitable to require the employer to do" to remedy the unjust dismissal. The employer challenged the arbitrator's jurisdiction to make the orders, arguing that they infringed freedom of expression under s. 2(b) of the *Charter*.

[83] The judgment of Lamer J. in *Slaight* sets out the framework for applying the *Charter* to administrative decision-making. Although Lamer J.'s judgment was in dissent, the majority expressed "complete agreement" with his discussion of the applicability of the *Charter* in this context: at 1048. Justice Lamer observed that there could be no question that the *Charter* applied to the arbitrator's orders. While the arbitrator was exercising a discretionary statutory power, legislation that creates a discretion cannot be interpreted as conferring a power to infringe the *Charter* "unless, of course, that power is expressly conferred or necessarily implied": *Slaight* at 1078, emphasis added. Justice Lamer explained at 1078:

2025 BCCA 83 (CanLII)

> Although this Court must not add anything to legislation or delete anything from it in order to make it consistent with the *Charter*, there is no doubt in my mind that it should also not interpret legislation that is open to more than one interpretation so as to make it inconsistent with the *Charter* and hence of no force or effect. Legislation conferring an imprecise discretion must therefore be interpreted as not allowing the *Charter* rights to be infringed.

[84] Where the power to limit *Charter* rights is expressly conferred or necessarily implied, it is the legislation itself that must be subject to the s. 1 justification test set out in *Oakes*. However, where the legislation does not confer, expressly or by necessary implication, the power to limit *Charter* rights, then it is the administrative decision or order itself that is the subject of the justification analysis: *Slaight* at 1080. Justice Lamer, again with the endorsement of the majority, held that an administrative order that limits a *Charter* right is also subject to the s. 1 *Oakes* test.

[85] While *Slaight* remains a foundational decision in understanding the application of the *Charter* to administrative decision-making, the law has evolved and, in some respects, changed. Significantly, in *Doré v. Barreau du Québec*, 2012 SCC 12, the Court moved away from a strict application of the s. 1 *Oakes* test in assessing an administrative decision for *Charter* compliance in favour of a “more flexible administrative approach” to balancing *Charter* protections in the exercise of administrative discretion: *Doré* at para. 37.

[86] *Doré* involved a challenge to the decision of a disciplinary body to reprimand a lawyer for the content of a letter he wrote to a judge. The lawyer did not challenge the constitutionality of the provision in the Quebec *Code of ethics of advocates*, R.R.Q. 1981, c. B-1, r. 1, that authorized the reprimand. Instead, he alleged that the reprimand decision itself was unconstitutional because it infringed his freedom of expression under s. 2(b) of the *Charter*.

[87] As noted by the Court in *Doré*, a discretionary administrative decision made by a decision-maker within the scope of their mandate is normally judicially reviewed on the deferential standard of reasonableness: at para. 3. The question was whether reasonableness should be replaced by the s. 1 *Oakes* test where the administrative decision-maker was required to account for *Charter* protections.

2025 BCCA 83 (CanLII)

[88] In moving away from the s. 1 *Oakes* test in favour of an administrative law framework, the Court found that such a change was justified, at least in part, by the "completely revised relationship between the *Charter*, the courts, and administrative law" since *Slaight*: *Doré* at para. 30. This changed relationship included the policy of deference on judicial review articulated in *Dunsmuir v. New Brunswick*, 2008 SCC 9, which was based on legislative intent and the specialized expertise of administrative decision-makers: *Doré* at para. 30. The Court also noted that post-*Slaight* cases routinely emphasized that administrative decision-makers are required to consider *Charter* rights and values within the scope of their expertise.

[89] Under the administrative law framework set out in *Doré*, the decision-maker must "balance the severity of the interference of the *Charter* protection with the statutory objectives": *Doré* at para. 56. On judicial review, the question is whether the decision reflects a "proportionate balancing" of the relevant *Charter* protections: at para. 57. If, in exercising their discretion, an administrative decision-maker has proportionately balanced the *Charter* protections with the statutory objectives, then the decision will be found to be reasonable. While this was a move away from a formulaic application of the *Oakes* test, the Court observed that the administrative framework used the same "justificatory muscles"; that is, balance and proportionality: at para. 5.

[90] In *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12 [*Loyola*], the Supreme Court of Canada affirmed the *Doré* framework, with some modification. In *Loyola*, the Court identified a preliminary issue in the analysis: "whether the decision engages the *Charter* by limiting its protections": at para. 39. If such a limitation has occurred, then the question becomes whether the decision reflects a proportionate balancing of *Charter* protections in light of statutory objectives.

[91] The Supreme Court of Canada has endorsed and applied the *Doré*/*Loyola* framework in subsequent decisions: *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32 [*TWU*] at paras. 57–59; *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 at paras. 59–74.

2025 BCCA 83 (CanLII)

[92] In *Vavilov*, the Court held that the standard of review of correctness continues to apply to the judicial review of an administrative decision concerning a constitutional question. However, the Court distinguished between a case in which a decision-maker has determined a constitutional challenge to its enabling statute and a case in which a decision-maker has had to proportionately balance *Charter* protections. *Vavilov* confirmed that in the latter category, the *Doré/Loyola* framework applied: *Vavilov* at para. 57.

[93] Despite this apparent consistency of approach, there are at least two remaining areas of uncertainty in the application of the *Doré/Loyola* framework. I will briefly describe these areas of uncertainty only by way of explaining why it is unnecessary to attempt to resolve them in the context of the present appeal.

[94] First, there is the question of the precise content of *Charter* values, and whether such values have an independent function in the exercise of administrative discretion where no *Charter* right is implicated. The debate over these questions is usefully framed by the majority and dissenting judgments in *TWU*. However, this is not a debate that is triggered on the facts of this case. Here, there is no dispute that the Adjudicator's exercise of statutory power implicated a *Charter* right: the protection of freedom of religion under s. 2(a). The appellants have not raised *Charter* values, as distinct from *Charter* rights, in support of their constitutional challenge.

[95] Second, there is the question of standard of review, and the recent decision of the Supreme Court of Canada in *York Region District School Board v. Elementary Teachers' Federation of Ontario*, 2024 SCC 22 [*York Region*]. *York Region* involved a judicial review of a labour arbitrator's decision dismissing the grievance of two teachers who were disciplined after a school search of their computers. The majority found that the arbitrator was required to apply s. 8 of the *Charter* in considering the teachers' privacy rights, yet her reasons did not indicate any consideration of *Charter* rights. The majority also held that the arbitrator's decision was reviewable on a standard of correctness. This was because the "issue of constitutionality on judicial review—of whether a *Charter* right arises, the scope of its protection, and the

2025 BCCA 83 (CanLII)

appropriate framework of analysis—is a 'constitutional questio[n]' that requires 'a final and determinate answer from the courts'": *York Region* at para. 63, citing *Vavilov* at paras. 53, 55.

[96] It is difficult to assess the full implications of *York Region* for the standard of review analysis under the *Doré/Loyola* framework, particularly because the majority did not expressly purport to overrule or modify the established framework. At the very least, *York Region* seems to suggest that different standards of review may apply to the two stages of the analysis: (1) correctness to the preliminary question identified in *Loyola* as to whether the *Charter* applies (which would include the scope of the *Charter* protection and the appropriate framework of analysis), and (2) reasonableness to the proportionate balancing that occurs at the second stage. Assuming, without deciding, that *York Region* establishes a bifurcated standard of review in this context, the only issue of real contention on this appeal as it relates to the Production Order is whether the Adjudicator proportionately balanced *Charter* protections. I will elaborate on this point later in these reasons.

Is the Commissioner empowered to consider Charter rights and values in exercising discretion under s. 38(1)(b) of PIPA?

[97] With that background in mind, I return to the question of whether the Commissioner is empowered to account for *Charter* rights when exercising discretion under s. 38(1)(b) of *PIPA*. To use the language of *Slaight*, the question is whether s. 38(1)(b) of *PIPA*, expressly or by necessary implication, confers the power on the Commissioner to infringe the *Charter*; or whether it confers an "imprecise discretion" that must be exercised in a *Charter*-compliant manner. If the legislation does not confer power to infringe the *Charter* on the Commissioner, then there is force to the AGBC's argument that the appellants' constitutional challenge is properly understood as a challenge to a specific administrative decision—the discretionary decision to issue the Production Order—rather than a challenge to legislation.

[98] As I have noted, the AGBC also argues that in interpreting the scope of the Commissioner's discretion under s. 38(1)(b) of *PIPA*, it is unnecessary to consider

2025 BCCA 83 (CanLII)

other provisions of the statute, including s. 23(1)(a). The AGBC says this is because the Supreme Court of Canada has directed, in cases such as *Doré*, that an administrative decision-maker is always required to proportionately balance *Charter* rights and values in exercising statutory discretion. Accordingly, the AGBC argues that the only narrow issue that arises at this stage of the proceeding is whether the Adjudicator proportionately balanced *Charter* rights in exercising her discretion to issue the Production Order.

[99] I disagree with this submission. I do not interpret the holding in cases such as *Doré* that administrative decision-makers are required to account for *Charter* rights and values in exercising discretion to mean that decision-makers are free to ignore clear indications in the legislation that *Charter* protections cannot be considered. As held in *Slaight*, legislative discretion should not be interpreted to confer a power to infringe the *Charter*, "unless, of course, that power is expressly conferred or necessarily implied": at 1078, emphasis added. It may be exceptional for a legislature to clearly prohibit an administrative decision-maker from considering *Charter* rights and values in exercising their statutory discretion. However, it is certainly conceivable that a legislature could intend to restrict, for example, freedom of speech to achieve certain statutory objectives based on the belief that such a restriction was generally justified under s. 1. In that event, I cannot see how it would be open to an administrative decision-maker to proportionately balance *Charter* rights and values on a case-by-case basis when that would undermine the legislation. The issue in such a case would be whether the legislation itself could be justified.

[100] In the present case, the appellants argue that the Commissioner's discretion in s. 38(1)(b) of *PIPA* is constrained by the mandatory language of s. 23(1)(a). In other words, the appellants say that s. 38(1)(b) does not provide an "imprecise discretion" within the meaning of *Slaight*, but rather a discretion that is constrained by the mandatory duty to provide access in s. 23(1)(a). If, as argued by the appellants, s. 23(1)(a) prohibits the Commissioner from accounting for *Charter* protections in adjudicating information requests under *PIPA*, then it is not open to the Commissioner to consider the *Charter* in exercising discretion under s. 38(1)(b).

2025 BCCA 83 (CanLII)

While I consider the appellants' interpretation of s. 23(1)(a) to be implausible, this provision cannot be simply ignored in the analysis given the appellants' arguments.

[101] It is equally true that s. 23(1)(a) cannot be considered in isolation, as the appellants implicitly argue. The modern approach to statutory interpretation requires the court to consider the legislative text, context, and purpose of *PIPA*: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 1998 CanLII 837 at para. 21; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para. 26 [*Bell ExpressVu*].

[102] As the AGBC submits, *PIPA* is not a self-enforcing scheme. Where an applicant is dissatisfied with an organization's response to a request for information, their only remedy is to invoke the powers of the Commissioner. If, following an inquiry, the Commissioner determines that the organization was "authorized to refuse the individual access to his or her personal information", then the Commissioner must either confirm the decision of the organization or require that it be reconsidered: *PIPA*, s. 52(2)(b) (emphasis added). The chambers judge found that the Commissioner has the power to account for the appellants' *Charter* rights in deciding what, if anything, from the Disputed Records must be produced to the Applicants: Reasons at para. 142. While this point was not addressed in detail by the chambers judge, he must be taken to have implicitly interpreted s. 52(2)(b) of *PIPA* to support this conclusion. In other words, the chambers judge must have concluded that the word "authorized" in s. 52(2)(b) means "authorized by law", including the *Charter*.

[103] The appellants argue that the chambers judge was wrong in his implied interpretation of s. 52(2)(b) of *PIPA*. They say the Commissioner has no authority under s. 52(2)(b) to confirm an organization's decision to refuse access to an applicant on the basis that the disclosure would unjustifiably infringe a *Charter* right. The appellants' proposed interpretation of s. 52 is not precisely articulated. As I understand their argument, the appellants appear to say that the only basis on which the Commissioner could find that an applicant was "authorized" to refuse access within the meaning of s. 52(2)(b) is that the information falls within an express exception to the right of access in s. 23. However, that is not what s. 52(2)(b) says. If

2025 BCCA 83 (CanLII)

the legislature had intended to be so restrictive, s. 52(2)(b) could have been drafted to state: "if the commissioner determines that the organization is authorized by an exception listed in s. 23 to refuse the individual access". The term "authorized" on its own plausibly encompasses an organization's decision to refuse access to personal information on the basis that providing access would constitute an unjustified infringement of *Charter* protections.

[104] To the extent that the provisions of *PIPA* are ambiguous, the court should adopt an interpretation that is compliant with the *Charter*: *Bell ExpressVu* at para. 62; *Slaight* at 1078. The appellants do not point to any indication of a legislative intent to empower the Commissioner to infringe the *Charter*, or to prohibit the Commissioner from considering *Charter* rights and values in exercising discretion under s. 38(1)(b) of *PIPA*. In my view, within *PIPA*'s comprehensive statutory scheme, the *Charter* necessarily acts as an implicit limit on the absolute duty of an organization under s. 23(1)(a) to provide access to personal information on request. In compelling the disclosure of information to the Commissioner under s. 38(1)(b) of *PIPA*, or to an applicant under s. 52, the Commissioner must proportionately balance *Charter* protections with statutory objectives.

[105] It follows that I agree with the AGBC that the true source of the alleged constitutional infringement in relation to the Production Order is not the legislation, but rather the Adjudicator's discretionary decision to issue the Order. I acknowledge, again, that the Adjudicator accepted the constitutional challenge as framed by the appellants, and concluded that ss. 23(1)(a) and 38(1)(b) infringed the appellants' s. 2(a) *Charter* rights. However, for the reasons I have stated, in my view she erred in her conception of the challenge. The Adjudicator failed to undertake the necessary first step of a constitutional challenge to legislation, which is to interpret the impugned provisions. This oversight is perhaps understandable given the manner in which the case was argued before her. However, the question of whether the impugned provisions of *PIPA* infringed the *Charter* had to be answered correctly by the Adjudicator.

2025 BCCA 83 (CanLII)

[106] The conclusion that the Adjudicator's decision to issue the Production Order was the true source of the *Charter* infringement leads to the question of whether this decision reflects a proportionate balancing of *Charter* rights, and is therefore reasonable. I will address that question shortly. First, I must address a further constitutional argument raised by the appellants, which requires separate consideration; that is, whether the legislature was constitutionally required to provide a blanket exemption in *PIPA* for documents created for a religious purpose.

Is a blanket exemption for records created for a religious purpose constitutionally required?

[107] The appellants' arguments on appeal heavily press the point that the AGBC presented no evidence to the Adjudicator to justify the legislature's failure to enact a blanket exemption in *PIPA* for documents created for a religious purpose. The appellants say that such documents could easily be added to the list of exemptions in ss. 3(2) or 23(3) of *PIPA* without undermining statutory objectives. They say that the fact that *PIPA* protects other categories of information from disclosure (such as the exemption in s. 3(2)(b) for information collected or used for journalistic, artistic or literary purposes) creates a "hierarchy of *Charter* rights", which is itself unconstitutional. Thus, the appellants argue that even if *PIPA*, properly interpreted, permits the Commissioner to account for *Charter* protections on a case-by-case basis, this is insufficient to meet constitutional requirements.

[108] The appellants advance these arguments as part of their challenge to the Adjudicator's s. 1 analysis, effectively placing the burden on the AGBC to justify the failure to enact such an exemption. However, the arguments overlook the nature and scope of the s. 2(a) infringement that the Adjudicator actually found. Where legislation is challenged on *Charter* grounds, it is necessary to identify the scope and nature of the rights limitation before turning to the s. 1 analysis: *B.C. Freedom of Information and Privacy Association v. British Columbia (Attorney General)*, 2017 SCC 6 at paras. 17, 19. As I have reviewed, the Adjudicator did not find that s. 2(a) of the *Charter* requires a blanket exemption in respect of information created for a religious purpose. Instead, she found that a production order would infringe the s. 2(a) rights of Mr. Vabuolas and Mr. Sidhu in these very specific circumstances,

2025 BCCA 83 (CanLII)

because of their evidence that the particular records in issue were an expression of their religious convictions and conscience.

[109] In their factum, the appellants argue that “all information collected for a religious purpose *is* protected by section 2(a) of the *Charter*” (emphasis in the original). However, they cite no authority for this proposition and it is inconsistent with the contextual nature of the s. 2(a) right. The right to freedom of religion under s. 2(a) of the *Charter* is infringed where a claimant demonstrates: (1) that they sincerely believe in a practice or belief that has a nexus with religion, and (2) that the impugned measure interferes with that practice or belief in a non-trivial manner: *Amselem* at para. 65. In some cases, such as this one, it may be that the compelled disclosure of information collected for a religious purpose will limit rights under s. 2(a) of the *Charter* because disclosure will amount to a non-trivial interference with a religious practice or belief. However, one can imagine that many records collected for a religious purpose (birth, death, and marriage records, as well as residential school records, to name a few) could be disclosed without an attendant breach of s. 2(a).

[110] The decision of the Supreme Court of Canada in *R. v. Gruenke*, [1991] 3 S.C.R. 263, 1991 CanLII 40, supports a case-specific approach to determining whether religious communications have constitutional protection from disclosure. The issue in *Gruenke* was the admissibility of evidence from a pastor and lay counsellor of a church regarding communications the accused made to them about her involvement in a crime. The Court held that there is no *prima facie* privilege for religious communications at common law. While the Court accepted that the common law privilege should be informed by s. 2(a) of the *Charter*, it did not accept that s. 2(a) mandated a blanket privilege (at 289):

2025 BCCA 83 (CanLII)

> While the value of freedom of religion, embodied in s. 2(*a*), will become significant in particular cases, I cannot agree with the appellant that this value must necessarily be recognized in the form of a *prima facie* privilege in order to give full effect to the *Charter* guarantee. The extent (if any) to which disclosure of communications will infringe on an individual's freedom of religion will depend on the particular circumstances involved, for example: the nature of the communication, the purpose for which it was made, the manner in which it was made, and the parties to the communication.
>
> [Emphasis added.]

[111] Accordingly, the Court concluded that the question of whether religious communications are privileged should be addressed on a case-by-case basis in accordance with the Wigmore criteria.

[112] While I acknowledge that *Gruenke* was about an assertion of common law privilege for religious communications, the Court's analysis was informed by s. 2(a) of the *Charter*. The Court's observation that "the extent…to which disclosure of communications will infringe on an individual's freedom of religion will depend on the particular circumstances" is equally applicable here: *Gruenke* at 289. The appellants' various policy arguments as to why information collected for a religious purpose should be subject to an exemption from *PIPA* do not establish that a blanket exemption is constitutionally required for all information collected for a religious purpose.

[113] Given my conclusion that *PIPA* empowers the Commissioner to account for *Charter* protections in case-specific circumstances, the only question left to address is whether the Adjudicator's decision to issue the Production Order was reasonable, in the sense that it reflected a proportionate balancing of the relevant *Charter* protections.

Is the Adjudicator's decision to issue the Production Order reasonable?

[114] Despite my conclusion that the Adjudicator erred in finding that the impugned provisions of *PIPA* violate s. 2(a) of the *Charter* but are saved by s. 1, I consider it unnecessary to remit this matter to the Adjudicator for reconsideration. The Adjudicator's reasons on the constitutional issues were entirely focussed on the specific factual circumstances before her. She found that the rights of Mr. Vabuolas

2025 BCCA 83 (CanLII)

and Mr. Sidhu would be infringed if they were required to disclose the Disputed Records because of their sincere belief that the disclosure in this context would be contrary to their religious beliefs. The Adjudicator's discussion of minimal impairment and proportionate effects in her s. 1 analysis also focussed on the fact-specific infringement of Mr. Vabuolas' and Mr. Sidhu's s. 2(a) *Charter* rights. The Adjudicator's analysis is consistent with a case-specific proportionate balancing of *Charter* rights under the *Doré/Loyola* framework.

[115] In my view, the Adjudicator's thorough reasons for decision permit this Court to conclude that she proportionately balanced the appellants' *Charter* rights with statutory objectives in deciding to issue the Production Order. While the Adjudicator assessed proportionality through the lens of the s. 1 *Oakes* test, this test involves the same "justificatory muscles" as proportionate balancing under the *Doré/Loyola* framework: *Doré* at para. 5. The Adjudicator's reasons are sufficient to demonstrate that she grappled with the substance of the inquiry required by *Doré/Loyola*.

[116] The appellants' arguments on appeal focus on the Adjudicator's alleged failure to give proper weight to their *Charter* rights, and not on her identification of the relevant *Charter* protections at play, the scope of the protections, or the appropriate framework of analysis to be applied to the protections. In addressing the alleged breach of s. 2(a) of the *Charter*, the Adjudicator's analysis was informed by *Amselem*. The Adjudicator also acknowledged the relevance of s. 8 of the *Charter*, and cited leading Supreme Court of Canada cases including *British Columbia Securities Commission v. Branch*, [1995] 2 S.C.R. 3, 1995 CanLII 142. The appellants do not take issue with her articulation of these relevant legal principles. Rather, their position, in essence, is that the Adjudicator failed to give appropriate weight to the *Charter* interests given their predominant importance.

[117] Accordingly, as I indicated earlier, I need not address the uncertainty—arising from *York Region*—regarding the standard of review applicable to the question of whether the *Charter* applies (which includes the scope of the *Charter* right, and the appropriate framework of analysis). Reasonableness is the applicable standard of

2025 BCCA 83 (CanLII)

review for the only disputed issue here: whether the Adjudicator proportionally balanced the appellants' *Charter* rights with statutory objectives.

[118] In relation to the alleged breach of s. 2(a) of the *Charter*, the Adjudicator provided thorough and logical reasons for her conclusion that the impact of the Production Order on the elders' protected *Charter* rights was outweighed by the importance of the statutory objectives of *PIPA*. She accepted that compelling the appellants to disclose the Disputed Records to her would infringe the elders' freedom of religion under s. 2(a) by requiring them to act contrary to the precepts of their faith. However, she also found that the infringement would be limited because the Disputed Records would only be disclosed to her, and only for the limited purpose of allowing her to decide the questions of fact and law arising in the inquiry. The Adjudicator noted that s. 41 of *PIPA* prohibited her from disclosing information obtained in the performance of her duties under the Act, other than in very limited circumstances.

[119] The Adjudicator conducted a similar balancing exercise in relation to the appellants' argument that the Production Order constituted a seizure within the meaning of s. 8 of the *Charter*, and that a seizure in these circumstances was unreasonable. The Adjudicator assumed that the s. 8 *Charter* protections were relevant in these circumstances. However, the Adjudicator noted that any seizure was authorized by law because of the express statutory authority in s. 38(1)(b) of *PIPA*. She stated that in her review of the Disputed Records, she would be limited to ascertaining whether they contained personal information that ought to be disclosed to the Applicants. Accordingly, she found that producing the Disputed Records would not be an unreasonable seizure in these circumstances.

[120] Significantly, in her analysis of the appellants' claims under both ss. 2(a) and 8 of the *Charter*, the Adjudicator concluded that without being able to see the Disputed Records, she would be effectively unable to perform her inquiry powers under *PIPA*. Among other things, the Adjudicator stated that she was "not confident that the [appellants'] description of the records is accurate": at para. 155.

2025 BCCA 83 (CanLII)

[121] The appellants submit, in essence, that the Adjudicator ought to have taken at face value their assertions that disclosure of the Disputed Records would constitute an unjustified infringement of the *Charter*. Such an approach does not involve a balancing of *Charter* protections with statutory objectives, but rather accords priority in every case to an organizations' assertion that a production order would unjustifiably infringe *Charter* rights. It is tantamount to the type of categorical exemption from the legislation that I have already concluded is not constitutionally required.

[122] In the Adjudicator's view, the evidence tendered by the appellants in this case was not sufficiently complete or certain to allow her to determine what information, if any, the Applicants had the right to access under *PIPA*. The Adjudicator's conclusion that a production order was necessary to ensure that statutory objectives could be met reflected a proportionate balancing of *Charter* protections in the circumstances of this case. As such, in my view, her decision to issue the Production Order was reasonable.

Disposition

[123] I would dismiss the appeal.

"The Honourable Madam Justice Horsman"

I AGREE:

"The Honourable Justice Dickson"

I AGREE:

"The Honourable Justice Fleming"

2025 BCCA 83 (CanLII)