

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



Grand Forks Congregation of Jehovah's Witnesses and Coldstream Congregation of Jehovah's Witnesses (Re), 2022 BCIPC 35

Office of the Information & Privacy Commissioner for British Columbia, Adjudicator Barker, 20 June 2022

Former members of a faith-based organisation requested access to their personal information from the organisation under privacy legislation.

Key words: Privacy, British Columbia, Canada, Jehovah's Witnesses, Personal Information Protection Act, Charter of Rights and Freedoms, Freedom of Religion

1. Jehovah's Witnesses are a religious denomination that practice the Christian faith, meeting in small congregations for community worship.
2. LW and GW were former Jehovah's Witnesses who, sometime after leaving their congregations, requested copies of records that contained information about them from their respective congregations.
3. The congregations refused to provide the information, and the former members applied to the Office of the Information & Privacy Commissioner for British Columbia (OIPC) for review of the matter.
4. The Watch Tower Bible and Tract Society of Canada (Watch Tower Canada), a charitable religious corporation incorporated under the federal [Canada Not-for-profit Corporations Act](#), represents Jehovah's Witnesses in Canada and applied for a stay of the OIPC proceedings on the basis that the British Columbia [Personal Information Protection Act](#) (PIPA) is unconstitutional and violates the organisation elders' section 2(a) Charter right to religious freedom.
5. The Attorney General of British Columbia applied for a stay of proceedings until OIPC had completed its inquiry, which was granted by the Court.
6. LW and GW specifically sought access to a confidential religious summary prepared by a committee of three congregation elders pertaining to spiritual status decisions involving them.

7. The Adjudicator found that PIPA applies to the elders' and congregations' collection, use and disclosure of personal information. The elders and the congregations were "organisations" under PIPA.
8. The congregations refused to release the records to the Adjudicator, who decided that it was necessary to review the documents to make a determination.
9. Watch Tower Canada and the elders contended that PIPA's legislative scheme as a whole was unconstitutional in its application to them because of the [Canadian Charter of Rights and Freedoms](#) (Charter).
10. The Adjudicator found that the impugned measures in PIPA infringed section 2(a) (freedom of religion). The Adjudicator explained (at [94]):

I find that what PIPA requires of the organisations, in terms of giving the applicants and the commissioner access to the records, is not a trivial or insubstantial interference with the elders' religious beliefs and practices. Given the religious precepts under which the two congregations are organized and function, only JV and PS have been authorized by a body of elders to view and deal with the disputed records. The respondents have, I conclude, established that being compelled to give the applicants access to their own personal information under s. 23, or to allow the commissioner to review the records under s. 38, would infringe the right of JV, PS and the other elders in their congregations to freedom of religion under s. 2(a) Charter.

11. However, the infringement was justifiable under section 1 of the Charter as the infringing measures were proportionate when balanced against the benefits of those measures.
12. The congregations did not establish that PIPA infringed section 2(b) (freedom of expression), section 2(d) (freedom of association) or section 8 (unreasonable search and seizure) of the Charter.
13. The Adjudicator ordered that the congregations were required to produce all of the records in their custody, or under their control, that contained GW's and LW's personal information.

IMPLICATIONS



Once the Adjudicator reviews the records and decides what personal information in them, if any, the applicants are entitled to access under PIPA, consideration would also be given to protecting the personal information of third parties such as the elders.

VIEW THE CASE



This case may be viewed at <https://www.canlii.org/en/bc/bcipc/doc/2022/2022bcipc35/2022bcipc35.html>

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