

CANADIAN ASSOCIATION OF PARLIAMENTARY ADMINISTRATORS

AUGUST 18, 2026

GRACE HESSION DAVID, COMMISSIONER

OFFICE OF THE SASKATCHEWAN INFORMATION AND PRIVACY COMMISSIONER

*CLEARVIEW AI INC. v BC (INFORMATION
AND PRIVACY COMMISSIONER),*

2026 BCCA 67

CLEARVIEW INC. v BC INFORMATION AND PRIVACY COMMISSIONER, 2026 BCCA 67

1. Is *PIPA* Constitutionally Applicable to Clearview Inc.? **Yes.**

[52] Clearview’s image crawler searches public websites, such as Facebook, that make billions of facial images available worldwide. Clearview’s success as a business depends on its ability to acquire facial data on a global scale to build the databank on which its search engine runs, and it says it is unable to exclude BC from its image crawler’s data acquisition activities. That means Clearview’s access to BC (and every other jurisdiction) is essential to its operation. In my view, this supports a conclusion that BC’s relationship to Clearview is substantial, not incidental.

R v BYKOVETS,

2024 SCC 6

This case had to balance the following interests:

An individual's online privacy interests (s. 8 of the Charter)

AGAINST

Society's (the state's) interest in safety/security

THE INDIVIDUAL'S INTERESTS WON OUT

*CLEARVIEW INC. v BC INFORMATION
AND PRIVACY COMMISSIONER,
2026 BCCA 67*

2. Was the Commissioner’s ruling reasonable in its rejection of the application of the “publicly available” exemption? **Yes.**

[81] ...the purpose of protection of privacy statutes is to provide individuals with some measure of control over the use of their personal information. An individual’s right to control the use of their personal information is intimately connected to their individual autonomy, dignity and privacy. This protection is characterized as being “quasi constitutional” because of the fundamental role privacy plays in the preservation of a free and democratic society.

*CLEARVIEW INC. v BC INFORMATION
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2026 BCCA 67

3. Was the Commissioner’s ruling reasonable in its finding that Clearview’s main purpose was commercial rather than in the aid of law enforcement? **Yes.**

[98] ...The fact that Clearview sells personal information to law enforcement does not make its purpose “law enforcement”. I note Clearview also distanced itself from law enforcement, submitting that any detriment arising to individuals from subsequent prosecution was not its responsibility ...



R v Fade Dawood, 2024 ONSC 3918

[15] The last line of inquiry leads to the inevitable conclusion that the subjective expectation of privacy is not objectively reasonable. A reasonable expectation of privacy is defined by shared moral values. It is shaped by an aspirational vision of the world that we wish to live in. Societal interests in protecting individual dignity, integrity, and autonomy must be balanced against effective law enforcement and other societal interests. Concluding that the applicant, Mr. Dawood, has a reasonable expectation of privacy in these circumstances would stymie police investigations, wildly skew the balance between privacy and societal interests in favour of the individual, and imperil our collective security.

*FACEBOOK INC. v PRIVACY
COMMISSIONER OF CANADA,*

argued at the Supreme Court of Canada
March 19, 2026

PRIVACY COMMISSIONER CANADA v FACEBOOK INC.

2023 FEDERAL COURT JUDGEMENT 533

The Federal Court trial division ruled that:

1. When people agreed to join onto the social media site, there was not enough evidence available for the court to conclude that Facebook Inc. failed to obtain “**meaningful consent**” from users and friends of users that third party applications could use their personal information.
2. Once a user’s personal information is disclosed to third party application – the privacy legislation (PIPEDA) does not require Facebook Inc. to **monitor and safeguard** the user information further.

*PRIVACY COMMISSIONER CANADA v
FACEBOOK INC.*

2024 FEDERAL COURT OF APPEAL 140

[106] In 2018, Mark Zuckerberg acknowledged before the US Senate that Facebook had failed “the basic responsibility of protecting people’s information”, that it had not done enough to prevent Facebook’s tools from being used for harm and that Mark Zuckerberg himself imagined that probably most people do not read the whole Data Policy and Terms of Service of Facebook. Additionally, Facebook’s Vice President and Chief Privacy Officer announced in a news release in 2018 that the Cambridge Analytica breach “showed how much more work we need to do to enforce our policies and help people understand how Facebook works and the choices they have over their data”.

*JUSTICE
SUZANNE
CÔTÉ*



*CHIEF
JUSTICE
WAGNER*



*JUSTICE
KASIRER*



JUSTICE JAMAL



*Mr.
MICHAEL
FEDER, K.C.*

TORYS LLP



*PRIVACY
COMMISSIONER
OF CANADA*

*Mr. PHILIPPE
DUFRESNE*

(and myself)



“DEEPFAKE” Defined – S.162.1(2)

Criminal Code of Canada

Definition of *intimate image*

(2) In this section, *intimate image* means

(a) a visual recording of a person made by any means including a photographic, film or video recording,

(b) a visual representation that is made by any electronic or mechanical means, including by means of artificial intelligence software, and that shows an identifiable person who is depicted as nude, as nearly nude, as exposing their sexual organs or as engaged in explicit sexual activity, if the depiction is likely to be mistaken for a visual recording of that person.



R v LaRouche, 2023 QCCQ 1853

[64] To create a successful deepfake, a user must have source material and destination material. This can be done using a bank of photographs or video clips. For example, it takes between 3,000 and 8,000 photographs of the same face to create a sufficient source file to export a face onto the body of another person. The software sequences a video excerpt image by image to obtain a bank sufficient to create a minimally realistic deepfake.

R v Flett, 2026 ABKB 296

[54] I do not rule out the possibility that, in an appropriate case, evidence of alteration or fabrication could be led at the admissibility stage in an attempt to overcome circumstantial evidence of authenticity. How such a contest of evidence would play out in an informed analysis is for another day. However, merely raising the spectre of a “deepfake” in the abstract is not enough to undercut circumstantial threshold authenticity.

Bill C-34: “Act to enact the Digital Safety Act and the Digital Safety Commission of Canada” – first reading: June 10, 2026

Bill C-36: “Act to enact the Protecting Privacy and Consumer Data Act – amending PIPEDA” – first reading: June 15, 2026

Age Verification vs Age Estimation

Age Verification: a piece of government identification is required that is then stored online and associated with the email/password for future use.

Age Estimation: the service uses artificial intelligence to scan the face of the user. Biometrics can predict the age. Artificial intelligence can also scan the internet for other predictors of the user's age.

New Digital Safety and Privacy Commission

- This will be a commission composed of five members;
- May issue binding orders;
- May levy fines up to the greater of \$10M CDN or 3% of gross annual global revenue;
- Appointments to Commission made by federal government and will report to Parliament. No longer an independent body.