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INFORMATION & PRIVACY
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— for —
British Columbia

Order 01-12

BRITISH COLUMBIA GAMING COMISSION

David Loukidelis, Information and Privacy Commissioner
April 9, 2001

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Summary: BCGC employee conducted a field review of activities of a society, NISS, as a result of which NISS's bingo licence was revoked in accordance with its terms and conditions and BCGC policy. BCGC field review qualified as investigation into a possible violation of law. Personal information in the review report of individuals associated with NISS was therefore compiled, and identifiable, as part of an investigation into a possible violation of law. Review report also contained information respecting the assets and finances of those individuals. Presumed unreasonable invasions of third party privacy not rebutted by applicant.

Key Words: personal information – investigation into a possible violation of law – presumed unreasonable invasion of personal privacy.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 15(1)(a), 22(1), 22(2)(a), (e), (g) and (h), 22(3)(a) to (j), 22(4)(j) and 23.

Authorities Considered: B.C.: Order No. 14, 1994, [1994] B.C.I.P.C.D. No. 17; Order 00-08, [2000] B.C.I.P.C.D. No. 8; Order 00-18, [2000] B.C.I.P.C.D. No. 21. **Ontario**: Order P-1399, [1997] O.I.P.C. No. 139.

Cases Considered: *Nanaimo Nonviolence Society* v. *British Columbia Gaming Commission*, 2001 BCSC 81, [2001] B.C.J. No. 125 (S.C.).

1.0 INTRODUCTION

[1] On May 3, 2000, the British Columbia Gaming Commission ("BCGC") – exercising its authority under the *Lottery Act* – completed a review of the operations of the Nanaimo Immigrant Settlement Society ("NISS"). That review, carried out by the BCGC's Nanaimo regional office, resulted in a document called a 'Field Review Report'.

The review was performed to ensure NISS's compliance with the BCGC's *Terms and Conditions for Charitable Gaming and Access to Gaming Revenue* ("BCGC Conditions").

[2] According to the report, NISS was no longer eligible to have access to gaming revenue. The NISS's financial records were said to be incomplete, there was a very limited paper trail regarding the use of charitable gaming funds and NISS board members had allegedly directly (and indirectly) received financial benefits from the NISS's operations. All of these things were a violation of the BCGC Conditions and the bingo licence BCGC issued to the NISS.

[3] As a result of this, the BCGC revoked the NISS's bingo licence on May 13, 2000. This action, according to the BCGC's initial submission in this inquiry, "generated significant interest within the community" and prompted the public and the media to contact it for more information. Curiously enough, given the issue in this inquiry, the BCGC created a public version of the Field Review Report that, according to the BCGC's initial submission (at p. 2),

> … could be made available without a formal request by removing all personal information to ensure that none would be disclosed contrary to the *Freedom of Information and Protection of Privacy Act* ("the Act"). The public version of the report was issued to those seeking additional information.

[4] Having prepared this anonymized version for public disclosure, the BCGC appears to have had second thoughts. When it received the applicant's June 5, 2000 access request, under the *Freedom of Information and Protection of Privacy Act* ("Act"), for "an unedited copy" of the report, the BCGC decided that it was at liberty to disclose the personal information of NISS board members and of the NISS's accountant without unreasonably invading their personal privacy within the meaning of s. 22(1) of the Act.

[5] It arrived at this decision, having given notice to the affected third parties, under s. 23 of the Act, and having received vigorous representations from two of them as to why their personal information should not be disclosed. The BCGC decided to give the applicant – who is a reporter for the *Nanaimo Daily News* – access to the report. As it is required to do by s. 23, the BCGC gave notice of this decision to the affected third parties, two of whom requested a review, under s. 53 of the Act, of the BCGC's decision. Because the matter did not settle during mediation, I held a written inquiry into the matter under s. 56 of the Act.

[6] A third individual whose personal information is contained in the report apparently did not respond to the BCGC's s. 23 notice in the first instance. One of the two individuals who made representations to the BCGC, and who later requested a review under s. 53 of the Act, ultimately did not participate in the inquiry.

2.0 ISSUE

[7] The only issue in this inquiry is whether the BCGC is required, by s. 22(1) of the Act, to refuse to disclose personal information to the applicant. Under s. 57(3)(b) of the Act, the applicant bears the burden of establishing that the personal information can be disclosed without unreasonably invading the personal privacy of the third parties.

3.0 DISCUSSION

[8] **3.1 Protection of Personal Privacy** – Section 22(1) of the Act requires a public body such as the BCGC to refuse to disclose personal information if its disclosure would unreasonably invade a third party's personal privacy. Schedule 1 to the Act defines the term "personal information" as "recorded information about an identifiable individual" and gives a non-exhaustive list of examples of personal information. This list includes information about the finances or assets of an individual.

[9] In some cases, personal information will be of a character – or will be created or exist in circumstances – that creates a presumed unreasonable invasion of personal privacy under s. 22(3). That section provides that a disclosure of personal information is presumed to be an unreasonable invasion of personal privacy if any of the presumed unreasonable invasions created by ss. 22(3)(a) through (j) applies. In determining whether s. 22(1) prohibits disclosure of personal information, a public body must consider all relevant circumstances, including those found in s. 22(2). Several of the relevant circumstances set out in s. 22(2) figure in this inquiry.

[10] The aspects of ss. 22(2) and (3) that are relevant here read as follows:

> 22(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,
>
> …
>
> (e) the third party will be exposed unfairly to financial or other harm,
>
> …
>
> (g) the personal information is likely to be inaccurate or unreliable, and
>
> (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.
>
> (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
>
> …

> (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,
>
> …
>
> (f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness,
>
> … .

[11] I should note here that some of the disputed information consists of references to a firm, company, sole proprietorship or trade name associated with one of the third parties. Because of the way in which that name is associated in the Field Review Report with the third party, it is to be treated as the personal information of that third party. It is used in the report as, in effect, the third party's personal name or a synonym for it. This conclusion turns on the specific facts here and is not a statement of general application as regards s. 22 and business entities.

[12] **3.2 Investigation Into a Possible Violation of Law** – According to the BCGC, none of the presumed unreasonable invasions of personal privacy created under s. 22(3) applies in this case. This is the BCGC's argument on that point, found at p. 3 of its initial submission, is as follows:

> BCGC determined that none of the provisions of section 22(4) or 22(3) applied. The only provision of s. 22(3) that might apply is 22(3)(b). BCGC considered whether its review could be considered an "investigation into a possible violation of law". BCGC's field reviews, conducted by staff, are a thorough review of an organization's accountability for gaming funds, their eligibility to access gaming funds, and are intended to assure their compliance with the rules established by BCGC. BCGC's reviews are not concerned with a violation of a particular law but with monitoring licensed gaming activity and adherence to the Terms and Conditions of Licence.
>
> BCGC also considered whether the broad definition of "law enforcement" provided in Schedule 1 of the Act would apply in relation to this section. BCGC concluded that it did not. If the Legislature had intended s. 22(3)(b) to be interpreted according to this broad definition, it would have used the term "law enforcement" rather than the term "investigation into a possible violation of law". As the Act does not provide a definition of "investigation into a possible violation of law", the BCGC assumed a plain language reading of the Act. It is also relevant to note that the Gaming Audit and Investigation Office of the Ministry of Attorney General is the office responsible for conducting "law enforcement" investigations relating to legalized gaming, not BCGC.

[13] I do not, for the following reasons, agree with the BCGC's conclusion that s. 22(3)(b) does not apply here.

Is A "Law" Involved Here?

[14] First, it is irrelevant that the term "law enforcement" is defined in Schedule 1 but is not used in s. 22(3)(b). The term "law enforcement" is used in s. 15 of the Act. It does not follow that the phrase "possible violation of law" in s. 22(3)(b) has a narrower meaning than the defined term "law enforcement". In fact, the Legislature has not defined the term "law" for the purposes of the Act. Here is the definition of "law enforcement", from Schedule 1:

> "law enforcement" means
>
> (a) policing, including criminal intelligence operations,
>
> (b) investigations that lead or could lead to a penalty or sanction being imposed, or
>
> (c) proceedings that lead or could lead to a penalty or sanction being imposed.

[15] This clearly focuses on "policing", "investigations" and "proceedings". It says nothing about what is being enforced through any of these actions or enterprises, *i.e.*, it says nothing specifically about what "law" is. Second, nothing in the Act displaces the principle of statutory interpretation which requires the term "law" to be given the same meaning throughout the Act.

[16] Does the phrase "a possible violation of law" in s. 22(3)(b) include a violation of the BCGC Conditions or any statutory provision associated with them or underpinning them? My predecessor concluded, for the purposes of s. 15, that the term "law" extends to matters that may be criminal, quasi-criminal, regulatory or disciplinary in nature (in the last case, where there is a statutory underpinning for the disciplinary process). I have agreed, for example, that disciplinary proceedings instituted by self-regulating professions under statutory authority qualify as "law" enforcement proceedings for the purposes of s. 15(1). See, for example, Order 00-08. Police discipline proceedings under the authority of the *Police Act* have also been found to deal with "law" enforcement. See, for example, Order No. 14-1994. In Order 00-18, I held that the process invoked by the Superintendent of Motor Vehicles, under the *Motor Vehicle Act*, to determine whether someone is fit to drive qualifies as "law" enforcement within the meaning s. 15(1).

[17] Although I do not foreclose the possibility that there may be other kinds of "law" for the purposes of the Act, I consider that "law" refers to (1) a statute or regulation enacted by, or under the statutory authority of, the Legislature, Parliament or another legislature, (2) where a penalty or sanction could be imposed for violation of that law. The term "law" includes local government bylaws, which are enacted under statutory authority delegated by the *Local Government Act*. I also consider that the definition of "regulation" in s. 1 of the *Interpretation Act* offers guidance in identifying things that may – where a penalty or sanction could be imposed for their violation – properly be considered a "law" for the purposes of the Act:

> "regulation" means a regulation, order, rule, form, tariff of costs or fees, proclamation, letters patent, commission, warrant bylaw or other instrument enacted
>
> (a) in execution of a power conferred under an Act, or
>
> (b) by or under the authority of the Lieutenant Governor in Council,
>
> but does not include an order of a court made in the course of an action or an order made by a public officer or administrative tribunal in a dispute between 2 or more persons.

[18] It will be apparent that not all aspects of this definition assist in elucidating what a "law" is. For example, a "proclamation" is unlikely to carry a penalty or sanction for its breach and is thus not likely to be a law for the purposes of the Act.

[19] The BCGC Conditions articulate rules for the granting, compliance with, suspension and revocation of charitable bingo licenses. Both now and at the time the field review was undertaken and the NISS's licence was cancelled, they set out detailed terms and conditions to be adhered to by all licensees, including the NISS. The preface to the BCGC Conditions, as they existed at the time of the review, described the BCGC as being

> … solely responsible for the licensing of charities, charitable bingo associations, social occasion casinos, charitable ticket raffles and gaming at fairs and exhibitions. … The Commission applies exclusive criteria in deciding which groups are eligible for access to charitable gaming revenue, the dollar amount of access and whether charitable licensees and/or direct charitable access recipients are using gaming revenue for purposes approved by the Commission in an accountable manner.

[20] Part 2 of the BCGC Conditions stipulated that licensees are responsible for the "conduct and management" of any licensed gaming event "in accordance with the licence", the BCGC Conditions "and all relevant policies, procedures and order of the Commission." Part 2 contained detailed rules for financial controls respecting gaming funds, financial reporting to the BCGC, use of gaming proceeds and other operational requirements. Part 5 of the BCGC Conditions set out ineligible uses of gaming proceeds for all categories of licensees. The BCGC retained the authority to cancel a licence for violation of the conditions. Part 11 of the conditions provided for review, by a three-member review board of the BCGC, of any licence suspension or revocation.

[21] The BCGC Conditions must be viewed in the context of 1998 amendments to the *Lottery Act*, under which the BCGC has the statutory authority to licence charitable bingo associations and charitable bingo licensees in British Columbia. That authority, in turn, derives from s. 207(1) of the *Criminal Code*. Under the Canadian constitution, Parliament controls gambling through the criminal law power. Among other things, s. 207(1)(b) provides that, despite any other provision of the *Criminal Code*, it is lawful

> (b) for a charitable or religious organization, pursuant to a licence issued by the Lieutenant Governor in Council of a province or by such other person

> or authority in the province as may be specified by the Lieutenant Governor in Council thereof, to conduct and manage a lottery scheme in that province if the proceeds from the lottery scheme are used for a charitable or religious object or purpose; … .

[22] Section 2.1 of the *Lottery Act*, in turn, provides that Cabinet "may license persons to conduct and manage lottery schemes in British Columbia". Section 1 of the *Lottery Act* provides that "lottery scheme" has the meaning given in s. 207(4) of the *Criminal Code*, which provides that "lottery scheme" is as defined in ss. 206(1)(a) through (g) of the *Criminal Code*. That definition covers bingo.

[23] Section 2.1(4) of the *Lottery Act* provides that the BCGC has the authority under s. 2.1(1) "to license persons to conduct and manage lottery schemes", including bingo. Under s. 7(4), Cabinet can delegate the authority, by regulation, "to make regulations" under the *Lottery Act* "prescribing terms and conditions of licences relating to the conduct, management and operation of, or participation in, lottery schemes".

[24] I am satisfied that, in light of this statutory framework of delegated legislative authority, the BCGC Conditions are a "law" for the purposes of the Act. I also note that there is a sanction for their violation – licence revocation. Section 2.2 of the BCGC Conditions requires licensees to comply with the BCGC Conditions. The same section provides that a licensee

> … that fails to meet these requirements may lose access to gaming revenue, including possible recovery of direct access [*i.e.*, charitable funding paid by the BCGC to a licensee] or suspension/revocation of licence.

[25] Section 2.14 provides that the BCGC may revoke a licence "where the licensee … has breached the provisions of the licence", which include the BCGC Conditions. Part 11 of the BCGC Conditions provides for a "hearing conducted by a three-member Review Board" of the BCGC. Under s. 11.1(b), a hearing can be held into a licence suspension or revocation by the BCGC. By virtue of s. 2.14, such a hearing serves as an appeal from a licence revocation. (There is no indication in the material in front of me whether such a hearing was held here.) The revocation of a bingo licence for violation of the BCGC Conditions is, in my view, a sanction for violation of a law.

[26] In passing, I note that in Ontario, in Order P-1399, [1997] O.I.P.C.D. No. 139, it was held that the refusal of a licence under the Ontario *Gaming Control Act* qualified as "law enforcement" for the purposes of Ontario's equivalent to s. 15(1)(a). This conclusion was reached even though the Ontario definition of "law enforcement" is narrower than the Act's definition. Order P-1399 is, despite the fact it deals with the Ontario definition of "law enforcement", of interest regarding the issue of what qualifies as a "law" under the Act.

[27] I also note, in passing, the decision of Hutchinson J. in *Nanaimo Nonviolence Society* v. *British Columbia Gaming Commission*, 2001 BCSC 81, [2001] B.C.J. No. 125 (S.C.), which dealt with an application for judicial review of a decision of the BCGC's review board to dismiss an appeal from a one-year licence revocation under the BCGC

Conditions. This decision supports, at least implicitly, the view that the BCGC Conditions, as regulations under the *Lottery Act*, are a "law" for the Act's purposes.

[28] I conclude that the BCGC Conditions qualify as a "law" for the purposes of the Act.

Is the Personal Information Covered By This Presumption?

[29] In this case, of course, the BCGC revoked the NISS's licence as a result of the Field Review Report, which found that the NISS had violated a number of the requirements of the BCGC Conditions. The NISS's licence was revoked 10 days after the date of the Field Review Report. There is no doubt in my mind that the third party personal information found in the Field Review Report was compiled, and is identifiable as, part of an investigation by the BCGC into a possible violation of the law, being the BCGC Conditions. I refer here to the names of the third parties and other information that would identify them. I also consider information in the Field Review Report about the finances, assets, employment and other aspects of their lives is covered by s. 22(3)(b). I find that s. 22(3)(b) applies to all of the third party personal information in the disputed record.

[30] **3.3 Financial Information of Third Parties** – The third party personal information in the record is also subject to the presumed unreasonable invasion of personal privacy in s. 22(3)(f) of the Act, which is quoted above. At the very least, the record describes the financial activities of the third parties, as well as their income and assets. It does not matter that the described activities, income or assets have to do with the third parties' dealings with the NISS. The NISS is not a public body under the Act. The third parties are not employees of a public body. The fact that the NISS itself was an entity subject to regulation by the BCGC does not somehow mean that no personal information is involved here or that s. 22(3)(f) does not apply. On a plain reading of that section, it is clear that it applies to the financial information of the individual third parties that is found in the record. I find that the s. 22(3)(f) presumed unreasonable invasion of personal privacy applies to that information.

[31] **3.4 Can the Information Be Disclosed?** – The BCGC argues that none of the relevant circumstances, including those set out in s. 22(2), favours the conclusion that s. 22(1) requires the BCGC to withhold the disputed personal information. The BCGC's s. 22(2) arguments, found at pp. 3 and 4 of its initial submission, merit full quotation:

- s. 22(2)(a) – BCGC, as a public body, is accountable for its decision to revoke the bingo licence of the Nanaimo Immigrant Settlement Society and ought to be subject to public scrutiny as this action resulted in the Society ceasing operations due to lack of funding. Disclosing of the identities of the individuals in the record is necessary to promote this public scrutiny.
- s. 22(2)(e) – BCGC does not believe that the third party is exposed **unfairly** to financial or other harm. All licensees have opportunity to review their Field Review Report and submit corrections to BCGC within 30 days. The Board of the Society did not submit corrections to BCGC, thus BCGC accepts the Field Review Report as accurate and true.

- s. 22(2)(f) – BCGC's understanding is that the personal information under dispute was not supplied in confidence. BCGC does not believe that there was any expectation that information it gathered would be held private. Two of the third parties were Board members with the Society. Information regarding Board membership is accessible through the Registrar of Societies.
- s. 22(2)(g) – BCGC does not believe the personal information is inaccurate or unreliable. All licensees have the opportunity to review their Field Review Report and submit corrections within 30 days. The Society did not submit corrections to BCGC, thus BCGC accepts the Field Review Report as accurate and true.
- ss. 22(2)(h) – BCGC does not believe disclosure will unfairly damage the reputation of any person referred to in the document. While the disclosure of the information may impact the third parties, it will not do so unfairly as BCGC believes the information in the Field Review Report is accurate and true.

Subjecting the BCGC to Public Scrutiny

[32] In his initial submission, the applicant echoes the BCGC's accountability arguments. Much of the applicant's accountability argument focuses on s. 22(4)(j) of the Act, which he believes applies to this case. That section provides that it "is not" an unreasonable invasion of personal privacy if the disclosure of personal information.

> (j) … disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by a public body, not including personal information that is supplied in support of the application for the benefit or is referred to in subsection (3)(c).

[33] The applicant's reliance on that section is misplaced, but the rest of his arguments could equally be made under s. 22(2). For example the applicant argues, at p. 2 of his initial submission, that for

> … those members of the public who participated in the gaming which raised this money and the community which expected to gain by it, the necessity of full transparency is paramount.

[34] The applicant argues that "full disclosure" is necessary, since the "NISS is using public money and is accountable to the provincial Gaming Grants government body." He says citizens have, in good faith, participated in gaming and full disclosure is "necessary to uphold the integrity of the gaming system, and the trust in individuals who operate and administer gaming in British Columbia." He notes that the report's findings "were serious enough to revoke the society's [NISS's] bingo licence", such that full disclosure is necessary. In his reply submission, the applicant supports and endorses the BCGC's s. 22 argument and contends that the Act "provides no grounds for the Nanaimo Immigrant Settlement Society to claim an unreasonable invasion of privacy." (Of course, the NISS's interests are not in issue here. It has no privacy rights under the Act and this inquiry is concerned only with the privacy of third party individuals.)

[35] For its part, the BCGC relies heavily on the relevant circumstance set out in s. 22(2)(a), *i.e.*, whether disclosure is desirable for subjecting the activities of "a public body" to public scrutiny. The BCGC bolstered its public scrutiny argument as follows, at p. 4 of its initial submission:

> In this instance, BCGC's decision to revoke the Society's bingo licence is under additional scrutiny due to the actions of one of the third parties. The third party has indicated that BCGC's decision was the result of political influence and that it was a political decision to revoke the bingo licence as retaliation for one of the third party's actions. BCGC strives to be free and clear of any and all political influence in its decision-making processes. This allegation is regarded as a serious matter as it is potentially damaging to public confidence in the regulation of gaming if not fully answered. The public must have the full range of relevant information when evaluating the allegation that BCGC was unfavourably predisposed towards the licence holder. In the particular circumstances of this case, members of the public can only make this assessment if they know the identities of the members of the society mentioned in the record.

[36] The BCGC does not say why, in the "particular circumstances of this case", the public can only assess whether the BCGC was "unfavourably predisposed towards [*sic*] the licence holder" if the identities of the members of the society mentioned in the record are disclosed. As I see it, all factual findings that might have been relevant to the BCGC's decision to revoke the NISS's licence have already been disclosed in the anonymized version publicly released by the BCGC. The actions of various individuals are described in the disclosed portions of the report. The alleged wrongful acts are fully set out and the actions of those involved are described in some detail. Only the identities of the individuals involved have been withheld, thus protecting their identities and also their other personal information. I fail to see how accountability of the BCGC, or explanation of its decision to the public, turns on naming names, particularly where the associated personal information is alleged to be inaccurate or unreliable as regards at least one of the affected individuals. Moreover, the BCGC is well aware of the identities of these individuals and, as the responsible regulatory authority, is well able to ensure – if it thinks it is appropriate and justified – that these individuals do not become involved as directors or principals of any other licensee or applicant.

[37] I fail to see how disclosing third party identities, and thus their other third party personal information, has anything to do with subjecting the BCGC's activities to public scrutiny. As I see it, the BCGC has exercised its statutory mandate by investigating the activities of the NISS and by revoking its licence. What is it the public might wish to scrutinize about these actions? The BCGC's "activities", as they relate to the NISS and the revocation of its licence, are fully described in the portions of the disputed record that have been disclosed to the applicant (and that were previously disclosed publicly by the BCGC when it released the sanitized version of the Field Review Report). As for the applicant's position about public scrutiny, I note that the NISS was the licensee – not the third parties – and that its licence has been revoked. Transparency and accountability as they apply to the NISS, as the former licensee, have already been assured through disclosure of the salient portions of the Field Review Report. I conclude that the relevant circumstance set out in s. 22(2)(a) does not favour disclosure of the personal information.

Unfair Exposure to Harm

[38] Nor does s. 22(2)(e) assist the BCGC, which argues that, because the NISS had an opportunity to review the disputed report and offer corrections within 30 days but did not do so, the contents of the Field Review Report are "accurate and true." For one thing, it is not clear that the BCGC afforded the individuals mentioned in the report an opportunity to suggest corrections. Even if it is safe to treat these third parties as if they were the same as the NISS, the fact that the NISS had a chance to respond does not mean the individuals had the same opportunity. At all events, one of them provided a detailed and lengthy representation to the BCGC in response to the s. 23 notice issued under the Act in connection with the applicant's access request. In some detail, that individual hotly disputed many of the most damning factual conclusions in the report. In this inquiry, moreover, that individual contends that personal information in the report is "inaccurate, untrue, unbalanced and unreliable" and says that its disclosure "would unfairly damage my reputation as well as being potentially libelous." He says the BCGC "failed to act on the information provided by me which would have enabled them redress the injustice I believe is self-evident". He says that he had not been given the "opportunity to object to the contents of the report" and that the BCGC did not provide him with a copy of the report.

[39] Although the NISS may have been given the opportunity to rebut the Field Review Report's factual findings, there is some doubt in my mind that the individual third parties had – despite their close association with, and roles in, the NISS – the same opportunity. Without in any way questioning the integrity of the Field Review Report or the process followed by the BCGC, I note that its contents are not the result of a process in which the full range of traditional safeguards was necessarily employed (*e.g.*, testimony under oath, representation by counsel). The NISS's right of rebuttal, and its right of appeal under Part 11 of the BCGC Conditions, do not, in my mind, necessarily exclude the relevance of s. 22(2)(e) as regards the interests of the third parties. In my view, disclosure of their personal information could unfairly expose them to "other harm" under s. 22(2)(e) and is a relevant circumstance that weights against disclosure.

Supply in Confidence

[40] As for s. 22(2)(f), I am not persuaded that it would, if the applicant or BCGC had established that there was no confidentiality, favour disclosure. The BCGC did not provide any evidence to support its assertion that information gathered during the review was not supplied in confidence. This does not mean that confidential supply is presumed under s. 22(2)(f) – far from it. It means I have no basis on which to find there was confidential supply of personal information in this case. But even if it had been established that personal information was not supplied in confidence, I would find that s. 22(2)(f) does not favour disclosure. It is neutral on the point in this case.

[41] I note here that – contrary to the BCGC's understanding – the fact that individual third parties were or were not members of the NISS's board of directors, and that information regarding board membership can be obtained through the Registrar of

Societies under the *Society Act*, is not relevant to the s. 22(2)(f) issue as it relates to the personal information actually in issue. That personal information goes well beyond the names, and roles, of individuals on the board of the NISS or acting as officers of that society.

Inaccurate or Unreliable Personal Information

[42] As is discussed above, the fact that the NISS, as the licensee, did not "submit corrections within 30 days" is not determinative. It certainty does not mean the third-party personal information is by default accurate or reliable. As I noted above, one of the third parties says the information pertaining to him is inaccurate and unreliable. This is not, however, the forum in which to determine whether the third party personal information in dispute in this case, at least, is inaccurate or unreliable. I do not have a sufficient basis for concluding that the personal information "is likely to be inaccurate or unreliable" for the purposes of s. 22(2)(g). That explicitly articulated circumstance does not apply here. But it is relevant, in my view, for the purposes of s. 22(2), as it relates to the third party just described, that he has in some detail disputed the aspects of the Field Review Report that relate to him. As regards this individual, his detailed arguments against the accuracy or fairness of the Field Review Report form a relevant circumstance that favours non-disclosure of his personal information.

Unfair Damage to Reputation

[43] Last, s. 22(2)(h) also does not assist the BCGC. It acknowledges that "disclosure of the information may impact the third parties", but argues that any damage to the reputations of the individuals would not be unfair, because the BCGC "believes the information in the Field Review Report is accurate and true." Again, one of the third parties argues, quite strenuously, that his personal information in the report is inaccurate and unreliable. He made this case to the BCGC, at some length, in the context of the s. 23 notification. Yet the BCGC appears to base its conclusion that the report's contents are accurate and reliable solely on the failure of the NISS to suggest corrections in response to an invitation extended to it by the BCGC.

[44] In any case, even if the information were accurate and true, it does not follow that any damage to the reputation of an individual referred to in the report would not be unfair for the purposes of s. 22(2)(h). Damage to an individual's reputation can be unfair where the damage is not appropriate. In this case, I am not persuaded that damage to an individual's reputation is required in light of any of the other relevant circumstances. The NISS's licence has already been revoked and I fail to see how damage to a third party's reputation is necessary. I prefer to approach this particular relevant circumstance with some caution here.

[45] I am not persuaded that any relevant circumstances overcome the presumed unreasonable invasion of personal privacy created by ss. 22(3)(b) and (f) in relation to any of the third parties. To the contrary, for the reasons given above, I conclude that relevant circumstances weigh in favour of the conclusion that s. 22(1) prohibits disclosure of the disputed personal information and I so find.

4.0 CONCLUSION

[46] For the reasons given above, under s. 58(2)(c) of the Act, I require the BCGC to refuse, under s. 22(1) of the Act, to disclose all of the disputed personal information in the Field Review Report.

April 9, 2001

ORIGINAL SIGNED BY

David Loukidelis
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