



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER  
— for —  
British Columbia

Order 03-26

**LAW SOCIETY OF BRITISH COLUMBIA**

David Loukidelis, Information and Privacy Commissioner  
June 23, 2003

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**Summary:** The applicant sought access to various Law Society records related to complaints he had made about various lawyers. Order 02-01 and Order No. 260-1998 addressed many of the records in dispute here and issue estoppel is found to apply to information dealt with in those decisions. In the case of some but not all of the information in other records, the Law Society is authorized to refuse to disclose information subject to s. 14 and is required to refuse to disclose third-party personal information protected by s. 22.

**Key Words:** scope of the Act – a record that is created by or for an officer of the Legislature – person acting in a quasi-judicial capacity – draft decision or communication – time extension – solicitor client privilege – expose to civil liability – threaten mental or physical health or safety – available for purchase by the public – personal information – unreasonable invasion of personal privacy – employment or occupational history – public scrutiny – fair determination of rights – unfair exposure to harm – inaccurate or unreliable personal information – unfair damage to reputation.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 3(1)(b) & (c), 13(1), 14, 15(2)(b), 19(1)(a), 20(1)(a), and 22(2), 22(2)(e), (f) and (h), 22(3)(d) and (f); *Legal Profession Act*, s. 88(2).

**Authorities Considered: B.C.:** Order No. 156-1997, [1997] B.C.I.P.C.D. No. 14; Order No. 185-1997, [1997] B.C.I.P.C.D. No. 46; Order No. 201-1997, [1997] B.C.I.P.C.D. No. 62; Order No. 260-1998, [1998] B.C.I.P.C.D. No. 55; Order No. 01-03, [2001] B.C.I.P.C.D. No. 3; Order No. 01-43, [2001] B.C.I.P.C.D. No. 45; Order No. 01-53, [2001] B.C.I.P.C.D. No. 56; Order No. 02-01, [2002] B.C.I.P.C.D. No. 1.

**Cases Considered:** *College of Physicians and Surgeons of British Columbia v. British Columbia (Information and Privacy Commissioner)* (2002), 9 B.C.L.R. (4<sup>th</sup>) 1, [2002] B.C.J. No. 2779 (C.A.); *College of Physicians and Surgeons of British Columbia v. British Columbia (Information and Privacy Commissioner)* (2001), 90 B.C.L.R. (3d) 299, [2001] B.C.J. No. 1030 (S.C.).

## 1.0 INTRODUCTION

[1] This is the latest in a series of decisions stemming from access to information requests the applicant has made, under the *Freedom of Information and Protection of Privacy Act* (“Act”), to the Law Society of British Columbia (“Law Society”). The two requests underlying this decision, which were made in the fall of 2001, relate to the same subjects as previous requests by the applicant. Several of these previous requests have resulted in orders under the Act. The most recent of these is Order 02-01, [2002] B.C.I.P.C.D. No. 1, which figures in the discussion below (as does Order No. 260-1998, [1998] B.C.I.P.C.D. No. 55). Other orders involving this applicant and his dealings with the Law Society, and other public bodies in relation to matters also connected with his Law Society complaints, include Order No. 201-1997, [1997] B.C.I.P.C.D. No. 62, Order No. 156-1997, [1997] B.C.I.P.C.D. No. 14 and Order No. 185-1997, [1997] B.C.I.P.C.D. No. 46.

[2] The more than 2,500 pages of records in dispute here relate to the Law Society’s Audit and Investigation files and Special Compensation Fund files for complaints that the applicant has made to the Law Society about various lawyers. I do not propose to give any background about the applicant’s dealings with the Law Society, which is adequately described in Order 02-01 and the other decisions just mentioned.

[3] As was the case in Order No. 260-1998 and Order 02-01, it has been difficult to discern in the applicant’s submissions any arguments regarding issues under the Act, as opposed to issues over which I have no jurisdiction. As was the case in Order 02-01, I have considered the applicant’s submissions to the extent they actually do address issues before me under the Act and have tried to reach both a just and legally correct result under the Act. As was the case in Order 02-01, however, I do not propose to summarize the applicant’s various submissions.

[4] The Law Society says that portions of records 1721 and 2090 are outside the scope of the applicant’s request and this inquiry. I have reviewed the relevant portions of those records and agree that they are out of scope and need not be dealt with here.

[5] I will note here that many of the disputed records are duplicates. Duplicates of records are identified in Exhibit “G” to the affidavit of Jason Eamer-Goult, which sets out a table of the disputed records (“Table of Records”). In the discussion below, I have generally not listed duplicates of records that I have expressly referred to by number, preferring wherever possible to avoid unnecessary clutter by simply referring to the fact that duplicates exist as identified in the Table of Records.

## 2.0 ISSUES

[6] The issues to be addressed in this inquiry are as follows:

1. Was the Law Society authorized to extend the time for responding under s. 10(1)(b) of the Act?
2. Do the doctrines of *res judicata* and issue estoppel apply to some of the disputed records?
3. Are some of the disputed records excluded from the Act's operation by s. 3(1)(b) or s. 3(1)(c) of the Act?
4. Is the Law Society authorized by ss. 13(1), 14, 15(1)(c), 15(2)(b), 19(1)(a) and 20(1)(a) to refuse access to information?
5. Is the Law Society required by s. 22 to refuse access to third-party personal information?
6. Does s. 88(2) of the *Legal Profession Act* apply to some of the disputed records and, if it does, what is the effect?

[7] Consistent with previous decisions, the Law Society bears the burden of proof on the issues in paras. 1 through 3, above, while s. 57(1) places the burden of proof on the Law Society respecting the issues described in para. 4. As regards para. 5, s. 57(2) of the Act places the burden on the applicant to establish that disclosure of personal information would not unreasonably invade third-party personal privacy. As indicated in Order 02-01, the Law Society bears the burden of proof on the issue in para. 6, above.

## 3.0 DISCUSSION

[8] **3.1 Extension of Response Time** – Section 10(1)(b) authorizes the head of a public body to extend the time for responding to an access request if “a large number of records is requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the public body”. The Law Society says that, because of the large number of records that were involved in processing the request in relation to the Special Compensation Fund files, a 30-day extension was warranted in order to avoid interference with its operations.

[9] The evidence of Jason Eamer-Goult, the Law Society's Freedom of Information and Privacy Analyst, is that, shortly before the expiry of the original response deadline, he concluded it would not be possible to respond in time, since roughly 2,300 pages of Special Compensation Fund records remained to be processed and he concluded that attempting to meet the deadline would unreasonably interfere with the Law Society's operations. He deposed that the scope of this aspect of the Law Society's response required extensive consultation with Law Society staff, and to have attempted to accomplish the necessary work within the original deadline would divert staff from other

responsibilities. He later determined that, because it would not be possible to respond by even the extended deadline, the Law Society needed a further extension. This office later gave the Law Society a further extension of 40 days under s. 10(1).

[10] Given the number of records involved, the complexity of the issues raised and the need to consult extensively within the Law Society respecting the various third-party interests engaged by the records, I am satisfied the Law Society was within its rights to take the extension that it did under s. 10(1)(b). The Law Society has performed its duty under that section and I confirm the extension of time that the Law Society took under s. 10(1)(b).

[11] **3.2 Identification of the Disputed Records** – Before assessing the Law Society’s reliance on various exceptions under the Act, it is necessary to identify which of the disputed records are actually in issue here. This is because the Law Society says, at para. 64 of its initial submission, that the status under the Act of many of the disputed records has been addressed in Order 02-01 and Order No. 260-1998. It contends that the principles of issue estoppel and *res judicata* apply, such that I should make the same findings in this case as were made in those previous decisions regarding the same records.

[12] Schedules II and III to the Law Society’s initial submission list the disputed records that the Law Society says are duplicates of records involved in, respectively, Order No. 260-1998 and Order 02-01. The Table of Records also identifies records in dispute here that were also in dispute in Order 02-01 or Order No. 260-1998. These sources permit me to conclude that many of the records in dispute here have been dealt with in Order 02-01 or in Order No. 260-1998. These records are addressed in the discussion below.

[13] **3.3 Effect of Earlier Decisions** – Again, the Law Society says the doctrines of *res judicata* and issue estoppel apply to records identified in the Table of Records and its submissions. In Order 01-03, [2001] B.C.I.P.C.D. No. 3, I decided that the doctrine of issue estoppel could be applied in an inquiry such as this. (I also indicated that the doctrine of *res judicata* would likely be available in an appropriate case.) As discussed in Order 01-03, various court decisions establish that issue estoppel applies where: (1) the same question has been decided in both proceedings; (2) the decision which is said to create the estoppel was final; and (3) the parties to the decision or their privies were the same as the parties to the proceedings in which the estoppel is raised or their privies. I am satisfied that issue estoppel applies in this case to the extent described below.

[14] The first criterion requires that the same question must have been decided in both proceedings. To determine if this is so here, I have reviewed the Law Society’s access decision, the records, Order 02-01 and Order No. 260-1998 and the Law Society’s evidence on this issue. In each of the instances noted below, I am satisfied that the same question has been decided in those earlier decisions, as noted below, as is raised in this case.

[15] As for the second requirement for issue estoppel, Order 02-01 and Order No. 260-1998 are clearly final decisions as contemplated by the above test. As for the third requirement, the material before me confirms that the present applicant was the applicant in Order 02-01 and Order No. 260-1998. The public body is, of course, the same in those cases and in this case.

[16] I am therefore satisfied that the doctrine of issue estoppel applies as noted below. I see nothing in the material before me to suggest that, as contemplated by Order 01-03 and the authorities cited there, fairness requires me to find that issue estoppel does not apply. Accordingly, the findings and orders in Order 02-01 and Order No. 260-1998 apply as noted below.

[17] **3.4 Are Some Records Excluded from the Act?** – The Law Society submits that two aspects of s. 3(1) exclude a number of pages of records from the Act’s operation. The relevant parts of that section read as follows:

**Scope of this Act**

- 3(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following: ...
- (b) a personal note, communication or draft decision of a person who is acting in a judicial or quasi judicial capacity;
  - (c) a record that is created by or for, or is in the custody or control of, an officer of the Legislature and that relates to the exercise of that officer’s functions under an Act; ... .

***Personal notes, communications or draft decisions***

[18] The Law Society says s. 3(1)(b) applies to the following records (and their duplicates as shown in the Table of Records): 298, 299, 300, 375, 859, 860, 861, 863, 864, 867, 915, 1337, 1590, 1591, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1606, 1607, 2032, 2033, 2395, and 2487. It says these are personal notes, communications or draft decisions of members of its Special Compensation Fund Committee (“SCFC”). It also relies on Order 02-01, in which I found that SCFC members are, when deliberating on or deciding matters within the SCFC’s authority, acting in a quasi-judicial capacity for the purposes of s. 3(1)(b). The Law Society relies on the affidavit sworn by Mary Ann Cummings, its Manager, Special Compensation Fund and Custodian Department, in support of its position.

[19] Of the records described above, records 298 and 2487 were addressed in Order 02-01. I held that s. 3(1)(b) excluded them from the Act’s application. Issue estoppel applies to these records – and to the duplicates of record 298 as noted in the Table of Records – on the basis of Order 02-01 and I therefore find that the Act does not apply to these records.

[20] As for the balance of the records listed above, I found in Order 02-01 that SCFC members are acting in quasi-judicial capacity when they discharge their functions as members of that committee. My review of the evidence, and of the balance of the above-described records, persuades me that s. 3(1)(b) applies to all of them and excludes them (and their duplicates as identified in the Table of Records) from the Act's coverage.

***Officer of the Legislature records***

[21] The Law Society says s. 3(1)(c) excludes record 512 of the disputed records from the Act's operation. This is a record of a telephone conversation between Mary Ann Cummings and the Office of the Ombudsman respecting an Ombudsman investigation. Consistent with the finding in Order 01-43, [2001] B.C.I.P.C.D. No. 45, I find that s. 3(1)(c) excludes this record from the Act.

[22] **3.5 Advice or Recommendations** – Section 13(1) of the Act authorizes a public body to refuse to disclose “advice or recommendations developed by or for” the public body. The Law Society says records 297, 452, 951, and 1113 (and their duplicates as shown in the Table of Records) contain advice or recommendations. Specifically, it says these pages contain recommendations of legal counsel to the SCFC advising “a particular course of action with respect to the consideration of claims for compensation”, with the records being created for the purpose of providing advice or counsel to the SCFC (para. 51, initial submission).

[23] In Order 02-01, I dealt with records 297, 452 and 1113 under s. 14, not s. 13(1). I found these records privileged and therefore protected under s. 14. The Law Society has applied both s. 13(1) and s. 14 to records 629, 951, 1049 and 1146. Records 629 and 1146 are duplicates of record 297 and were therefore addressed in Order 02-01. I need not deal with records 951 or 1049, which were not dealt with in Order 02-01, since they are, as discussed below, protected under s. 14.

[24] **3.6 Solicitor-Client Privilege** – Section 14 of the Act authorizes a public body to refuse to disclose “information that is subject to solicitor client privilege.” Many previous orders have confirmed that this provision encompasses both the privilege pertaining to confidential solicitor-client communications and litigation privilege. As reflected by Order 02-01, the principles to be applied under s. 14 have also been discussed on many occasions. I have applied those well-accepted principles here without repeating them.

[25] The Law Society claims privilege for records disclosing legal advice given by in-house and external counsel to the SCFC in relation to the applicant's applications for compensation from the Law Society. It also claims privilege for communications to or from in-house and outside counsel in relation to those compensation applications. Other records are, the Law Society says, privileged communications that relate to its investigations of various complaints that the applicant has made against various lawyers. The Law Society says communications to or from the Law Society and in-house or outside counsel are protected under s. 14. It relies on the affidavits of Mary Ann Cummings, Ken Affleck and Jean Whittow to support its s. 14 case.

[26] I held in Order 02-01 that the following records – which are among those the Law Society now says are privileged – are protected in whole or in part under s. 14 (using the numbers the Law Society has assigned for this case): records 50, 154, 275, 276, 277, 283, 285, 286, 291, 296, 297, 298, 306, 321, 323, 329, 331, 333, 335, 340, 348, 352, 365, 366, 368, 369, 372, 377, 379, 385, 387, 389, 391, 411, 412, 416, 452, 453, 532, 533, 548, 561, 730, 839, 846, 1061, 1113, 1174, 1347, 1348, 1377, 1378, 1411, 1414, 1415, 1430, 1432, 1433, 1439, 1440, 1450, 1476, 1480, 1510, 1527, 1528, 1535, 1541, 1542, 1543, 1566, 1568, 1575, 1611, 1612, 1618, 1621, 1628, 1639, 1642, 1643, 1928, 1933, 1979, 1980, 1994, 2036, 2045, 2056, 2057, 2069, 2165, 2194, 2195, 2208, 2218, 2229, 2230, 2240, 2250, 2256, 2260, 2266, 2284, 2304, 2313, 2385, 2386, 2404, 2407, 2427, 2440. I am persuaded that, on the basis of Order 02-01, issue estoppel applies to these records. I therefore find that s. 14 authorizes the Law Society to refuse disclosure respecting these records. This finding also applies to duplicates of the records just listed as shown in the Table of Records.

[27] The Law Society also says that portions of the following records (and any duplicates as noted in the Table of Records) were found in Order No. 260-1998 to be privileged and protected under s. 14: 332, 354, 844, 963, 1715, 1719, 1721 and 1722. The Table of Records establishes that it was held in Order No. 260-1998 that information in the records just described is protected by s. 14 of the Act. The material before me satisfies me that issue estoppel applies and I find that s. 14 authorizes the Law Society to refuse to disclosure of information in these records.

[28] The Law Society has withheld, under s. 14, the following records in whole or in part (and their duplicates as noted in the Table of Records) that were *not* addressed in Order 02-01 or in Order No. 260-1998: records 21, 22, 49, 51, 95, 125, 170, 183, 199, 213, 241, 242, 249, 253, 254, 255, 256, 260, 262, 266, 295, 346, 349, 380, 560, 596, 951, 1337, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1349, 1350, 1358, 1359, 1360, 1361, 1367, 1427, 1436, 1459, 1469, 1470, 1506, 1522, 1536, 1544, 1556, 1560, 1567, 1587, 1614, 1627, 1644, 1647, 1648, 1655, 1790, 1858, 1859, 1860, 1861, 1869, 1872, 1883, 1899, 1904, 1905, 1922, 1941, 1952, 1955, 1960, 1966, 1969, 1981, 1982, 1985, 1998, 2003, 2004, 2014, 2020, 2023, 2031, 2034, 2035, 2054, 2055, 2064, 2071, 2076, 2087, 2089, 2097, 2098, 2099, 2101, 2102, 2103, 2109, 2111, 2113, 2114, 2120, 2124, 2125, 2136, 2173, 2184, 2215, 2220, 2257, 2308, 2309, 2312, 2388, 2396.1, 2430, 2437, 2448, 2457, 2562, 2569. Of the records the Law Society says are protected under s. 14, I have already found that s. 3(1)(b) excludes from the Act's operation the following records (and their duplicates as noted in the Table of Records): 298, 299, 300, 375, 859, 860, 861, 863, 864, 867, 915 and 1337. Since the Act does not apply to those records, I have not listed them here under s. 14 or considered whether that exception applies to them.

[29] The Law Society argues that both of types of privilege recognized under s. 14 apply to these records. As regards litigation privilege, the Law Society says the following in its initial submission:

***Litigation Privilege***

68. The Law Society maintains with regard to this request that the documents excepted under section 14 are also subject to litigation privilege. The Applicant has made numerous complaints against members of the Law Society, as well as numerous requests for disclosure of information over the past several years. To date, he continues to advance claims against members of the Law Society (**See Affidavit of Mary Ann Cummings, paragraph 5, Tab 2**). The Law Society remains conscious of this fact in its dealings with the Applicant and with both in-house and external legal counsel on any matter related to the Applicant.
69. In **College of Physicians** [cited below] (**Tab 33**), Owen-Flood, J. reviewed the law surrounding litigation privilege and, at paragraph 100, asked “whether the College was sufficiently down to the continuum of investigating the Applicant’s complaint that litigation was in reasonable contemplation by the College, and whether each document was created for the dominant purpose of assisting that litigation”. (The *College of Physicians* case is under appeal. The Law Society has intervenor status in the appellate action.)
70. In that case, the College was conducting a preliminary investigation into the Applicant’s complaint. The Judge reviewed the number of complaints to the College that actually resulted in disciplinary action (a modest number) and concluded that a hearing was not reasonably in the contemplation of the public body when the investigation began. In the instant case, however, most of the documents excepted under section 14 were generated during the Special Compensation Fund process. The documents clearly anticipated a situation, with this applicant, where the Law Society would require informed legal advice, and for which external counsel had been retained.

**See Affidavit of Mary Ann Cummings, paragraph 7 & Exhibit A – See Tab 2**

[30] In my view, the Law Society’s case for litigation privilege falls short of the mark. In reaching this conclusion, I have considered its affidavit evidence and both the trial and appellate judgements in *College of Physicians and Surgeons of British Columbia v. British Columbia (Information and Privacy Commissioner)*. The trial judgement is found at (2002), 9 B.C.L.R. (4<sup>th</sup>) 1, [2002] B.C.J. No. 2779, and the Court of Appeal judgement is found at (2001), 90 B.C.L.R. (3d) 299, [2001] B.C.J. No. 1030 (S.C.).

[31] This finding does not, however, affect the outcome, since I am persuaded that these records are protected by legal professional privilege. It is clear from the evidence that the various communications in question were made in confidence, were made to or from lawyers acting for the Law Society respecting the applicant’s compensation applications or complaints, and relate to the seeking or giving of legal advice to the Law Society or the SCFC. My review of the relevant records, and the Law Society’s submissions on severance, leads me to conclude that the Law Society’s severing of



records, and withholding of records that are entirely privileged, are appropriate in each instance.

[32] As exceptions to this, the above s. 14 finding does not apply to record 170 (and its duplicate, record 2568), 1952, 1955, 1960 or 1969, portions of which, the Law Society says, are protected by ss. 14 and 22 of the Act, and by s. 88(2) of the *Legal Profession Act*, as discussed below. As indicated below, portions of these records are outside the scope of the applicant's request and need not be dealt with under s. 14 or s. 88(2).

[33] As a further exception to the above finding respecting s. 14, I am not persuaded that all of record 2087, which is a ten-page transcript of SCFC proceedings on February 24, 1997, is protected under s. 14. The name of the court reporting firm responsible for the transcript is found at the bottom of each page and the court reporter has, on the last page, certified the accuracy of the transcript.

[34] It is not clear whether the first page of this record has been disclosed to the applicant. It is a cover page, which states the nature of the proceeding, the matter being addressed, the names of SCFC members attending the meeting and the names of persons appearing before the SCFC (including the applicant). It is apparent from the transcript that only the SCFC, counsel to the SCFC and the court reporter were present for the first part of the proceeding. The transcript of this portion of the proceeding, which occupies just over three pages, records what counsel to the SCFC said to the SCFC and some statements by its chair. These are clearly privileged communications and can be withheld under s. 14. I refer here to pp. 1-3 and the first 14 lines of p. 4. The title page is not privileged.

[35] The rest of record 2087, however, is a transcript of the SCFC proceedings while the applicant was present. At lines 8 and 9 of p. 4 of record 2087, the following text appears:

(PROCEEDINGS ADJOURNED)

(PROCEEDINGS RECONVENED)

[36] The first statement after this text is attributed to the SCFC's chair and following it is a statement by counsel to the SCFC. Immediately after those statements, beginning at line 15 of p. 4, the chair addresses the applicant by name and discussion follows between the chair and the applicant (with some interjections by SCFC members) about how and when the SCFC might proceed to hear from the applicant in connection with his compensation application to the SCFC.

[37] I fail to see how this discussion between the applicant and the SCFC is privileged. Legal professional privilege applies only to confidential communications between client and lawyer related to the seeking or giving of legal advice. The discussion between the applicant and the SCFC can hardly be described as a communication between the SCFC's lawyer and the SCFC or between the Law Society's lawyer and the Law Society. Nor can it be said, in light of the applicant's presence, that the discussion was confidential.

Last, the discussion did not relate to the seeking or giving of legal advice by or to the SCFC or Law Society.

[38] The parts of the transcript preceding and following the above-quoted references are separate and distinct in character. The two parts can be severed, as contemplated by s. 4(2). The Law Society is authorized to withhold pp. 1-3 and the first 14 lines of p. 4 of record 2087, but is not authorized to withhold the balance of record 2087.

[39] **3.7 Law Enforcement Records** – The Law Society says that portions of record 801 are protected under s. 15(1)(c) and s. 15(2)(b) of the Act. Section 15(1)(c) of the Act authorizes a public body to refuse to disclose information if the disclosure could reasonably be expected to “harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement”.

[40] The Law Society points out that previous decisions have established that it is a law enforcement agency for the purposes of the Act. Here, the Law Society says, the law enforcement technique in question is its own “discretion to keep a lawyer’s response to a complaint confidential while providing only a summary to the complainant.”

[41] I do not think the Legislature intended a public body’s discretion to provide summaries of responses to complaints to fall within the category of “investigative techniques and procedures” as contemplated by s. 15(1)(c). I find that s. 15(1)(c) does not authorize the Law Society to refuse to disclose this information.

[42] Section 15(2)(b) of the Act authorizes a public body to refuse to disclose information that

... is in a law enforcement record and the disclosure could reasonably be expected to expose to civil liability the author of the record or a person who has been quoted or paraphrased in the record.

[43] Having reviewed the Law Society’s submissions and evidence – including its *in camera* submissions and evidence – I am not persuaded that s. 15(2)(b) applies to record 801. As noted below, however, I am persuaded that ss. 19(1) and 22(1) respectively authorize and require the Law Society to refuse to disclose record 801.

[44] **3.8 Threat to Mental or Physical Health or Safety** – The Law Society says s. 19(1)(a) authorizes it to refuse to disclose information in record 801. That section authorizes a public body to refuse to disclose information, including personal information about an applicant, if its disclosure could reasonably be expected to threaten anyone else’s safety or mental or physical health.

[45] In Order 02-01, I found that s. 19(1)(a) authorized the Law Society to refuse to disclose information it had withheld from this same record. Issue estoppel applies and I therefore find that s. 19(1)(a) authorizes the Law Society to refuse to disclose record 801.

[46] **3.9 Available for Purchase By the Public** – Section 20(1)(a) of the Act authorizes a public body to refuse to disclose information “that is available for purchase by the public”. The Law Society says that s. 20(1)(a) authorizes it to refuse to disclose records 2087 and 2481. These are, respectively, the ten-page transcript of SCFC proceedings on February 24, 1997, discussed above, and a 35-page transcript of a January 20, 1998 SCFC hearing. Both hearings involved compensation applications the applicant had made to the SCFC.

[47] As noted above, s. 14 authorizes the Law Society to withhold portions of the nine pages of transcript found in record 2087. The Law Society argues that the entire record, including the title page for which it did not claim privilege, can be withheld under s. 20(1)(a). The Law Society has disclosed to the applicant the two cover-pages of record 2481, but says the 33 pages of actual transcript can be withheld under s. 20(1)(a). No other exceptions have been applied to the transcript.

[48] At para. 13 of this affidavit, Jason Eamer-Goult deposed that he has “confirmed with the respective court reporters that they have the transcripts in question in their possession.” This is the only evidence the Law Society has provided on this issue. It is not sufficient to establish that these transcripts are, within the meaning of s. 20(1)(a), available for purchase by the applicant, much less “by the public”. I note, first, that the Law Society has claimed privilege over the transcript of proceedings found within record 2087 and I have found that a portion of that record is privileged. I have difficulty understanding how the Law Society can also attempt to rely on s. 20(1)(a), since this would require me to accept that the applicant, or “the public”, could purchase record 2087. Without more evidence, I am not prepared to infer, in the case of either record, that it is “available for purchase by the public”. I find that s. 20(1)(a) does not authorize the Law Society to refuse to disclose these records.

[49] **3.10 Third-Party Privacy** – Section 22(1) of the Act protects privacy by requiring a public body to refuse to disclose personal information the disclosure of which would unreasonably invade personal privacy. A number of the records that the Law Society submits are protected, in whole or in part, by s. 22(1) were also addressed in Order 02-01. They are records 283, 285, 286, 297, 298, 328, 368, 452, 548, 561, 730, 801, 839, 1061, 1113, 1174, 1430, 1480, 1510, 1913, 2195 and 2260. I am persuaded that issue estoppel applies to each of these and to their duplicates as shown in the Table of Records. I therefore find that s. 22(1) requires the Law Society to refuse to disclose third-party personal information in the records just described and their duplicates as indicated in the Table of Records. (With the exception of records 328, 801 and 1913, of course, I have also found that, on the basis of Order 02-01, issue estoppel applies to the records just listed, such that s. 14 also applies to them here.)

[50] The remaining records, or portions of records, that the Law Society says are subject to s. 22(1) are (without listing their duplicates as shown in the Table of Records): records 170, 300, 328, 468, 923, 951, 1340, 1341, 1342, 1350, 1361, 1506, 1522, 1555, 1649, 1650, 1782, 1784, 1787, 1790, 1792, 1940, 1949, 1952, 1955, 1959, 1960, 1966, 1969, 1972, 1974, 1976, 1978, 1997, 2090, 2097, 2098, 2099, 2101, 2120, 2228, 2355, 2379, 2398, 2413, 2430. I have found that s. 14 authorizes the Law Society to refuse to

disclose information in most, though not all, of these records. I will nonetheless deal with these records under s. 22, by way of emphasizing to the applicant how that section applies to third-party personal information such as that in dispute here.

[51] The principles to be applied under s. 22 have been outlined many times. Without repetition, I will apply here the principles set out in Order 01-53, [2001] B.C.I.P.C.D. No. 56. The relevant portions of s. 22 read as follows:

**Disclosure harmful to personal privacy**

- 22 (1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.
- (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 ...
- (e) the third party will be exposed unfairly to financial or other harm,
  - (f) the personal information has been supplied in confidence,
  - (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 ...
- (d) the personal information relates to employment, occupational or educational history,
  - (e) the personal information was obtained on a tax return or gathered for the purpose of collecting a tax,
  - (f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness, ... .

[52] In Order 02-01, I discussed in various places the third-party privacy issues raised by the applicant's request for records. As is indicated at para. 118 of Order 02-01, personal information relating to professional disciplinary matters before the Law Society falls under the presumed unreasonable invasion of personal privacy created by s. 22(3)(d). This presumed unreasonable invasion of personal privacy applies, in this case, to records 730, 801, 1174, 1506, 1510, 1522 and 1649 (and their duplicates as shown in the Table of Records). (I have already held that s. 14 applies to information in all of these except record 1649, but consider it worth underscoring for the applicant that s. 22(1) does have a role to play in relation to records of this kind.)

[53] Almost all of the third-party personal information in these records consists of third-party names and addresses. The information was created or compiled as part of the Law Society's handling of compensation claims or complaints involving clients and lawyers other than the applicant or the lawyers about whom he complained or respecting whose behaviour he sought compensation. Having reviewed the records to which the Law Society has, in whole or in part, applied s. 22, I am satisfied that the presumed unreasonable invasions of personal privacy created by ss. 22(3)(d) and 22(3)(f) apply.

[54] Accordingly, it falls to the applicant to establish that this information can be disclosed to him without unreasonably invading third-party personal privacy. The applicant has not done so. None of the relevant circumstances, including those set out in s. 22(2), favours disclosure of this third-party personal information to the applicant. The Law Society's affidavit evidence establishes that most, if not all, of this information was supplied in confidence within the meaning of s. 22(2)(f). I also consider ss. 22(2)(e) and (h) to be relevant in this case and am persuaded that they favour the finding that disclosure of this personal information would unreasonably invade third-party personal privacy.

[55] I find that s. 22(1) requires the Law Society to refuse to disclose the personal information that it has withheld under that section.

[56] **3.11 Section 88(2), *Legal Profession Act*** – The Law Society has withheld the names of other Special Compensation Fund claimants or their lawyers, or both, from records 170 (and its duplicate, record 2568) 1952, 1955, 1960, 1966 and 1969. It says s. 88(2) of the *Legal Profession Act* requires it to do so. Paragraph 17 of Jason Eamer-Goult's affidavit, on the other hand, expresses the view that these pages of records are outside the scope of the applicant's access request:

The information in documents 170, 1952, 1955, 1960, 1966, 1969, and 2568 which the Law Society withheld under section 88 of the *Legal Profession Act* consists of either names of other Special Compensation Fund claimants, or names of other Special Compensation Fund claimants and respective respondent lawyers, but as far as I am aware, they do not concern the Applicant or his Special Compensation Fund claims.

[57] I have reviewed these records and agree that, on their face, the severed information is personal information of individuals other than the applicant or any lawyers about whom he complained or who were involved in his compensation claims. Because this information is outside the scope of the applicant's request, it is not necessary for me to consider the Law Society's submission respecting s. 88(2) of the *Legal Profession Act* or to otherwise address these pages of records. I note that, in any case, the severed information is third-party personal information that, on its face, would be subject to s. 22(3) of the Act and, for reasons given above respecting s. 22, I cannot see how the applicant would be entitled to this third-party personal information.

#### 4.0 CONCLUSION

[58] For the reasons given above, I make the following orders under s. 58 of the Act:

1. I confirm the extension of time that the Law Society took under s. 10(1)(b) of the Act;
2. I confirm that s. 3(1)(b) of the Act excludes the records described above in section 3.4 of this order, in relation to s. 3(1)(b), from the Act's application;
3. I confirm that s. 3(1)(c) of the Act excludes the records described above in section 3.4, in relation to s. 3(1)(c), from the Act's application;
4. Subject to para. 5, below, I confirm that s. 14 of the Act authorizes the Law Society to refuse to disclose the records described above in section 3.6;
5. Having found that s. 14 of the Act authorizes the Law Society to refuse to disclose only part of record 2087, I require the Law Society to give the applicant access to the portions of pp. 4-9 of record 2087 beginning with line 15 on p. 4;
6. Subject to paras. 7 and 9, having found that neither s. 15(1)(c) nor s. 15(2)(b) of the Act authorizes the Law Society to refuse to disclose record 801, I require the Law Society to give the applicant access to that record;
7. I confirm that s. 19(1)(a) of the Act authorizes the Law Society to refuse to disclose record 801;
8. Subject to para. 5, above, as it relates to record 2087, having found that s. 20(1)(a) of the Act does not authorize the Law Society to refuse to disclose records 2087 or 2481, I require the Law Society to give the applicant access to those records; and
9. I require the Law Society to refuse access to all of the information that it has refused to disclose under s. 22(1) of the Act.

June 23, 2003

#### ORIGINAL SIGNED BY

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David Loukidelis  
Information and Privacy Commissioner  
for British Columbia