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Order F11-12

BRITISH COLUMBIA LOTTERY CORPORATION

Celia Francis, Senior Adjudicator

May 5, 2011

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Summary: Applicant requested BC Lottery Corporation's "Casino Standards, Policies and Procedures Manual (Version 2)". BCLC denied access to the Manual in its entirety under ss. 15 and 17. Section 17 found not to apply at all and s. 15 found to apply to certain portions. BCLC ordered to disclose portions of Manual to which s. 15 found not to apply.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 15(1)(k) and 15(1)(l) and 17(1)(a), 17(1)(b), 17(1)(d) and 17(1)(f).

Authorities Considered: B.C.: Decision F06-07, [2006] B.C.I.P.C.D. No. 26; Order No. 324-1999, [1999] B.C.I.P.C.D. No. 37; Order 02-50, [2002] B.C.I.P.C.D. No. 51; Order F08-03, [2008] B.C.I.P.C.D. No. 6; Order 01-22, [2001] B.C.I.P.C.D. No. 23; Order F07-06, [2007] B.C.I.P.C.D. No. 8; Order 00-37, [2000] B.C.I.P.C.D. No. 40; Order 00-39, [2000] B.C.I.P.C.D. No. 42; Order F05-09, [2005] B.C.I.P.C.D. No. 10; Order 01-36, [2001] B.C.I.P.C.D. No. 37; Order 00-10, [2000] B.C.I.P.C.D. No. 11; Order F08-22, [2008] B.C.I.P.C.D. No. 40; Order 03-11, [2003] B.C.I.P.C.D. No. 11; Order 01-20, [2001] B.C.I.P.C.D. No. 21; Order 01-01, [2001] B.C.I.P.C.D. No. 1. **Ont.:** Interim Order P-1281 Appeal P-9500288, [1996] O.I.P.C. No. 373.

Cases Considered: *Workers' Compensation Board Alberta v. Appeal Commission* (2006) 258 D.L.R. (4th) 29; *R. v. Mohan*, [1994] 2 S.C.R. 9.

Authors Considered: *Sopinka, Lederman & Bryant: The Law of Evidence in Canada*, 3rd ed. by Alan W. Bryant, Sidney N. Lederman and Michelle K. Fuerst. Markham, Ont.: LexisNexis, 2009.

1.0 INTRODUCTION

[1] This order flows from a request under the *Freedom of Information and Protection of Privacy Act* ("FIPPA") for the British Columbia Lottery Corporation's ("BCLC") "Casino Standards, Policies and Procedures Manual (Version 2)" ("Manual"). In response to the applicant's request, BCLC denied access to the entire Manual under ss. 15(1)(l), 17(1)(b) and (d) and 21(1)(a)(ii), (b) and (c)(i) and (ii) of FIPPA. BCLC said that release of the manual "could compromise the integrity of casino gambling in British Columbia".

[2] The applicant requested a review of BCLC's decision by this Office ("OIPC"). During mediation, BCLC told the applicant that it was adding ss. 17(1)(a) and (f) and 15(1)(a), (c) and (k) as exceptions and that it was abandoning s. 21. Mediation did not resolve the issues and the matter proceeded to an inquiry under Part 5 of FIPPA. The applicant and BCLC both made submissions.

2.0 ISSUES

[3] The issues before me are whether the public body is authorized to deny access to information under ss. 15(1)(a), (c), (k) and (l) and 17(1)(a), (b), (d) and (f) of FIPPA. Under s. 57(1), BCLC has the burden of proof respecting these exceptions.

3.0 DISCUSSION

[4] **3.1 Preliminary Matters**—I will begin with a number of preliminary matters.

BCLC's objection to mediation material

[5] BCLC objected to mediation material in the applicant's reply submission, saying it should be removed because it contravened the OIPC's inquiry instructions that such material can only be included if the other party consents, which BCLC does not.[1] The OIPC's Registrar of Inquiries agreed with BCLC on this point and removed the material in question from the applicant's reply.[2] There is therefore no need for me to deal with this issue.

Request for oral inquiry

[6] BCLC requested an oral inquiry on the basis that the issues in the inquiry were complex and significant, although it also said it did not see a need to adduce any oral evidence.[3] The applicant considers an oral inquiry to be unnecessary as there is no need to weigh conflicting oral testimony or make

[1] Pages 1-2, BCLC's objection letter of August 30, 2010.
[2] Registrar's letter of August 31, 2010 to the parties.
[3] Para. 95, BCLC's initial submission.

findings of credibility. It said such an oral inquiry would only add expense and inconvenience.[4]

[7] The OIPC's policy on oral inquiries provides that, in deciding whether to hold an oral inquiry, an adjudicator should consider whether: (a) material facts are in dispute; (b) credibility is in issue; (c) the issues are complex; (d) the review raises significant policy issues; and (e) the person who requested the review has a limited ability to read and write or a physical disability which impairs the person's ability to make a written submission.[5] Applying these factors, I see no need to hold an oral inquiry. The inquiry does not raise any significant policy issues or disputed material facts. The withheld material is not complex and there are no credibility issues either. The written submissions fully canvass the issues in dispute in this case. I therefore decline BCLC's request for an oral inquiry.

"Expert evidence"

[8] BCLC filed two affidavits of persons whose evidence in the appended reports BCLC tendered as expert evidence. The first report was by Jervis C. Rodrigues, Chartered Accountant, Chartered Insolvency Restructuring Professional and Certified Fraud examiner. He is also "an experienced consultant providing financial services to the gaming sector" in Canada and the United States.[6] His résumé indicates that he has testified as an expert witness on matters relating to forensic accounting, bankruptcy and commercial disputes.

[9] Mr Rodrigues was asked to provide his opinion on the following questions:

(1) the meaning of "monetary" or "economic" value;

(2) whether the Manual in its entirety had or is reasonably likely to have monetary value or derives independent economic value (actual or potential) from not being generally known by the public or other persons; and

(3) whether disclosure of the Manual could reasonably be expected to harm the financial or economic interests of either the BCLC or the provincial government.

[10] The second report was by Independent Consultant Gerald N. Boose.[7] Mr Boose has been involved in the gaming industry since 1995 and was employed in the industry in Ontario and Manitoba from 1997 to 2008. Mr Boose believes he understands the industry in BC well, having had contact with BCLC through the Gaming Security Professionals of Canada. Mr Boose was asked to provide his opinion on the following questions:

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[4] Para. 28, applicant's initial submission; para. 26, applicant's reply submission.
[5] Section 6.31.
[6] Rodrigues report.
[7] Boose report.

(1) the security risks and crime prevention challenges, if any, faced by casino gaming providers in the operation of a casino business;

(2) the role, if any, that confidentiality over casino practices and procedures play in casino security and prevention of crime in casino operations; and

(3) the effect, if any, of public disclosure of those casino practices and procedures.

[11] The applicant briefly argued in reply that BCLC did not give proper notice under the *Evidence Act* and that, in any event, Mr Rodrigues and Mr Boose are not qualified to effectively "speculate" on the consequences of disclosure of the Manual.[8] BCLC countered that the requirements for timelines in s. 10 of the *Evidence Act* do not apply here but that, if they do, it has met those requirements. It referred to Decision F06-07[9] in this regard.[10]

[12] Section 10 of the *Evidence Act* applies to expert reports which are tendered as evidence without the need for the expert's *viva voce* evidence at a hearing (although s. 10(5) permits an opposing party to require the expert to be called as a witness). It provides in part:

> 10(1) In this section and sections 11 and 12, "proceeding" includes a quasi-judicial or administrative hearing but does not include a proceeding in the Court of Appeal, the Supreme Court or the Provincial Court.
>
> (2) This section and section 11 do not apply to proceedings of a tribunal, commission, board or other similar body that enacts or makes its own rules for the introduction of expert evidence and the testimony of experts, and if there is a conflict between any such rules and this section or section 11, those rules apply.
>
> (3) A statement in writing setting out the opinion of an expert is admissible in evidence in a proceeding without proof of the expert's signature if, at least 30 days before the statement is given in evidence, a copy of the written statement is furnished to every party to the proceeding that is adverse in interest to the party tendering the statement.
>
> (4) The assertion of qualifications as an expert in a written statement is proof of the qualifications....

[13] In Decision F06-07, Commissioner Loukidelis assumed, without deciding, that an inquiry under FIPPA is a quasi-judicial or administrative hearing within the meaning of s. 10(1) of the *Evidence Act*. On that assumption, he agreed with the applicant that (as is still the case) the OIPC had no rules for the introduction of

[8] Page 2, applicant's reply submission.
[9] [2006] B.C.I.P.C.D. No. 26.
[10] Pages 2-3, BCLC's letter of August 30, 2010.

expert evidence and the testimony of experts within the meaning of s. 10(2) of the *Evidence Act*. Ultimately Commissioner Loukidelis found it unnecessary to decide whether ss. 10 and 11 apply to inquiry proceedings as he had concluded that the evidence at issue did not qualify as expert opinion evidence. However, he went on to say:

> [26] If I had concluded that I would consider Amos's affidavit as expert opinion evidence and s. 10 of the *Evidence Act* applied in the context of a written inquiry under the Act, then I would agree with the applicant that s. 11 of the *Evidence Act* would also be relevant and the two provisions would have to be interpreted together sensibly to accommodate the tendering of expert evidence in quasi-judicial or administrative proceedings that are generally conducted in writing and only exceptionally involve oral testimony. As such, for a written inquiry under the Act, the discretion in s. 11(2) would be available to permit expert evidence to be tendered, despite non-compliance with 30-day prior notice under s.10, and the procedures and schedule for an inquiry under the Act, written or oral, could be adjusted to ensure that parties affected by expert evidence could respond to that evidence on fair and adequate notice.

[14] In this case, the schedule for submissions set by the OIPC Registrar called for an exchange of initial submissions by July 30, 2010 and reply submissions by August 13, 2010. The closing date for the Inquiry was August 17, 2010. BCLC met the July 30, 2010 deadline and, at that time, provided the applicant with its evidence, including the affidavits of Mr Rodrigues and Mr Boose. However, the Registrar spoke to the applicant on the phone on August 5, 2010, as she had not received his initial submission, due on July 30, 2010. He explained that he had been in court the week prior and had not yet prepared his submission and asked for an extension. The applicant was then given until August 13, 2010 to deliver his initial submission to the OIPC and the BCLC. The BCLC subsequently requested, and was granted, an adjustment to the deadline to reply submissions to August 27, 2010. The closing date was then adjusted accordingly to August 31, 2010.

[15] I note that the applicant did not raise any objections to the affidavits and reports of Mr Rodriguez and Mr Boose in his initial submission even though he had received them two weeks earlier. Rather the applicant's objection was not raised until reply. In any event, even if I assume that the *Evidence Act* applies to the evidence BCLC tendered as expert evidence, as the events unfolded, the applicant had that evidence within 30 days of the close of the inquiry.

[16] In their text, *The Law of Evidence* (3rd ed.) (at p. 785), Sopinka, Lederman and Bryant describe the function of an expert in a judicial setting as being to provide the trial judge with a ready-made inference from proven facts since the technical or scientific nature of the subject matter is likely to be beyond the fact-finder's knowledge or expertise. Such evidence is admissible when the fact-finder is unable to draw an inference or to form a proper conclusion without

the assistance of experts and the evidence is otherwise admissible at common law or under statute. As the authors point out:

> ... In each case the trial judge must determine whether the subject matter of the opinion necessitates comprehension beyond the level of the common person. Some areas are obvious:
>
> > Where expert evidence is tendered in such fields as engineering or pathology, the paucity of the lay person's knowledge is uncontentious. The long-standing recognition that psychiatric or psychological testimony also falls within the realm of expert evidence is predicated on a realization that in some circumstances the average person may not have sufficient knowledge of or experience within human behaviour to draw an appropriate inference from the facts before him or her.

[17] In Decision F06-07, Commissioner Loukidelis noted that the strict criteria for the admissibility of expert evidence in judicial proceedings do not apply in an inquiry under FIPPA because it is not governed by the strict rules of evidence. In doing so, he placed reliance on the Alberta Court of Appeal decision *Workers' Compensation Board Alberta v. Appeal Commission*.[11] The Court concluded in that case that the criteria *R. v. Mohan*[12] established did not apply in an administrative law setting where the strict rules of evidence do not apply and the weighing of evidence is generally regarded as a question of fact:

> 67 ... In an administrative law context, "[r]elevant expert evidence is admissible. Any frailties in the facts or hypotheses upon which an opinion is based, or in the qualifications of the expert, affect the weight of the evidence, but not its admissibility...
>
> 69 Weighing evidence is generally characterized as a question of fact, as factual conclusions result from the weight assigned to the underlying evidence....

[18] While Commissioner Loukidelis accepted (in Decision F06-07) that the strict rules of evidence do not apply to expert evidence, he also said that this does not mean that "anything goes" in respect of such evidence.[13] Although an administrative tribunal can accept such evidence, in doing so, it might well ask the purpose for which it is doing so and may wish to adopt a more cautious approach if, for example, the evidence is being tendered on the basis that it is beyond the ability of the decision-maker to understand unaided.

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[11] (2006) 258 D.L.R. (4th) 29.

[12] [1994] 2 S.C.R. 9. In that case, the Court established a four-part test for the admission of expert evidence: (1) relevance; (2) necessity in assisting the trier of fact; (3) the absence of any exclusionary rule; and (4) a properly qualified expert.

[13] The issue in that inquiry was whether s. 17 or s. 21 applied to a contract for house-keeping services. The Commissioner said, at para. 19, that while he would consider whether certain evidence was relevant, he would not admit it as "expert opinion evidence" as the deponent did not have any specialized or direct knowledge specific to the issues at hand, which included the disclosure practices of health authorities in BC. Rather, the deponent offered broad policy perspectives and predictions on public access to contracts in a more general sense. As a result, he said, it was not necessary to decide whether ss. 10 and 11 of the *Evidence Act* applied.

[19] While I accept the evidence of Mr Rodrigues and Mr Boose which has been tendered by BCLC as being admissible, that does not mean it is to be admitted as "expert" evidence. The first opinion Mr Rodrigues provided relates to the meaning of "monetary" or "economic value". On that score Mr Rodrigues referred to the definitions provided on www.investwords.com. I see the question of whether information has "monetary value" for s. 17(1)(b) purposes to be one of statutory interpretation well within the expertise of an adjudicator and a legal issue which I must decide. I also do not see Mr Rodrigues's evidence in this respect to be necessary for me to appreciate the underlying facts due to their technical nature. Similarly, in respect of his opinions on whether the Manual "has or is likely to have monetary value" or whether "in its entirety it derives independent economic value, actual or potential, from not being generally known by the public or other persons", I do not see the factual basis upon which Mr Rodrigues's opinions are based to be ones beyond my comprehension without an expert's assistance; nor do I feel ill-equipped to draw proper inferences from such facts. Finally, Mr Rodrigues opines on whether disclosure of the Manual "could reasonably be likely to harm the financial or economic interests of either the BCLC or the Government of British Columbia" or "would result in harm or improper benefit". Again, these questions are the very questions of statutory interpretation that I am called upon to decide. Additionally, the brief opinions Mr Rodrigues gives in this regard are highly speculative and general in nature and in many respects echo those of Darryl Schiewe, BCLC's Vice-President, Casino and Community Gaming. While I consider Mr Rodrigues's evidence in my consideration of the main issues, I do not consider it "expert" evidence as Commissioner Loukidelis discussed this term in Decision F06-07.

[20] The first part of Mr Boose's report is a factual description of any security risks and crime prevention challenges that casino gaming security providers face generally in the operation of a casino business. Such evidence, while relevant, does not qualify as opinion evidence as no opinion is offered. The second part of Mr Boose's report addresses what role, if any, confidentiality plays in casino security and prevention of crime in casino operations. This too is a factual description only and no opinion is offered. The third part of Mr Boose's report contains some factual descriptions but also offers an opinion on any effect of disclosure on casino practices and procedure generally, without any specifics relating to BC casinos. While I accept this part of his report constitutes expert opinion evidence, the weight to be attributed to that evidence is attenuated due to its very general and, in some respects, speculative nature.

Applicant's objection to BCLC's in camera material

[21] In accordance with the OIPC's inquiry instructions, BCLC requested advance approval to submit large portions of its initial submission on an *in camera* basis. I carefully considered its reasons and, having reviewed the proposed *in camera* material, I concluded that not all of it warranted being received *in camera*. I requested that BCLC agree to the applicant receiving

some of this material, which it did. I also accepted that it was appropriate for me to receive the remainder of the *in camera* material on this basis as it could reveal information in dispute. The Registrar conveyed this decision to the parties during the inquiry process.

[22] The applicant objected to the *in camera* material in his initial submission. I acknowledge the applicant's point that not being able to review the *in camera* material puts him at a disadvantage but I remain of the view that the *in camera* material is appropriately received as such. I do not propose to reconsider my decision on this issue.

Section 70 "manual"

[23] The applicant said the Manual should be made publicly available under s. 70(1) of FIPPA.[14] In a March 5, 2009 letter to BCLC, the applicant earlier asked that the Manual be made available under this section and BCLC declined, advising the applicant to make a formal request for the Manual under FIPPA.[15]

[24] There is no indication that the s. 70(1) issue was part of the mediation process. Nor is it listed as an issue in the notice for this inquiry and the accompanying fact report. Moreover, the parties' submissions do not provide an adequate basis on which I could determine this matter. I therefore decline to consider the s. 70(1) issue here. I note in any case that, even if the Manual were a manual for the purposes of s. 70(1), BCLC could delete information from it under ss. 15 and 17 of FIPPA before making it available to the public, as ss. 70(2) and (4) make clear.

Legal Profession Act

[25] The applicant argued that it is important for his law firm to have access to the Manual so that it can advise its clients about the rules and laws governing gaming in this province. BCLC's refusal to give access to the Manual is "subverting and frustrating" his firm's mandate under the *Legal Profession Act*, he submitted. The applicant also argued that the Manual is a "regulation" under the *Gaming Control Act* and, as such, a lawyer practicing in the gaming area must have a thorough knowledge of it.[16]

[26] BCLC argued that the applicant's submissions on these points are irrelevant to this inquiry. It made the point that the *Legal Profession Act* provides lawyers with no particular right to know under FIPPA.[17]

[27] I agree. The applicant's arguments in this vein are not relevant to the issues of whether or not ss. 15 and 17 apply to the Manual. The applicant is no more entitled to the Manual by virtue of being a lawyer than any other applicant.

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[14] Page 1, applicant's initial submission.
[15] Exhibits "F" & "G", Rothenburger affidavit, BCLC's initial submission.
[16] Paras. 13-21, applicant's initial submission.
[17] Paras. 12-13, BCLC's reply submission.

[28] **3.2 Background**—BCLC is a Crown corporation which, under authority of the *Gaming Control Act* ("GCA"), conducts, manages and operates casino gaming in the Province. In accordance with its statutory mandate, BCLC contracts with private sector organizations ("casino service providers") who provide operational services for all casinos located in the Province. These casino service providers are governed by, and required to comply with, rules and procedures that BCLC establishes. This includes compliance with the Manual. BCLC's mandate includes authority to make rules for the purpose of conducting and managing gaming and requires BCLC to monitor compliance by casino service providers with the GCA, the regulations and BCLC's rules. BCLC said the Manual is a comprehensive and detailed consolidation of policies, procedural and operational rules for the conduct of casino gaming operations in the Province, with the exception of casino surveillance.[18]

[29] **3.3 Record in Dispute**—The 608-page Manual contains detailed policies, standards and procedures that BCLC imposes on Casino Service Providers regarding staffing protocols, key controls, systems, security and surveillance protocols and other matters. Each page is marked "confidential".

[30] **3.4 Harms-Based Exceptions**—Past orders have set out the evidentiary requirements for the application of FIPPA's harms-based exceptions. Commissioner Loukidelis encapsulated the standard of proof for s. 17(1) in Order No. 324-1999[19] as follows:

> … As was said in Ontario Order 203 (November 5, 1990), the alleged "harm must not be fanciful, imaginary or contrived but rather one which is based on reason". It must be possible for a reasonable person to conclude, based on the evidence, that an identified, or specific, harm to the financial or economic interests of the public body is likelier than not to flow from disclosure of the information. Of course, the evidence in each case will determine whether there is a reasonable expectation of harm from disclosure.[20]

[31] In Order 02-50,[21] Commissioner Loukidelis considered the standards for establishing a reasonable expectation of harm regarding s. 17 at some length, culminating with this statement:

> [137] Taking all of this into account, I have assessed the Ministry's claim under s. 17(1) by considering whether there is a confident, objective basis for concluding that disclosure of the disputed information could reasonably be expected to harm British Columbia's financial or economic interests. General, speculative or subjective evidence is not adequate to establish that disclosure could reasonably be expected to result in harm under s. 17(1). That exception must be applied on the basis of real grounds that are connected to the specific case. This means establishing a clear and

[18] Paras. 3-4, BCLC's initial submission; paras. 18-20, Friesen affidavit; Schiewe affidavit.
[19] [1999] B.C.I.P.C.D. No. 37.
[20] At p. 6.
[21] [2002] B.C.I.P.C.D. No. 51, at paras. 124-137.

> direct connection between the disclosure of withheld information and the harm alleged. The evidence must be detailed and convincing enough to establish specific circumstances for the contemplated harm to be reasonably expected to result from disclosure of the information. A Ministry or government preference for keeping the disputed information under wraps ... will not, for example, justify non-disclosure under s. 17(1). There must be cogent, case-specific evidence of the financial or economic harm that could be expected to result.

[32] Order F08-03[22] had this to say about s. 15:

> [27] … As I have said many times before, the evidence required to establish that a harms-based exception like those in ss. 15(1)(a) and (l) must be detailed and convincing enough to establish specific circumstances for the contemplated harm that could reasonably be expected to result from disclosure of the withheld records; it must establish a clear and direct connection between the disclosure of the withheld information and the alleged harm. General speculative or subjective evidence will not suffice.

[33] Previous orders have also recognized that the type of harm contemplated is relevant to an assessment of whether a reasonable likelihood of harm has been established.[23] I have taken the same approach as these and other relevant orders have in considering the parties' arguments on the reasonable expectation of harm in ss. 15 and 17.

[34] **3.5 Financial or Economic Harm**—BCLC takes the position that it is entitled to withhold the entire Manual under s. 17(1). The provisions in issue read as follows:

> **Disclosure harmful to the financial or economic interests of a public body**
>
> 17(1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information:
>
> (a) trade secrets of a public body or the government of British Columbia;
>
> (b) financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value;

[22] [2008] B.C.I.P.C.D. No. 6.
[23] See for example Order F08-22, [2002] B.C.I.P.C.D. No. 40, at paras. 33-57, and Order 00-10, [2000] B.C.I.P.C.D. No. 11, at pp. 9-10.

> (c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;
>
> (d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;
>
> …
>
> (f) information the disclosure of which could reasonably be expected to harm the negotiating position of a public body or the government of British Columbia.

[35] BCLC argued that the entire Manual has monetary or economic value derived from "the quality of its overall design, its level of complexity or detail, and its having been tailored or customized to the gaming industry".[24] Noting that disclosure to the applicant must be considered disclosure to the world,[25] BCLC argued that disclosure of the Manual as a whole could reasonably be expected to harm its financial and economic interests. This could happen in part, BCLC argued,

> … through the economic loss resulting from the inability to derive benefit from marketing the [Manual] for sale in the future, as well as a detrimental impact on its current competitive advantage and a loss of revenues due to increased competition from BCLC's competitors in Washington State.[26]

[36] This is so, BCLC argued, even though it is a monopoly and has no casino gambling competition within BC. The potential financial harm is "significant", BCLC said, as "the market would be prepared to pay a *significant amount of money* to purchase the Manual".[27] The public's right to know does not diminish the potential harm, especially in this case, BCLC argued, where the Gaming Policy and Enforcement Branch ("GPEB") has regulatory oversight over BCLC and its service providers, who are thus subject to a significant variety of oversight and accountability beyond FIPPA.[28]

[37] The applicant replied that BCLC's arguments on s. 17(1) were "speculation", advancing the

> theory that Washington State casinos will be able to use the Policy Manual to revamp their casinos to attract British Columbia gamblers away from British Columbia casinos to Washington State. Of course, the BCLC cannot point to any harm when the BCLC disclose[s] the Policy Manual to operators who have casinos in both B.C. and Washington State.[29]

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[24] Para. 19, BCLC's initial submission.
[25] BCLC referred here to Order 03-11, [2003] B.C.I.P.C.D. No. 11.
[26] Para. 16, BCLC's initial submission; Rodrigues Report, pp. 2-4.
[27] Para. 21, BCLC's initial submission; Rodrigues Report, p. 3; italics BCLC's in original.
[28] Paras. 22-23, BCLC's initial submission.
[29] Pages. 4-5, applicant's reply submission.

[38] **3.6 Trade Secret**—BCLC argued that, as a "compilation" of casino operating standards, policies and procedures, the entire Manual is a "trade secret" of BCLC, as defined in Schedule 1 of FIPPA. The definition of this term in Schedule 1 of FIPPA reads as follows:

> **"trade secret"** means information, including a formula, pattern, compilation, program, device, product, method, technique or process, that
>
> (a) is used, or may be used, in business or for any commercial advantage,
>
> (b) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use,
>
> (c) is the subject of reasonable efforts to prevent it from becoming generally known, and
>
> (d) the disclosure of which would result in harm or improper benefit.

[39] I summarize below BCLC's arguments on this issue:

- the Manual "is a guide as to how to create a customer-focused environment within a casino while enhancing casino gaming operations"[30] and reveals the overall scheme in which the day-to-day business of casino gaming is conducted; the Manual is "critical to the effectiveness of BCLC's casino operations", profits from which have risen steadily over the last ten years; its release would "risk that advantage in the hands" of BCLC's competitors, for example in Washington State, who could use the Manual to improve their policies so as to lure customers away from the British Columbia market, leading to loss in revenue for BCLC; BCLC has never sold the Manual and has no plans to do so; however, it may in future "seek to engage in the sale" of the Manual for financial remuneration; release of the Manual would deprive BCLC of the benefit of marketing the Manual in the future if it decided to do so, which would represent an economic loss[31]

- having regard to (1) the cost to produce the Manual (about $191,000 in employee salaries to create it and an annual cost of $86,000 in one analyst's salary to maintain it), (2) market demand for the Manual (BCLC has received two inquiries from the United States regarding access to the Manual) and (3) the opportunity for gaming companies to improve their performance by adopting the Manual's policies and procedures, access to "a well designed manual" such as this one would have both "monetary" and "economic" value, as it would provide gaming companies with "significant cost savings and performance enhancement

[30] Para. 31, BCLC's initial submission.
[31] Paras. 24-32, BCLC's initial submission; Schiewe affidavit.

opportunities" and the market would pay a significant amount of money to purchase it[32]

- the Manual is the subject of reasonable efforts to keep it from being generally known, as follows: the Manual contains a confidentiality statement on each page; contracts between BCLC and casino service providers state that the Manual is a confidential document; prior to having access to the Manual, "casino service providers must undergo extensive background and security reviews by GPEB"; BCLC has declined to provide a copy of the Manual to a corporation operating two facilities in the United States; BCLC has provided a copy to at least one other provincial gaming corporation in Canada on a confidential basis

- BCLC has plans for "future casino gaming enhancements" in British Columbia and BCLC will likely use a bid process to select any new service providers; if a potential bidder were provided access to the Manual, that bidder could use the Manual to make its bid appear more "attractive", "creating an unfair bidding process" and making it more difficult for BCLC to select the best operator and to maximize BCLC's profitability[33]

Analysis

[40] Past orders have stated that the criteria for a "trade secret" are exhaustive.[34] In order for the Manual to be a "trade secret", it must first be "information, including a formula, pattern, compilation, program, device, product, method, technique or process". BCLC argued that the Manual is a "comprehensive compilation", referring to the following definition of "compiled" in the government's policy and procedures manual:

> the information was drawn from several sources or extracted, extrapolated, calculated or in some other way manipulated.

[41] BCLC provided affidavit evidence on the creation of the Manual as follows:

- a BCLC employee visited several casinos taking notes of job descriptions and practices

- a committee of BCLC staff representing a broad range of expertise used this material, together with a brief policy manual developed by a casino and its own expertise, to develop and draft "a comprehensive document" aimed at addressing all aspects of casino operations, to standardize the gaming experience, protect the integrity of gaming, ensure compliance with legislation and improve security and surveillance procedures

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[32] Rodrigues report.
[33] Paras. 33-36, BCLC's initial submission; see also affidavits of Somers, Armand, Schiewe, Rothenburger, Wolfram and Rodrigues report.
[34] See for example Order 01-20, [2001] B.C.I.P.C.D. No. 21, at para. 69.

- "content was drafted to respond to the unique concerns and requirements relating to gaming in British Columbia"

- the completed draft was circulated to BCLC staff and casino service providers for review, comment and approval[35]

- a BCLC analyst spends most of her time preparing and circulating updates[36]

[42] FIPPA does not define "compilation" and past orders provide no assistance on this issue. However, in addition to the definition of "compiled" in the government's manual (noted above), dictionary definitions of "compilation" provide helpful guidance

- "something that is compiled, esp. a book, etc, composed of separate articles, stories etc."[37]

- "a collection of literary works arranged in an original way, esp., a work formed by collecting and assembling pre-existing materials or data that are selected, coordinated, or arranged in such a way that the resulting product constitutes an original work of authorship"; "a collection of statutes, updated and arranged to facilitate their use"[38]

[43] These definitions all suggest that a "compilation" is a set of pre-existing items pulled together from several disparate sources. By contrast, the Manual in issue here, while "information" composed of many sections on different aspects of gaming and drawing on various sources, is an original, cohesive document, created specifically to standardize casino practices and policies in one comprehensive volume. It is not in my view a "compilation" as contemplated by the definition of "trade secret" in FIPPA.

[44] Even if, for the purposes of discussion I accept that the Manual is a "compilation", I do not consider that it meets the rest of the definition of "trade secret". BCLC argued that this "well-designed" Manual, aimed at creating a "customer-focused environment"[39] could be used by competitors in other jurisdictions to lure customers away from British Columbia casinos. By its own admission, however, the Manual responds to the "unique concerns and requirements relating to gaming" in this province.[40] This suggests that another jurisdiction, with its own concerns and requirements, might find the Manual of limited use.

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[35] Somers affidavit.
[36] Armand affidavit.
[37] Oxford Illustrated Dictionary, 1998 Oxford University Press.
[38] Black's Law Dictionary, 8th edition, Thomson West, 2004
[39] Para. 31, BCLC's initial submission.
[40] Para. 13, Somers affidavit.

[45] BCLC defines "economic value" as the ability of an asset to generate income.[41] However, it has not said how much of its increased income over the last 10 years can be attributed to use of the Manual, as opposed to, say, an expansion of gaming facilities or an increase in patronage. In such a case, I do not see how the Manual can be said to have "independent economic value". As Commissioner Loukidelis said in Order 01-22:

> [71] The term "trade secrets" is also used in s. 21. The substance of ICBC's argument is, in effect, that the documents under consideration represent the trade secrets of ICBC because they demonstrate ICBC's methodology in investigating, detecting and prosecuting fraud. The information is argued to have financial value, as reflected in the savings accruing to ICBC insured as a result of these fraud investigations being completed and prosecuted. In my view, such information does not have sufficient independent, objectively ascertainable financial value to constitute a trade secret.

[46] BCLC also says access to the Manual by casino service providers is restricted, although it does not say how many casino employees actually have access to it. It is possible that dozens or perhaps hundreds of casino employees throughout BC have access to the Manual, albeit under conditions of confidentiality. While I accept that BCLC has made reasonable efforts to prevent the Manual from becoming known to the general public, the evidence suggests the Manual is nevertheless available within the casino industry, possibly even to those who own casinos in other jurisdictions. Given this, I do not consider that the Manual meets the third part of the "trade secret" test.

[47] As for the last criterion, BCLC has asserted that access to the Manual by potential service providers in future bidding process could enable them to appear "more attractive" or create an unfair bidding process. It has not explained how bidders might use the Manual to this end, which does not assist BCLC's argument on this point. I also observe that current casino service providers, who have access to the Manual, could skew their bids to the disadvantage of competitors. I therefore find that the Manual does not meet the fourth criterion either.

[48] To conclude, I find that the Manual is not BCLC's "trade secret" for the purposes of s. 17(1)(a).

[49] **3.7 Information of Monetary Value—**BCLC said the Manual as a whole is "commercial information" as it was compiled as a "how-to guide" for the operation of a casino, the conduct of casino gaming operations and "how to create a customer-focused environment within a casino while enhancing gaming operations". BCLC also said the Manual has business-specific uses by and for BCLC and its casino service providers. It adds that the Manual is associated with the selling of casino services in that it includes, for example, information about the terms and conditions for providing those services and the methods to be

[41] Rodrigues report; Schiewe affidavit.

used. Moreover, BCLC added, the Manual as a whole has commercial value to other gaming companies and BCLC's competitors.[42]

[50] BCLC also made arguments on cost and market demand similar to those it made above on "trade secrets". BCLC argued disclosure of the entire manual would assist its competitors in Washington State to improve their policies and attract customers away from the British Columbia market. BCLC said the Manual's value also comes in part from the "quality of its overall design, its level of complexity or detail, and its having been tailored or customized to the gaming industry", all in addition to BCLC's time and expense in creating the Manual.[43]

[51] BCLC defined "monetary value" as the assets a product would bring to its owner if sold. It said the Manual has "monetary value" as BCLC has the mandate to sell it and "may wish to sell" it in future. BCLC added that the Manual "belongs" to it, in that BCLC employees created it and continually revise it as part of their jobs, taking their time and expense.[44]

[52] The applicant suggested that BCLC's arguments on these points are speculative. BCLC has a monopoly within the province, the applicant argued. It is not able to point to any harm to its interests from disclosure to operators which operate casinos in both BC and Washington State and which may have foreign ownership, the applicant submitted.[45]

Analysis

[53] Order F07-06[46] said that previous orders establish that s. 17(1)(b) is only engaged where three criteria are established:[47]

- the information must fall into the category of "financial, commercial, scientific or technical" information
- the information must be owned by ("belong to") the public body
- the information must either have or be reasonably likely to have monetary value.

[54] For reasons similar to those I gave in Order F07-06,[48] I am satisfied that the disputed information "belongs to" BCLC, for s. 17(1)(b) purposes. I do not consider, however, the Manual to be BCLC's "commercial information".

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[42] Paras. 37-44, BCLC's initial submission.
[43] Paras. 45-49, BCLC's initial submission.; Rodrigues report;
[44] Rodrigues report.
[45] Pages 4-5, applicant's reply submission; affidavits of Schiewe, Armand, Somers, Wolfram; Rodrigues report.
[46] [2007] B.C.I.P.C.D. No. 8.
[47] See, for example, Order 00-37, [2000] B.C.I.P.C.D. No. 40, and Order 00-39, [2000] B.C.I.P.C.D. No. 42.
[48] At para. 18.

In Order F05-09,[49] I noted that previous orders have found that "commercial information" relates to commerce or the buying and selling of goods and services, including information about:

- offers of products and services the entity proposes to sell or perform;
- the entity's experiences in commercial activities where this information has commercial value;
- terms and conditions for providing services and products;
- lists of suppliers or subcontractors compiled for use in the entity's commercial activities or enterprises;
- methods an entity proposes to use to supply goods and services; and
- the number of hours an entity proposes to take to complete contracted work or tasks.

[55] In Order 01-36,[50] the Commissioner said that "commercial information" relates to a commercial enterprise but need not be proprietary in nature or have an independent market or monetary value. In Order F07-06 I also discussed the meaning of "commercial information",[51] saying among other things,

> [22] Under this analysis, the information at issue should itself be associated with the buying, selling or exchange of merchandise or services carried on by the particular entity in order to qualify as "commercial information" for s. 17(1)(b) purposes. The fact that the information at issue may have some or potential commercial value is not the test for whether the information itself is "commercial".[52]

[56] Having regard for these and other relevant passages on the meaning of "commercial information", I conclude the information in the Manual is not concerned with the buying and selling of merchandize or services that BCLC carries on. It is a detailed set of policies and procedures on the conduct of casino gaming. Contrary to what BCLC argued, the possibility that the Manual might be of "commercial value", in the sense that BCLC might want to sell it, is immaterial.

[57] BCLC has also not shown how the Manual has "monetary value". Even if I accept BCLC's definition of this term, BCLC has not said what price the Manual might fetch. Moreover, the supposed "market demand" to date apparently amounts to one inquiry from another jurisdiction regarding two facilities and one confidential disclosure to another. This hardly suggests that the Manual is in demand outside the province. BCLC's arguments on the sensitivity of the

[49] [2005] B.C.I.P.C.D. No. 10.
[50] [2001] B.C.I.P.C.D. No. 37.
[51] At paras. 21-24.
[52] Interim Order P-1281 Appeal P9500288, [1996] O.I.P.C. No. 373.

Manual's contents are also at odds with its arguments on the potential sales value of the Manual. It says in any event it has no plans to sell the Manual.[53]

[58] To conclude, I find that s. 17(1)(b) does not apply to the Manual.[54]

[59] **3.8 Undue Financial Loss or Gain to a Third Party—**BCLC said disclosure of the Manual would result in undue loss to casino service providers through loss of revenues from reduced gaming revenue. Disclosure would also, BCLC argued, result in undue gain to BCLC's competitors through "performance enhancement opportunities, gained market share and *significant* cost savings".[55] This gain would be "undue" in light of BCLC's investment of time and money creating the Manual, BCLC said, and "the significant amount of money that the market would be prepared to pay for it". This would, it continued, result in a "correlating loss of market share, the related revenue and proceeds of sale, thus resulting in harm to the financial and economic interests of BCLC and/or the government of British Columbia".[56] The applicant combined his reply on this point with that on s. 17(1)(b).

Analysis

[60] Commissioner Loukidelis considered the meaning of "undue loss or gain" in Order 00-10[57]. I also discussed its meaning in Order F07-06:

> ***Undue loss or gain***
>
> [41] … The meaning of "undue financial loss or gain" has often been considered. As noted in Order 00-41,[58] "undue" is defined in the Oxford English Dictionary as "excessive or disproportionate". Its ordinary meaning includes something that is unwarranted, inappropriate or improper. …

[61] BCLC's arguments on this point, which overlap with those it made above on the "trade secret" issue, are speculative and based on hypothetical scenarios. BCLC has not quantified the supposed undue loss or gain it says would result from disclosure of the Manual. Moreover, as I said above, it is not clear how other jurisdictions, with their own unique requirements and environments, would find the Manual useful in the way BCLC would have me believe. BCLC has also not provided cogent evidence to show how disclosure would result in "undue gain" to competitors in other jurisdictions.

[62] I acknowledge that BCLC has provided evidence on how much it cost in salary dollars to produce the Manual and the annual salary costs of maintaining

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[53] Para. 27, Schiewe affidavit.
[54] I made a similar finding in Order F07-06 for similar reasons, at paras. 30-37.
[55] Italics in original, para. 56.
[56] Paras. 50-56, BCLC's initial submission; affidavits of Schiewe, Friesen, Somers, Wolfram, Armand; Rodrigues report.
[57] [2000] B.C.I.P.C.D. No. 11; see pp. 17-19.
[58] [2000] B.C.I.P.C.D. No. 44, at para. 36.

it. BCLC has not, however said what it could reasonably expect to charge for copies of the Manual, if it chose to market this document, which as noted above, is not something BCLC plans to do. Nor has it shown how any supposed lost sales opportunities could reasonably be expected to translate into "undue loss" to casino service providers in BC.

[63] For these reasons, I find that s. 17(1)(d) does not apply to the Manual.

[64] **3.9 Harm to Negotiating Position—**BCLC argued that disclosure of the Manual could reasonably be expected to harm its negotiating position because "BCLC would be able to derive benefit from marketing the [Manual] for sale in future". Disclosure would, it said, "enable others to use the information to their advantage, to the detriment of BCLC, in any attempt to negotiate a sale on the [Manual]". This could, BCLC argued, in turn be reasonably expected to harm BCLC's and/or the province's financial and economic interests.[59]

[65] BCLC did not say what negotiations might be involved here nor how disclosure of the Manual could harm its negotiating position in any such negotiations. BCLC's arguments on this point are much the same as those I cited above. They are not persuasive. I find that s. 17(1)(f) does not apply to the Manual.

[66] **3.10 Harm to Law Enforcement**—The relevant provisions read as follows:

> **Disclosure harmful to law enforcement**
>
> 15(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
>
> (a) harm a law enforcement matter,
>
> …
>
> (c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,
>
> …
>
> (k) facilitate the commission of an offence under an enactment of British Columbia or Canada, or
>
> (l) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.

[67] BCLC said casino operations have distinctive elements that make casinos "particularly vulnerable to security breaches and criminal behaviour, including theft, robbery and fraud".[60] BCLC argued that the Legislature "has in effect

[59] Para. 60, BCLC's initial submission; Rodrigues report.
[60] Paras. 61-66, BCLC's initial submission.

declared that disclosure of the information described in the relevant sub-sections would be so detrimental to the public interest that it presumptively cannot be countenanced".[61]

[68] BCLC provided argument directed at ss. 15(1)(c), (k) and (l). Although BCLC's decision letter also referred to s. 15(1)(a) as authority for withholding information and the notice of inquiry listed this paragraph as an issue, its initial submission did not refer to s. 15(1)(a). I therefore take BCLC to have abandoned its position on s. 15(1)(a) and I will not consider it here.

[69] **3.11 Facilitate Commission of an Offence and Harm to Security of Property or System—**BCLC blended its submissions on ss. 15(1)(k) and (l). It argued that disclosure of certain parts of the Manual could facilitate the commission of an offence under s. 15(1)(k), because it would facilitate the planning and execution of crimes by criminals. BCLC also said that security of its casinos and systems is integral to protection of casino assets and the prevention of criminal activity in casinos. BCLC highlighted in yellow the portions of the Manual it considers fall under s. 15. It uses a variety of access, documentation, personnel and cash handling controls to accomplish these goals and argued that these controls are "systems" within the meaning of s. 15(1)(l). It provided an extensive description of its concerns in these areas in the 135-page Friesen affidavit,[62] much of which I received on an *in camera* basis. I have considered this lengthy affidavit carefully and set out below the salient points from the open parts:

- theft by casino staff is a concern where staff have responsibilities for handing assets such as cash and chips or where they have access to high security areas
- theft by those external to casinos (including break-ins and attempts to breach systems and equipment) is also a concern; it tends to involve sophisticated planning and be more difficult to detect, if less frequent
- casinos are also robbery targets, involving acts or threats of violence and sometimes the large-scale storming of a facility
- in addition to cash and chips, other assets are vulnerable to theft and robbery: casino records; gaming supplies and equipment (coupons, dice, cards); slot machines (software and hardware); and keys
- fraud is also an issue and can take these forms: cheating at table play (*e.g.,* theft or marking of cards, weighting dice, changing bets); manipulation of slot machines; counterfeiting of cash, chips, tickets or coupons; making false claims for payment
- because of their cash-based nature, casinos are targets for money laundering activities

[61] Para. 64, BCLC's initial submission.
[62] At paras 44-99.

- employee and public safety is an issue during robberies as criminals often use threats to force employees to assist criminals; loan-sharking is also a concern
- organized crime is a significant concern to casinos; among other things, such criminals may induce or force casino employees to assist them in robbery, theft and fraud
- any degree of criminality in casinos will call into question the integrity of gaming[63]

[70] BCLC said disclosure of specific portions of the Manual could facilitate the commission of an offence or harm the security of property or systems, including sections on these topics:

- staffing protocols would tell criminals how many staff they could expect to encounter during a robbery or breach and thus how many accomplices they would need
- sections on secure areas of casinos and "access authorizations", including who has access to restricted, high-security areas of a casino (*e.g.,* the surveillance room), which areas have a high concentration of assets and where "vulnerable activities" occur; such knowledge would make it easier for criminals to know which employees to target for their knowledge and could also jeopardize the safety of those employees
- key and card controls, including who has access to various types of keys; storage of keys and the kinds of keys that are used in specific areas; this would facilitate a breach of casino security, such as via breaking and entering, tampering with equipment or theft and robbery
- alarm systems
- records and information technology, including systems with client personal information, as it could lead to: identity theft; creating false employee identification to bypass security and gain access to unauthorized areas of a casino; hacking into a casino's operating systems to manipulate data and to conceal thefts and fraud
- systems access, including facilitating hacking and availability of back-up equipment
- because of the "impracticability of recording every gaming floor transaction", information on "asset handling vulnerabilities" such as: vault protocols; location, movement, accumulation and centralization of liquid assets (*e.g.,* to the vault, at casino opening and closing, at drop and count, for bank deposits or at shift changes; slot machine programming, access and storage protocols) including staffing levels and surveillance protocols for these times; detection of and responses to irregularities and discrepancies

[63] Paras. 47-119, Friesen affidavit.

- security, storage, transfer, destruction, movement and asset accounting protocols for cards, dice, cash, coupons and chips, including methods for detecting tampering and counterfeiting, specifications for cards and dice and how often cards and dice are replaced during gaming
- large table buy-in procedures, because of the large amount of cash involved and customers may be targeted in the course of a robbery during such a procedure
- evacuation procedures, including protocols on the handling of vulnerable assets during such procedures
- types of transactions required to be reported or considered to be suspicious for purpose of detecting and preventing money-laundering
- verification of payments, including authorization protocols, which would assist patrons in claiming fraudulent payments, including surveillance and security protocols around payments
- surveillance and security protocols
- reporting and investigation thresholds[64]

[71] The applicant took umbrage at the notion that disclosure of the manual to his firm would facilitate the commission of an offence.[65] He said his firm intends to use the civil court system to enforce the Manual and the GCA, but cannot do so without access to the Manual.[66]

[72] BCLC denied that it sought to "impugn" the applicant in arguing harm on disclosure. BCLC continued that, as stated in past orders, "the applicant need [not] be the alleged terrorist or vandal exploiting the weaknesses in the system". Disclosure, either to the applicant in response to his request, or under s. 70 would, it said, amount to disclosure to the world.[67]

Analysis

[73] I agree with BCLC on its last point. Many orders have said that, except for personal information, disclosure of information under FIPPA is to be regarded as disclosure to the world.[68] I do not for a moment suggest that the applicant would use the Manual for nefarious purposes. BCLC is right, however, to view disclosure of the Manual in terms of what any recipient, including a criminal, might do with it.

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[64] Paras. 120-324, Friesen affidavit. Again, much of this material was *in camera*.
[65] Para. 25, applicant's initial submission.
[66] Pages 2-3, applicant's reply submission; paras. 5-6 Sioui affidavit; Exhibit "A" to Sioui affidavit. The applicant also cited examples of certain casino activities which he said were "breaches" of the Manual which BCLC had not enforced.
[67] Paras. 13-16, BCLC's reply submission.
[68] See for example, Order 01-01, [2001] B.C.I.P.C.D. No. 1.

[74] Returning to the merits of BCLC's arguments on ss. 15(1)(k) and (l), I am constrained in what I can say, as much of BCLC's submissions and evidence on these points were properly received *in camera*. I am satisfied, however, that disclosure of the yellow-highlighted portions of the Manual could reasonably be expected to facilitate the commission of crimes or result in harm to property and systems in the ways BCLC argues. It is clear that revealing information on, for example, how and when cash and chips are moved through a casino, where they are stored and counted, and under what conditions, could assist in the planning of theft or robbery by revealing when such assets are at their most vulnerable.

[75] Disclosure of information on which employees have access to high-security areas of casinos or have particular kinds of keys could make them targets of criminals, who could attempt to induce or force the employees to collude or participate in a theft or robbery, thus facilitating the commission of an offence for the purposes of s. 15(1)(k). Similarly, disclosure of information on security, surveillance and other protocols could reasonably be expected to harm property or systems within the meaning of s. 15(1)(l). I find that ss. 15(1)(k) and (l) apply to the portions of the Manual that BCLC highlighted in yellow in the copy it provided to me.

[76] **3.12 Other Issues**—BCLC made arguments on s. 15(1)(c) and the "mosaic effect" which I need not consider, given my finding on ss. 15(1)(k) and (l).

[77] BCLC also said it considered whether it was reasonable to sever the Manual in accordance with s. 4(2) of FIPPA. BCLC concluded it was not,[69] although it highlighted in yellow portions of the Manual that are of concern to it for the purposes of ss. 15(1)(k) and (l). As noted above, I have concluded that BCLC is justified in withholding those highlighted portions. It is reasonable, in my view, to sever the Manual, as BCLC has marked it and I therefore need not consider BCLC's argument on this point.

4.0 CONCLUSION

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

1. Subject to para. 2 below, I require BCLC to give the applicant access to the information it withheld under s. 17(1).

2. I confirm that BCLC is authorized by ss. 15(1)(k) and (l) to withhold the information it highlighted in yellow in the copy of the Manual it provided to me for this inquiry.

[69] Paras. 92-94, BCLC's initial submission.

3. I require BCLC to give the applicant access to the information described in para. 2 above within 30 days of the date of this order, as FIPPA defines "day", that is, on or before June 17, 2011 and, concurrently, to copy me on its cover letter to the applicant.

May 5, 2011

ORIGINAL SIGNED BY

Celia Francis
Senior Adjudicator

OIPC File No. F09-37832