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Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 291-1999
February 11, 1999

****** This Order has been subject to Judicial Review ******

INQUIRY RE: A decision of the Law Society of British Columbia to refuse the applicant's request for access to correspondence between certain members of the Law Society and the Insurance Department of the Law Society

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1. Description of the review

This is a written inquiry under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). It arose out of a request for review of the decision of the Law Society of British Columbia (the Law Society) to refuse the applicant's request for access to correspondence between certain members of the Law Society (the third parties) and the Insurance Department of the Law Society.

On September 22, 1997 the applicant submitted a request to the Law Society for correspondence between third parties and the Insurance Department of the Law Society. On October 22, 1997 the Law Society refused access to these records under sections 14, 17, and 22 of the Act. The Law Society also refused under section 8 to confirm or deny the existence of a document.

On April 6, 1998 the applicant made a request to the Office of the Information and Privacy Commissioner (the Office) to review the Law Society's decision to apply sections 14, 17 and 22 of the Act. The applicant did not request a review of the section 8 refusal. Though the request for review was made after the expiry of the thirty-day time limit in section 53(2)(a) of the Act, the Director of the Office, after communicating with both parties, allowed an extension under section 53(2)(b) of the Act.

2. Timeliness of the Inquiry and the Parties' Submissions to the Inquiry

Two main preliminary questions arise in respect of timeliness. First, what is the effect of the expiry of the ninety-day period in section 56(6) of the Act? Secondly, what is the effect of an applicant's failure to observe time limits set by the Office for the

delivery of submissions on the inquiry? Since the facts surrounding those issues are somewhat convoluted, I intend to describe them in detail.

The ninety-day review period under section 56(6) of the Act for this inquiry was to expire on July 27, 1998. On June 23, 1998 the Office sent out a Notice of Inquiry to the parties setting July 15, 1998 for the close of the inquiry.

On July 2, 1998 the applicant requested that the inquiry be adjourned to mid-September 1998. He provided the following detailed reasons:

> 1. I am currently involved in an adjudication with the Information and Privacy Commissioner as well as other legal s involving my union and the City of Vancouver at the B.C. Labour Relations Board. I anticipate that these matters will be resolved by the end of August 1998.
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> 2. As you know, section 56 of the Act provides ninety days for mediation and/or negotiation by the Commissioner's office. The 90 day period in the instant case expires on July 27, 1998. As I understand it the 'intention of the mediation process is to facilitate a settlement of the issues' in all cases and to ensure that an applicant 'has received access to all information and records' they are 'entitled' to under the Act.
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> The Notice of Inquiry in this case was issued approximately 27 days before the expiry of the ninety-day period. There was no explanation for this rush to an inquiry. Further, I have never been contacted by the portfolio officer for this case even though I asked him to update me on his mediation efforts on June 1, 1998 (Appendix1). I have had to submit an access request to the Commissioner's office for this information. I expect to receive a response no later than July 27, 1998 (Appendix 2). In any event, I think that this matter will end up before an adjudication. Needless to say, this process takes a lot of time.
>
> 3. The third paragraph of the Portfolio Officer's Fact Report contains a misleading statement. Had the portfolio officer bothered to contact me during mediation, I would have advised him that a review of the section 8 denial in the public body's letter of October 22, 1997, was an issue in the inquiry scheduled for July 15, 1998. This issue has to be resolved before I make my initial submissions in this matter.
>
> 4. The Third parties in the instant case include counsel for my union and the City of Vancouver and an arbitrator - who happens to be a lawyer. All these individuals are also involved in the aforementioned proceeding before the Labour Relations Board. The reports sent to the Insurance Department of the Law Society of British Columbia by these lawyers, which are also the documents at issue in this case, may be subject to disclosure under other legislation. Indeed, section 3(2) of the Act recognizes this possibility. It reads...

> In short, I will, in the first instance, try to access the said reports under legislation other than the Act. If I do not succeed, I would then like to exercise my rights of access to the documents in question under the Act.
>
> 5. Further, in the recent judicial review involving the Commissioner and the City of Vancouver, Mr. Justice Tysoe remitted back to the Commissioner the matter of my grievance file in the custody of the external lawyer of the City of Vancouver. I advise that this lawyer is also one of the third parties in the inquiry scheduled for July 15, 1998. I do not know how long it's going to take the Commissioner to process my request for review of File No. 01919-164. I do expect to find the report sent by the City's lawyer to his liability insurer in the said file. It goes without saying that all this is going to take a bit of time to sort out. Hence, my request for an adjournment of the July 15, 1998 inquiry.
>
> 6. Finally, when the Registrar of Inquiries sent me the Notice of Inquiry for this case, she was aware that I was involved in another inquiry (with the University of British Columbia) scheduled for July 14, 1998. Why is she asking me to participate in two inquiries at the same time? This is most unfair and it should not have happened. I may refer this matter, together with my complaints against portfolio officers for OIPC files 6771 and 6810, to the Commissioner, the Attorney General and the minister responsible for the Act.

On July 6, 1998 the Law Society responded that it did not oppose an adjournment, but that mid-September was not convenient to its counsel and that accommodation of her calendar would require a date between September 2 and 10 or after November 15. At the same time the Law Society also put on record certain reservations about the applicant's attitude toward timeliness under the Act. These included the following points:

> The applicant's request to the Law Society for the records that are the subject of this inquiry was made on or about September 22, 1997. The Law Society, in compliance with the Act, responded to the Applicant on October 22, 1997.
>
> It was not until over five months later on April 6, 1998 that the Applicant requested a review of the decision of the Law Society. The reason given was that he '...was involved in several proceedings under the Act, including two inquiries, two section 43 applications and a judicial review'. Now the Applicant asks for an extension once again to accommodate a multiplicity of proceedings (see paragraph 4 of the Applicant's letter). These matters surely must have been in the contemplation of the Applicant when he wrote to the Commissioner on April 6, 1998 requesting this review. As a sophisticated and frequent user of the Act, he is well aware of the approximate time when the inquiry would occur and of his other commitments.

> It is clear from the Applicant's own correspondence that for a considerable period of time the Applicant will have a number of matters outstanding with the Office of the Information and Privacy Commissioner (the 'OIPC') and related proceedings. We raise this because the Applicant must be made to realize that others too have many matters on their calendar and the ability to focus on one matter to the exclusion of others and to the inconvenience of others is a luxury not contemplated by the Act.
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> The reasons given by the Applicant in his request for an extension to bring this review were related to his busy schedule, in particular his other matters before the OIPC. The Applicant now again asks the OIPC to exercise its discretion in his favour to accommodate other matters which presumably he considers more urgent or pressing at this time. The result is that the Law Society has been inconvenienced.
>
> We ask that the Commissioner make note of these facts in his decision on this inquiry. The Law Society believes that the integrity of the Act requires those who seek to rely on it to respect the process.

On July 8, 1998 I notified the parties that the inquiry was being re-scheduled to close on November 16, 1998. The parties were also notified that initial submissions were due in my Office by noon on November 6, and that reply submissions were due by noon on November 13, 1998.

On July 22, 1998 the applicant wrote to say that the November date was inconvenient for him. He requested that it be re-scheduled for August 23 or 30, 1998, "[b]ecause of certain developments in a related proceeding at the B.C. Labour Relations Board."

On July 27, 1998 the Law Society responded that the new proposed dates were Sundays and presumed the applicant meant August 24 and 31. It stated that those were not convenient dates for counsel to the Law Society, that new counsel should not have to be appointed to accommodate the applicant's request, and that an August date could also create difficulties for the Law Society in obtaining its affidavit evidence.

On July 28, 1998 the Director of the Office notified the parties that, on the basis of her delegated authority, the inquiry would remain scheduled for November 16, 1998, in order for both parties to have ample time to prepare submissions.

On July 30, 1998 the applicant wrote requesting that the inquiry be scheduled to close on August 21, 1998. On August 4, 1998 the Law Society replied that this proposal was unacceptable due to prior commitments of its counsel. On August 6, 1998 the Director of the Office notified the parties that she had concluded that there was no compelling reason to reschedule the inquiry to August 21, 1998, and again confirmed the November 16, 1998 date.

On August 28, 1998 the applicant wrote yet again to object to the timing of the inquiry. Though he had previously requested an adjournment of the inquiry to a time outside of the ninety-day period in section 56(6) of the Act, he now wished to rely upon the ninety-day requirement:

> ...the dates I had suggested for the inquiry have come and gone. You were under a statutory mandate to hold an inquiry in this matter within 90 days of receipt of my request for review.
>
> Further, there has not been any genuine mediation in this matter. Had the portfolio officer of this file put his mind to the issues at stake, he would have seen that the public body never released any information to me, even though the records in question contain my personal information. In short, section 22 does not apply in this case.
>
> Further, as you know, I have lodged a complaint against my union with the Labour Relations Board. I require the documents at issue, which are in the possession of the Law Society, for the purpose of my complaint. Consequently, by his failure to mediate this case the portfolio officer may be prejudicing this case.
>
> I want some action on this matter before the end of this week. Specifically, I should be given all the records in question. Indeed, when this matter was assigned to a portfolio officer, your officer said that, 'The intention of the mediation process is to facilitate a settlement of the issues in this case and to ensure that you have received access to all the information and records you are entitled to under the Act.'

On September 10, 1998 the Registrar of Inquiries again confirmed to the applicant that the inquiry would be closing on November 16, 1998. She also informed him that the issue of mediation had been addressed in an earlier letter dated July 16, 1998 from the portfolio officer. Specifically, since the Law Society was not prepared to modify its decision, mediation was unlikely, unless the applicant was prepared to modify his request. If the applicant was prepared to do that, he had been told to inform the portfolio officer.

On October 16, 1998 the applicant, acting in person, filed a petition for judicial review in the Supreme Court of British Columbia. The petition named the Office as respondent. The relief sought included orders "quashing the Respondent Commissioner's decision to refuse to process a request for review from the petitioner within the statutory 90 days mandated under section 56(6) of the FOI Act" and "compelling the Respondent Commissioner to process the petitioner's request for review...forthwith." The Office filed an appearance to the petition and an outline, which summarized its position on the ninety-day issue as follows:

> The Commissioner did not refuse to conduct an inquiry into the Petitioner's request for review dated April 6, 1998, in a timely fashion, or at all. To the extent that the inquiry has exceeded the 90 day period

> described in section 56(6) of the Act, this was at the request of the Petitioner who expressly and implicitly waived any entitlement to completion of the inquiry within the 90 day period.

The applicant's petition remains outstanding. He has taken no steps to set it down for hearing by the Supreme Court.

On November 6, 1998 the Law Society delivered its initial submission on the inquiry. No submission was received from the applicant.

In a letter dated November 9, 1998 the Registrar of Inquiries confirmed a telephone conversation she had with the applicant the same day. The applicant had apparently told the Registrar that he was not aware that his initial submission was due on November 6. The reason he gave was that he did not have his documents, because of his pending petition for judicial review. The applicant indicated he nonetheless still wished to make a submission on the inquiry. The Registrar stated in her letter that, if the applicant did wish a submission to be considered, he must deliver it with a letter of explanation, but that the inquiry was still closing on November 16, 1998.

No submission was received from the applicant by November 16, 1998.

On November 18, 1998 the Registrar of Inquiries couriered a further letter to the applicant confirming that the inquiry had closed on November 16 and enclosing for his information the initial submissions of the Law Society and several affidavits of third parties.

On November 19, 1998 the Office received an initial submission from the applicant. In it he stated:

> I was not able to make said submissions by the scheduled dated because I am involved in other legal proceedings, including two judicial reviews. I am more than willing to make further submissions on this issue should that be required; otherwise, I will assume that this is not issue.
>
> However, I wish to assert that I am not waiving any of my rights in the pending judicial review by making this submission.

On November 20, 1998 a severed copy of the applicant's submission was provided to the Law Society. Both parties were also informed that I would consider objections to the late filing of the applicant's submission and any reply submissions the parties provided by November 30.

On November 23 and 24, 1998 the applicant wrote with objections about the Law Society's initial submissions. On November 24, 1998 the Registrar of Inquiries wrote informing the applicant that his objections would be forwarded to me. On November 26, 1998 the Law Society wrote objecting to my consideration of any material received after the closing of the inquiry on November 16, 1998:

> It is our position that the Inquiry was scheduled to proceed, was required to proceed, and indeed, did proceed on November 16, 1998. The scheduled date of the Inquiry was confirmed by the decisions of the Information and Privacy Commissioner dated July 8, 28, and August 6, 1998. Your letter to the Applicant, dated November 9, 1998, (copied to us) confirmed that the Inquiry was proceeding as scheduled on November 16, 1998. Your subsequent letter to us of November 18, 1998, clearly implied that no further submissions would be accepted and that the material that had been filed was being forwarded to the Commissioner for his decision.
>
> In your letter of November 18, 1998, you also stated that our submission could only be provided to the Applicant after a decision had been made not to accept the Applicant's submission. To do otherwise would be contrary to the terms of the Notice of Inquiry and the statements contained in your letter of November 9, 1998; furthermore, and perhaps more importantly, such action on your part would be a direct contravention of your own Inquiry procedures (see Lorrainne A. Dixon decision July 28, 1998).
>
> In light of the above, with all respect, we are now perplexed that we should be asked to provide a further response with respect to your acceptance of the Applicant's submission which was delivered after the date of the Inquiry, and after the Applicant was provided with a copy of our submission. Furthermore, we do not understand why we are required to file a Reply to the Applicant's submission when your office appears to have already indicated that the Applicant's submission would not be accepted after the date of the Inquiry.
>
> Notwithstanding the unsettled question of whether there is any statutory authority allowing the Inquiry to have been conducted after July 27, 1998 (which we raised in our letter to your office dated July 6, 1998), we concede that we consented to the Applicant's request for an adjournment. However, if our consent amounted to a waiver of the requirement that the Inquiry be conducted within 90 days after the date of the request for review, that waiver only operated until the revised scheduled date of the Inquiry. Therefore, in our view, the Commissioner has no jurisdiction or authority under the Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165, to consider any matters related to this Inquiry which were raised beyond November 16, 1998, and, as a result, the Commissioner cannot consider materials submitted beyond that date.

On November 30, 1998 the Law Society delivered a reply submission on the basis that it was without prejudice to its objection to my consideration of any material delivered after the close of the inquiry on November 16, 1998. On November 30, 1998 the applicant also delivered a reply submission.

On December 1, 1998 the applicant wrote yet again requesting leave to file a surreply to the Law Society's reply. The Registrar informed him that any surreply must

be delivered by noon on December 4, 1998, and that I would then decide whether it would be considered.

3. Analysis of timeliness issues

The first question in respect of timeliness is the effect of the expiry of the ninety-day period in section 56(6) of the Act.

In the convoluted circumstances of this case, the Office initially scheduled the inquiry to close within the ninety-day period. The applicant then requested an adjournment to a date outside that period. The Law Society agreed, but only if the date was one which was also convenient to its counsel. I selected the date of November 16 because, though it was farther down the road than the applicant wished to stipulate, it gave enough time to both parties.

When the applicant found that he could not dictate a new date for the close of the inquiry, he changed his position and insisted that the inquiry was required to be held within ninety days, which by that time was impossible since the ninety-day period had passed.

The applicant then filed a petition for judicial review to compel the inquiry to go forward in accordance with the Act. He never brought the petition on for hearing although, if one accepts his assertion to the Registrar of Inquiries, the applicant's preoccupation with the petition caused him to overlook the November 6 date when he was required to make his initial submission on the inquiry.

The applicant was given another chance to tender a submission with an explanation by November 16, but he again failed to file anything. Finally, on November 19, the applicant commenced delivering submissions - an initial submission, a reply, and a request to file a surreply.

The reason given by the applicant for not delivering any submission before November 19 was that he was "involved in other legal proceedings, including two judicial reviews." The first judicial review, referred to in the applicant's correspondence to the Office, was decided by Tysoe J. in June 1998. The second judicial review was filed by the applicant on October 16, 1998, has not been brought on for hearing, and was aimed at getting this inquiry to go forward - exactly what the applicant acted against by failing to make timely submissions.

The Law Society consented to the adjournment of the inquiry to a closing date of November 16, 1998, even though that was well outside the ninety-day period in section 56(6) of the Act. However, now that the applicant has delivered submissions after November 16, the Law Society has taken the position that its "waiver" of the ninety-day requirement operated only to November 16, and that I have no jurisdiction to receive submissions after that date.

Section 56(6) provides that an inquiry "must be completed within ninety days after receiving the request for review." The ninety-day period normally runs from the

receipt of the request for review to the completion of the inquiry, with the order disposing of the issues on the inquiry being made after its completion.

In other cases, my Office has taken the position that, despite the use of the word "must," the time requirement in section 56(6) is directory rather than mandatory. The effect of this is that non-compliance with the ninety-day requirement, whether it is waived by the parties or not, does not result in a loss of jurisdiction to continue.

The reasoning behind this approach to section 56(6) of the Act was illustrated in relation to time limits in sections 7 and 27 of the federal *Access to Information Act* in the case of *Cyanamid Canada Inc. v. Canada (Minister of Health & Welfare), (1992), 9 Admin. L.R. 161 (Fed. C.A.).* In that case, the Minister intended to disclose information he had reason to believe might contain confidential third party business information and he was required to notify the requester and the third party of his intention within thirty days of receipt of the access request. Notices were delivered to the requesters and to the third party drug company, Cyanamid, but outside the thirty-day time period. The Court rejected Cyanamid's argument that non-compliance with the time limit in the notice provisions had rendered the Minister's decision to disclose "void and of no legal effect." Instead, the doctrine in Montreal Street Railway Co. v. Normandin, [1917] A.C. 170 (P.C.) was adopted:

> While there is a presumption that the word 'shall' in a statute is mandatory in nature, there is no general rule to that effect and it has often been interpreted to be directory when certain conditions are present. The case most often cited in support of this proposition is Montreal Street Railway Co. v. Normandin, [191] A.C. 170 (P.C.), where Sir Arthur Cannell stated, at pages 174-75:
>
> The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at...*When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature*, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done. (Emphasis added)
>
> I am satisfied that the doctrine applies to the present case. The statutory notice provisions clearly involve the performance of public duties by the respondent. There is no sanction or penalty provided in the Act for failure to give notices in time. The object of the notice provisions is to provide a defined time frame within which a request for information should be processed, and to allow the requester to file a complaint with the Information Commissioner. To interpret the notice provisions as mandatory would result in a denial of the release of the information to the

> requesters and would only cause the filing of a second request and timely compliance. This would not promote the main object of these provisions. Furthermore the requesters, through no fault of their own, would be penalized by the error of the respondent notwithstanding that they do not object to their own late notices.

Section 2(1) of the Act provides that one of the purposes of the Act is to provide "an independent review of decisions made under this Act." In my view, the ninety-day period in section 56(6) of the Act is not intended to create a technical barrier which robs applicants, public bodies, or third parties of my Office's independent review of decisions made under the Act. The ninety-day period is intended to benefit the independent review process by requiring that inquiries proceed in a timely way, but without creating a structure of strict compliance which would be, in itself, counterproductive to the delivery of a fair yet flexible review process to those who are affected by decisions under the Act.

I have considerable sympathy with the Law Society's opposition to the applicant's late delivery of submissions. I do not agree, however, that the close of the inquiry on November 16, 1998 ended my jurisdiction and discretion to consider further information and submissions, if justice and fairness so require. In my view, therefore, the real issue is not whether the ninety-day period in section 56(6) of the Act has been exceeded. Clearly it was and with the consent of both parties, at least initially. If the applicant's latter position, that the ninety-day period is strict, is a correct position, then he is arguing against my jurisdiction to process his own request for review. The applicant might just as well abandon the matter as advance such a contradictory debate, which I have no intention of attempting to resolve.

Given my view of the effect of section 56(6), I consider that I do have jurisdiction to consider the applicant's late submissions, if justice and fairness so require. The jurisprudence establishes that administrative and quasi-judicial decision-makers are masters of their own processes and that they have authority to control abuse of those processes: Prassad v. Canada (Minister of Employment & Immigration), [1989] 1 S.C.R. 560, Misra v. College of Physicians and Surgeons (Sask.) (1988), 5 W.W.R. 333 (Sask. C.A.), and S.(N.) v. Norris (1992), 6 Admin. L. R. (2d) 228 (Ont. Ct. Gen. Div.).

The authority involved here, therefore, is my jurisdiction over the procedures to be followed for inquiries under the Act, including my authority to respond to abuse of the review and inquiry process when that occurs. It is under this jurisdiction that the question of the effect of an applicant's failure to observe time limits set by the Office for the delivery of submissions on the inquiry should be determined.

The discretion to receive or reject late submissions should be exercised sensibly and even-handedly. For the most part, a reasonably flexible rather than overly technical approach will be in order. The principal concerns will always be to ensure the overall fairness of the process and to guard against abuse.

I am mindful that the rights given in the Act to access information and for my Office's independent review of public bodies' decisions are important rights, which ought to be interpreted and administered with respect and latitude. It is also necessary,

however, to have regard for the distinction between the rights given in the Act and the reasonable limits on resources which are available or may be devoted to ensuring that those rights are within the grasp of all members of the public. I agree with the following remarks of Commissioner Wright in Ontario Order M-618, October 18, 1995 http://www.ipc.on.ca/web_site.eng/locating/orders-m/M-618.htm:

> [The applicant] may, in principle have an unlimited right of access to government information, subject only to the exemptions set out in the Act. However, in my opinion, he does not have an unlimited right of access to the processes available to secure those rights....
>
> The Legislature created the Office of the Information and Privacy Commissioner to administer the Act in ways that facilitate the purposes of the legislation. This mandate cannot require the Commissioner to act unreasonably in administering his own processes, or in supervising the processes of institutions. The Legislature must have intended that the Commissioner have the necessary authority to control his own processes, and to supervise the processes of institutions under the Act, so as to minimize or eliminate the potential for abuse.

I agree with the Law Society's characterization of the applicant as a sophisticated and frequent user of the Act. I am also satisfied that the applicant was well informed of the November 16, 1998 closing for this inquiry and of the associated deadlines for initial and reply submissions. Indeed, I find that by consistently confirming the date for the inquiry in their responses to the applicant's voluminous correspondence, my staff went beyond what was reasonably required to notify the applicant of the deadlines he was required to meet. I am also satisfied that the applicant was adequately informed that he could provide a late submission with a letter of explanation, if it was delivered by November 16, 1998.

Considering all of the circumstances of this unusual case, I find that the applicant has demonstrated a singular determination not to comply with my Office's procedural directives for this inquiry but rather, for reasons best known to himself, to dictate his own terms of participation. The applicant, though well aware of the procedures of my Office, has refused to adhere to dates or conditions which are not of his own choosing. Furthermore, in the words of Esson C.J. sitting as an Adjudicator under the Act in Havey v. Information and Privacy Commissioner (6 September 1996), the applicant has demonstrated an "ability, by piling proceeding upon proceeding, to create confusion as well as waste time and resources all of which must be met from the hard pressed public purse."

I think that the Law Society's frustrations with the applicant's conduct on this inquiry are justified. In my view, the applicant has gone beyond using the review and inquiry process under the Act, to abusing it. I do not think it unfair, in the circumstances of this case, for me to decline to consider the submissions delivered by the applicant after the close of the inquiry on November 16, 1998. Indeed, I conclude that permitting the applicant to carry on as he is would be to condone a continuing abuse of process which, in turn, would bring the administration of the Act into disrepute.

The applicant has also erroneously held the Portfolio Officer to task. Section 55 of the Act gives me discretion to authorize a mediator to investigate and try to settle a matter under review. Such an appointment permits pre-inquiry investigation and mediation. The degree to which such efforts will be appropriate or effective will vary widely from case to case. Authority under section 55 does not contemplate that my staff must or will extricate deals when one or more parties are unwilling to move from their position, as apparently happened here.

4. Applicability of exceptions claimed

I have reviewed the disputed records and the Law Society's reasons for applying sections 14, 17, and 22 of the Act to them. In that regard, I note that section 57 puts the burden of proof on the Law Society to establish the applicability of sections 14 and 17 to the disputed records and, on the applicant, to establish the inapplicability of section 22 to personal information in the disputed records.

The applicant requested access to written notices between certain members of the Law Society and the Insurance Department of the Law Society. The three records in dispute (notices of potential claims) originated from members who were connected to an employment dispute between the applicant and a third party, but who were not counsel for the applicant.

I am satisfied that the disputed records were created for the dominant purpose of obtaining legal advice for use in litigation or about contemplated litigation. They are covered, therefore, by the litigation branch of solicitor-client privilege, and section 14 of the Act applies. In my view, the records may well also be protected by solicitor-client privilege generally. I also find that the Law Society's application of sections 17 and 22 has merit.

5. Conclusion and Order

I consider the applicant's conduct with respect to the timeliness matters raised in this case to be an abuse of the inquiry process established under the Act. Having concluded that I would not consider, or require the Law Society to respond to, submissions delivered by the applicant after the close of the inquiry on November 16, 1998, my decision on this inquiry is based on a careful review of the disputed records and the initial submission of the Law Society.

I have no hesitation in concluding that the disputed records were properly withheld on the basis of sections 14, 17, and 22 of the Act. Under section 58(2)(b) and (c) of the Act, I confirm the decision of the Law Society of British Columbia.

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David H. Flaherty
Commissioner

February 11, 1999