

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER P2006-004

November 15, 2006

LAW SOCIETY OF ALBERTA

Review Number P0208

Office URL: www.oipc.ab.ca

Summary: In the course of complaints he made to the Law Society about various lawyers under the *Legal Profession Act*, and appeals from dismissals of these complaints, the Applicant/Complainant made a number of requests to the Law Society for access to information. He was not satisfied with the Law Society's responses to his requests. As well, he made a number of complaints, including that the Law Society had improperly used and disclosed his personal information, and that it had failed to develop and follow information and privacy policies and practices as required by the Act.

The Commissioner found that the Applicant's requests for information pertaining to the complaints and appeals had not been requests for his personal information, and that the *Personal Information Protection Act* did not govern the question of what information the Law Society was required to provide to the Applicant pursuant to a request for information under its own processes pursuant to the *Legal Profession Act*. The Commissioner also dismissed the Applicant's various complaints. He found that the Law Society had properly used and disclosed the Applicant/Complainant's information to process his complaints, and the Applicant had not established any improper purpose. He also found that the Law Society had complied with its duty under the Act to develop reasonable policies and practices.

Statutes Cited: **AB:** *Legal Profession Act*, R.S.A. 2000, c. L-8, s. 7(1); Law Society Rules, s. 2.1; *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 4(5), 4(5)(b), 6, 7(1)(c), 7(1)(d), 9, 17, 20, 24, 24(1), 24(1)(a), 24(1)(b), 24(1)(c), 24(2)(a), 24(2)(c),

24(3)(b), 24(4), 27, 27(1)(a), 46(1), 72; *Personal Information Protection Act Regulation* AR 366/2003, s. 5(d).

BACKGROUND

[para 1] The Applicant/Complainant (the “A/C”) filed six complaints with the Law Society of Alberta – an “organization” under the *Personal Information Protection Act* – against some of its members, under the *Legal Profession Act*. These complaints were dismissed, and the A/C appealed these dismissals to the Appeal Committee of the Law Society. In the course of the complaint and appeal proceedings, the A/C made a number of requests to the Law Society for access to information, as well as requests for the privacy and information policies of the Law Society. With respect to the information requests, he asked for copies of all the files relative to the complaints he had made, as well as the “appeal binders” that had been provided for the purpose of the appeals to the Appeal Panel members, and to the individual lawyers against whom his complaints had been made.

[para 2] On April 18, 2005, the A/C wrote to the Law Society to withdraw his consent from use and distribution of all his personal information “between parties, Lawyers, Law Firms and various departments and staff within the Law Society of Alberta ...”.

[para 3] The Law Society provided formal responses to the A/C’s information requests on May 2 and May 5, 2005.¹ The first response consisted of Records 1 to 377, and consisted of the A/C’s “complaint files”. The second response consisted of the “appeal binders” that had been provided to the Appeal Panel members.² The Law Society severed information and pages from these records on the basis of exceptions under the *Personal Information Protection Act* (the “Act” or “PIPA”). The Applicant was not satisfied with these responses, and on May 5, 2005, asked me to review the responses. He also complained that the Law Society had improperly used and disclosed his personal information, that it had improperly disclosed the personal information of a third party, and that it had failed to develop approved information and privacy policies and practices, and to follow these policies and practices as required by the Act. As well, he complained that the Law Society had failed to respond appropriately when he withdrew or varied his consent to further use of his personal information. Finally, he complained that the Law Society had failed to meet its duty to assist him by not deciphering handwritten notes in some of the records it had provided to him, and by not permanently removing information from the records that “has no value”.

¹ Further responses were made on subsequent dates, which were after the date on which the A/C made his request for review to this office on May 5, 2005. They pertained to correspondence from the A/C which was also dated after May 5, 2005. Some of the Law Society’s responses contained information that was generated after the request for review.

² Each of the individual Law Society members against whom the A/C had made complaints were also provided with a copy of the appeal binder pertaining to them.

[para 4] Subsequent to his request for review to this office, the A/C continued to ask for additional documents, and the Law Society provided further records on three dates - June 2, August 3, and August 24, 2005. These included files related to his information requests, and files in which his name appeared in e-mail correspondence. Again, the Law Society severed information and pages from these records on the basis of exceptions under the Act. The Applicant was also not satisfied with these responses. However, as these latter requests and responses were not part of the A/C's request for review of May 5, 2005, I will not make any decisions about them in this inquiry.

[para 5] There is some disagreement between the parties as to why the matter was not mediated. In any event, there was no mediation, and a Notice of Inquiry was issued by my office on August 29, 2005.

I. RECORDS AT ISSUE

[para 6] The documents which the Law Society selected as responsive to the requests in this inquiry were numbered 1 to 376, and the contents of the appeal binders were separately numbered as "Exhibits". The records at issue are the personal information included in information severed or pages removed by the Law Society from the documents provided by it to the A/C, or in documents withheld from the A/C in their entirety.

[para 7] As well, the A/C complains that some of his personal information in the responsive records was improperly disclosed.

III. ISSUES

[para 8] The Issues as stated in the Notice of Inquiry were as follows:

Issue 1: Is there a reasonable apprehension of bias because the Commissioner who is conducting the inquiry is a member of the Law Society of Alberta?

Issue 2: Did the Law Society comply with section 6 of the Act (policies and practices)?

Issue 3: Did the Law Society comply with section 24(1)(a), (b) and (c) of the Act (access)?

Issue 4: Do the Rules for disclosure under the *Legal Profession Act* and the *Rules of Court* apply, having regard to section 4(5) of the Act?

Issue 5: Did the Law Society properly apply section 24(2)(a) of the Act (legal privilege) to the records/information?

Issue 6: Did the Law Society properly apply section 24(2)(c) of the Act (information collected for investigation or legal proceeding) to the records/information?

Issue 7: Does section 24(3)(b) of the Act (information revealing personal information about another individual) apply to the records/information?

Issue 8: If section 24(3)(b) applies, is the Law Society reasonably able to sever the information, as provided by section 24(4) of the Act?

Issue 9: Did the Law Society have a duty to the Applicant/Complainant under section 27(1)(a) of the Act (duty to assist)? In particular, did the Law Society have a duty to ensure that its members who had the Applicant's/Complainant's personal information were aware of and complied with the Applicant's/Complainant's variation of consent? If the Law Society had a duty under section 27(1)(a), did the Law Society comply with that duty?

Issue 10: Did the Law Society use the Applicant's/Complainant's personal information in contravention of the Act, having regard to sections 7(1)(c), 9 and 17 of the Act?

Issue 11: Did the Law Society disclose the Applicant's/Complainant's personal information in contravention of the Act, having regard to sections 7(1)(d), 9 and 20 of the Act?

Issue 12: Did the Law Society disclose another individual's personal information in contravention of the Act, having regard to sections 7(1)(d), 9 and 20 of the Act?

Issue 13: Does section 27 of the Act (duty to assist) require that the Law Society decipher handwritten notes or remove from the records all information that has no value?

IV. DISCUSSION OF ISSUES

[para 9] Many of the issues stated in the Notice of Inquiry can be dealt with by deciding the extent of my jurisdiction under PIPA as it relates to the information requests and responses to them in this case.

[para 10] I do not regard those of the A/C's information requests that are the subject of this order as requests for his personal information under PIPA. Though at some stages the A/C's information requests used the language of PIPA, the information he sought and received was not for his "personal information" as I interpret the scope of that term in the context of the Act. Rather, it was for more general information – the complaint files and appeals binders pertaining to his complaints under the *Legal Profession Act*. Though these documents included some of the A/C's personal information, they also included much information that was not his personal information. In my view, the information exchange that was done was pursuant to the Law Society's own legislation and rules, and as a function of its duty to be fair to the parties, rather than under PIPA. I do not have jurisdiction over what information the Law Society decided to provide to the A/C or to withhold from him under its own processes. Although in severing or withholding certain information, the Law Society also used the language of PIPA, it did not need to do this. It had authority under the *Legal Profession Act* and its own rules enacted thereunder, to

both disclose and withhold information.³ It does not follow from the fact that it cited the PIPA exceptions that the Law Society was bound to observe the PIPA rules in choosing what information it was necessary to provide and what it could withhold under its own processes. Therefore, I have no jurisdiction to review its decision. Any review of that decision could only be done by the courts.⁴

[para 11] My jurisdiction over information requests under the *Personal Information Protection Act* is limited to access requests *for personal information*. Sections 24 and 46(1) of the Act combine to confer my jurisdiction. They provide:

24(1) Subject to subsections (2) to (4), on the request of an individual for access to personal information about the individual and taking into consideration what is reasonable, an organization must provide the individual with access to the following:

(a) *the individual’s personal information where that information is contained in a record that is in the custody or under the control of the organization;*

*46(1) An individual who makes a request to an organization **respecting personal information about that individual** may ask the Commissioner to review any decision, act or failure to act of the organization. [emphasis added]*

[para 12] The Act defines “personal information” as “information about an identifiable individual”. In my view, “about” in the context of this phrase is a highly significant restrictive modifier. “About an applicant” is a much narrower idea than “related to an Applicant”. Information that is generated or collected in consequence of a complaint or some other action on the part of or associated with an applicant – and that is therefore connected to them in some way – is not necessarily “about” that person. In this case, only a part of the information that the A/C asked for was information “about” him. Had he relied on PIPA to obtain information, he would not have received much of the information that was made available to him under the *Legal Profession Act* and the Rules created thereunder, or pursuant to the requirements of fairness.

³Section 7(1) of the *Legal Profession Act* provides the Benchers (the governing body) may make rules for the exercise or carrying out of the powers and duties conferred or imposed on the Society or the Benchers under that Act. Among its powers and duties is that to address the “unethical, incompetent or unauthorized practice of law”. The Benchers have passed rules for the use and disclosure of information relative to this power. Rule 2.1(3) provides that the Society may use information without consent of an individual to assist it in addressing such matters, and in serving the interests of justice within regulatory proceedings. Rule 2.1(4) provides that the Society may disclose information without the consent of the individual where the interests of justice within regulatory proceedings, taking into consideration the protection of privacy, weigh in favour of disclosure.

⁴ I could consider a complaint that personal information that was provided to someone had not been provided for an authorized purpose. However, I do not have jurisdiction over what general information must be given to a person who wants access under this process.

[para 13] As noted, the A/C's requests arose in the context of a series of complaints against the Law Society's members under the *Legal Profession Act*, and appeals from dismissals of these complaints, under the Law Society's complaints process.

[para 14] Although in some of the A/C's later communications to the Law Society he said he was asking for his "personal information", the information requests that are the subject of this inquiry were initially not made as requests for his "personal information". Nor did the A/C initially make any reference to the *Personal Information Protection Act*. Rather, the requests – made between February and early April, 2005 - were broader and more general – for the complaint files and appeal binders that related to his complaints.⁵ Similarly, the Law Society's early communication with the A/C did not appear to contemplate the requirements of the Act. Its responses were likely based on its practice of providing information that is necessary to file an appeal to a complainant whose complaint has been dismissed.

[para 15] As noted, the A/C eventually began to speak of his requests in the language first of the federal legislation (the *Personal Information Protection and Electronic Documents Act* (PIPEDA)) and later of PIPA (both of which speak of requests for "personal information"). Despite this, in my view, he did not thereby change the scope of his request. Rather, I believe he used the phrase because he understood it in 'layman's' terms (that is, as referring to "information pertaining to my dealings with you"), and also as a way of trying to assert that he had rights to information. The first time the A/C made his request in terms of a request for his "personal information" was in mid-April, 2005. However, this change in the A/C's choice of language did not mean he was asking for something different – he was still asking for his unsevered complaint files and appeal binders. He did not intend by this to limit the scope of his request to his own personal information, in the sense of information that was "about him" in a strict sense. This is confirmed by the fact that when he responded to the suggestion that he had, in his letter of April 15, 2005, made a new request for information⁶, he replied that "this is the same request that I have been making to the Officers and Staff of the Law Society and my lawyers since 1998" (AC's letter of April 20, 2005). In a letter of April 18, the A/C asked for "full and complete access to all my personal information contained in the files of all departments of the Law Society dating back to 1998". On April 26, the Law Society asked the A/C to clarify as follows: "Please confirm the records that you are seeking. Are you seeking the binders [the appeal binders] only, or are you seeking all your personal information dating back to September, 1998?"⁷ To this the A/C replied:

Again it appears that we have now gone full circle on this issue, and I remind you that according to the Executive Director the binders should constitute a complete

⁵ It appears from the correspondence that although the A/C had received copies of much of what was in these files, he wanted versions that did not except information at all. This suggestion is contained, for example, in a letter he sent to the Law Society President on April 26, 2005.

⁶ In this document, he asked for a "detailed account and acknowledgement of all materials that may have been improperly collected and distributed by the Law Society and its associated members".

⁷ Judging from the fact that the Law Society regarded a request for the appeal binders as a narrowing of his request, the Law Society seems to have regarded "personal information" as having a wider scope than that which I have given it. However, this does not bear on the appropriate interpretation of the term.

copy of the existing files. I look forward to receiving my complaint files along with the noted Binders.”

At the same time he asked again for “Hard Copies of all my personal information in your / their [referring to the member lawyers] care and control.”, and stated:

Please, provide me with your intention to comply with my request to obtain access to my Personal Information from the various departments of the Law Society of Alberta and its various members involved in my complaints. I require this information to properly present my appeals and the Appeal Chair requires that I must have all my information submitted in writing by May 20, 2005. Please note that all my complaints have a constant consistency regarding the withholding of and miss-use of my personal information and the complaint files will show that I have already made voluminous requests for access to my personal information from your members and the Law Society of Alberta.⁸

[para 16] Again, in my view, throughout this correspondence the Applicant was not making a request for his “personal information” as this term is found in PIPA, even though some such information was contained in the files, and even though, occasionally, he used the language of either PIPEDA or PIPA – which speak of “personal information” - with reference to his requests. Rather, he was asking for his complaint files and the appeal binders. (In particular, it seems he was seeking access to the parts of these files that had been severed from earlier copies of information he had received, but, he believed, had been provided to the lawyers complained against and the Appeal Panel members.) Further, I believe that the Law Society also ultimately understood the A/C’s requests as requests for the complaint files and binders. This is affirmed by the fact that it provided considerable information to the A/C that was the information of other persons (which would not be responsive relative to a request under PIPA, which is necessarily limited to one’s own information).

[para 17] In view of this, it is not clear why, in withholding information, the Law Society relied on the exceptions in PIPA. Possibly, it regarded all of the information in the files as the Applicant’s personal information (thus would regard an information request for all complaint files and a request for all personal information as coextensive). However, this theory is not adequate to explain why the Law Society released to the Applicant considerable information about third parties, and other information that was not about him. (In my view, the Law Society was perfectly entitled to do this as a

⁸ As well, on April 26, 2005, the A/C wrote:

The fact of the matter is that my complaint file ... should have all of my personal information in it. As you have agreed to supply me with the binders for free then I question your confusion. Regarding all the other files, all of the pertinent personal information that the Law Society has collected would likewise be pertinent to at least one of these complaints. ...

Therefore, I again narrow the scope of my request to:

- 1) All of the binders which I presume would have been supplied during the normal course of the Appeal Process
- 2) Any and all my personal information which was provided pursuant to these complaints during the informal process by me and the Lawyers dating back to September 1998 as collected by [a Law Society official] or his staff and held within the offices of the Law Society of Alberta.

function of its powers under its own processes, but the reliance on the PIPA exceptions does cause confusion about what it was doing.) The confusion about the nature of the information requests and responses is also exacerbated by the fact that in some cases the explanation for withholding in the Law Society's table of severed and withheld material says that the particular portion at issue is "not the personal information of the applicant". Information that is not the personal information of the applicant is not responsive to a request under PIPA. PIPA exceptions do not need to be applied to information that is unresponsive to a PIPA request.

[para 18] I do not need to decide for the purpose of this inquiry precisely which parts of the information in the documents collected or created for the purpose of the complaint proceedings were "personal information" of the A/C, as that term is to be understood in PIPA. It is sufficient to say that there is a great deal of information in the documents that is not the A/C's personal information even though it was generated in consequence of his complaints. The latter includes information about the persons about whom he complained and their dealings with the A/C, information about other third parties and their dealings with the A/C, descriptions of various events and transactions, and correspondence and memos related to the handling of the complaints and other aspects of the complaint process. As well, the fact the A/C was the author of documents does not necessarily mean that the documents so authored were his personal information.

[para 19] The extent to which the Law Society was obliged, by virtue of its obligations under its own legislation and rules, to provide any of this information - both that which was the A/C's personal information and that which was not - is, as I have said, outside my jurisdiction.

[para 20] I note the possibility that the A/C may try to make a further access request to the Law Society under PIPA for the parts of the complaint files and appeal binders that do consist of his personal information. However, most of the information in this material that was personal to him was already provided to the A/C under its own legislation and processes. Only a small amount of personal information - that contained in the parts of the information that the Law Society severed and withheld from the complaint files and appeal binders - was not disclosed. Unless the A/C could persuade me that there are relevant circumstances that require disclosing this personal information, I would be minded to regard his purpose in making an additional request at this point as one that would make the request frivolous and vexatious.

[para 21] I note as well that section 24(1) requires an organization to provide access only if it is reasonable to do so. "Reasonable" might not apply to an access request brought under PIPA that would require the organization to review documents already dealt with or to be dealt with under its own process, to select out items of personal information that appear throughout the documents, and then to exercise its discretion separately relative to the "personal" parts of the information according to a different set of principles (PIPA principles). I would be receptive to an argument that it would not be reasonable for an organization to undertake such an exercise without at least some suggestion of a reasonable purpose.

[para 22] I want to make it very clear that I am not ducking my responsibility in this case. The issue of when an individual can obtain information as part of an administrative or regulatory process and when they can obtain information pursuant to PIPA is a critical one. This issue has significant implications for a number of regulatory organizations. It should be understood that the provisions of PIPA were not intended to somehow interweave with, fetter, or form an overlay upon, the information sharing responsibilities of such organizations relative to their regulatory functions. There are provisions in PIPA that accommodate such separate processes, and each should be regarded as operating in its own sphere and having a separate, if sometimes complementary, purpose. As well, as noted, a request that both processes be run in a given case relative to overlapping information might not, depending on the circumstances, be “reasonable”.

Issue 1: Is there a reasonable apprehension of bias because the commissioner who is conducting the inquiry is a member of the Law Society of Alberta?

[para 23] This issue was withdrawn by the A/C, and I do not need to consider it.

Issue 2: Did the Law Society comply with section 6 of the Act (policies and practices)?

[para 24] Section 6 provides:

6 An organization must

(a) develop and follow policies and practices that are reasonable for the organization to meet its obligations under this Act, and

(b) make information about the policies and practices referred to in clause (a) available on request.

[para 25] The A/C’s submission on this point appears to focus on the fact the Law Society’s policies and practices had not been “approved” by it on a particular date (April 27, 2005), and also that these policies and practices are inconsistent with the “CSA Model Code for the Protection of Privacy”. As well, he complains that the Law Society has failed to provide him with copies of its policy regarding the handling of privacy complaints, and also has failed to provide to him the policies and practices of other organizations to which it sent his personal information.

[para 26] The Law Society provides detailed evidence by way of an affidavit from its Information Officer and attached documents about the steps it has taken to meet its obligations under section 6 of the Act. This affidavit indicates that although the privacy policy was not formally approved until September, 2005, it has been in effect and followed by the LSA since January 1, 2004, the date the Act came into effect. I am satisfied that this policy is reasonable for the Law Society to meet its obligations under the Act. The CSA Model Policy has no bearing on this question.

[para 27] With regard to the Law Society's failure to provide to the A/C a copy of its policy regarding the handling of privacy complaints, the Law Society states that its privacy policy indicates that individuals who have concerns about how the Law Society has administered their personal information should contact the Law Society's Information Officer. It says the policy is no more specific than this because the steps that will be taken by the Information Officer will depend on the nature of the complaint. I accept this explanation.

[para 28] With regard to the privacy policies of other organizations to which it sent the A/C's personal information, this Office had indicated to the A/C that this issue would not form part of the present inquiry. However, as he has made submission about it, I will comment on this suggestion here. The information at issue was provided to members of the Appeal Committee, as well as to members of the Law Society against whom the A/C had made complaints. With respect to the former, all of these individuals were members of the governing body of the Law Society and as such were bound by the Law Society's privacy policies, which have already been conveyed to the A/C. With respect to the latter, the information was provided to these individuals as a matter of fairness to enable them to prepare to deal with the A/C's complaints. In situations in which the Act permits an organization to disclose information to another organization or individual, the organization is not required to try to monitor the way that information is treated by the individual or organization to which it was disclosed. If the recipient of the information is an organization under PIPA, it must abide by the PIPA rules. However, other than where the other person or organization acts as agent or is engaged to perform services⁹, it is not the responsibility of the organization that conveys the information to ensure compliance with PIPA.

Issue 3: Did the Law Society comply with section 24(1)(a), (b) and (c) of the Act (access)?

[para 29] The relevant parts of section 24 provide:

24(1) Subject to subsections (2) to (4), on the request of an individual for access to personal information about the individual and taking into consideration what is reasonable, an organization must provide the individual with access to the following:

- (a) the individual's personal information where that information is contained in a record that is in the custody or under the control of the organization;*
- (b) the purposes for which the personal information referred to in clause (a) has been and is being used by the organization;*

⁹ In such cases, section 5(2) of the Act provides the organization is responsible for compliance by the other person or organization.

(c) *the names of the persons to whom and circumstances in which the personal information referred to in clause (a) has been and is being disclosed.*

(4) *If, in respect of a record, an organization is reasonably able to sever the information referred to in subsection (2)(b) or (3)(a), (b) or (c) from a copy of the record that contains personal information about the individual who requested it, the organization must provide the individual with access to the record after the information referred to in subsection (2)(b) or (3)(a), (b) or (c) has been severed.*
[emphasis added]

[para 30] Section 24(1) is triggered on a request for access to personal information. For the reasons discussed at paragraphs 9 to 19 above, I do not regard the requests at issue in this inquiry that the A/C made to the Law Society for information to have been requests for his personal information. This is so even though there was such “personal information” in the complaints files and appeal binders. Therefore, the section does not apply to the requests in this inquiry.

[para 31] Even if the section did apply, I accept that the explanations given to the A/C by the Law Society of its reasons for using and disclosing his information, and the information it provided about the persons to whom it was disclosed and under what circumstances, were adequate.

Issue 4: Do the Rules for disclosure under the *Legal Profession Act* and the *Rules of Court* apply, having regard to section 4(5) of the Act?

[para 32] This issue was framed in response to the A/C’s “Question to the Commissioner” – “Is it the purpose of the Act to deny the public the right to full disclosure as provided for under the *Legal Profession Act* and pursuant to the *Rules of Court*?”.

Section 4(5) of the Act provides:

(5) *This Act is not to be applied so as to*

(a) *affect any legal privilege,*

(b) *limit the information available by law to a party to a legal proceeding, or*

(c) *limit or affect the collection, use or disclosure of information that is the subject of trust conditions or undertakings to which a lawyer is subject.*

[para 33] Section 4(5)(b) reaffirms the idea, already discussed above, that the Law Society, in the discharge of its regulatory duties, may provide participants in this process

with information – even if it is personal information – for the purpose of meeting its duty of fairness, under its own legislation and rules, quite apart from the Act. Section 20(m) also permits disclosures of personal information that are reasonable for the purposes of an investigation or legal proceeding. I accept the Law Society’s argument that the conduct proceedings relating to the A/C’s complaints were legal proceedings, and that it may do these things.

[para 34] In this case I presume the Applicant’s reference to the *Legal Profession Act* underlies his complaint that when the Law Society provided him with bundles of information which it supplied to the individuals about whom he had complained, and to the members of the Appeal Committee, it severed certain information. (This is in contrast to the idea that the A/C did not want the Law Society to share his personal information without his consent, or in any event after he had retracted his consent. The Applicant did also make the latter argument (which I will address below), but his references to the *Legal Profession Act* and *Rules of Court* were not made to support the latter claims.) For the reasons given at paragraphs 9 to 19 above, the Law Society’s choices as to what particular information to withhold is beyond my jurisdiction.

Issue 5: Did the Law Society properly apply section 24(2)(a) of the Act (legal privilege) to the records/information?

[para 35] Section 24(2)(a) provides:

(2) An organization may refuse to provide access to personal information under subsection (1) if

(a) the information is protected by any legal privilege;

[para 36] For the reasons discussed at paragraphs 9 to 19 above, I do not regard the requests at issue in this inquiry that the A/C made to the Law Society for information to have been requests for his personal information. Therefore, whether the Law Society properly applied section 24(2)(a) is not a relevant consideration to whether its decisions about what information to provide to the Applicant in this case under its own processes were appropriate.

Issue 6: Did the Law Society properly apply section 24(2)(c) of the Act (information collected for investigation or legal proceeding) to the records/information?

[para 37] Section 24(2)(c) provides

24(2) An organization may refuse to provide access to personal information under subsection (1) if ...

(c) the information was collected for an investigation or legal proceeding;... .

[para 38] For the reasons discussed at paragraphs 9 to 19 above, I do not regard the requests at issue in this inquiry that the A/C made to the Law Society for information to have been requests for his personal information. Therefore, whether the Law Society properly applied section 24(2)(c) is not a relevant consideration relative to whether its decisions about what information to provide to the Applicant in this case under its own processes were appropriate.

Issue 7: Does section 24(3)(b) of the Act (information revealing personal information about another individual) apply to the records/information?

[para 39] For the reasons discussed at paragraphs 9 to 19 above, I do not regard the requests at issue in this inquiry that the A/C made to the Law Society for information to have been requests for his personal information. As the decisions of the Law Society as to what information to provide to the Applicant pursuant to his requests for the complaint files and appeal binders are beyond my jurisdiction, section 24(3)(b) does not apply to those decisions.

[para 40] I note that if I were to receive a complaint that the Law Society disclosed someone's personal information where this was not for the purpose of its regulatory process, I could entertain such a complaint. However, the Law Society is quite within its rights, under its own process and also by virtue of sections 4(5) and 20(m) of the Act, to disclose the personal information of individuals as part of its conduct of its regulatory proceedings.

Issue 8: If section 24(3)(b) applies, is the Law Society reasonably able to sever the information, as provided by section 24(4) of the Act?

[para 41] Because I have found that section 24(3)(b) does not apply, I do not need to answer this question.

Issue 9: Did the Law Society have a duty to the Applicant/Complainant under section 27(1)(a) of the Act (duty to assist)? In particular, did the Law Society have a duty to ensure that its members who had the Applicant's/Complainant's personal information were aware of and complied with the Applicant's/Complainant's variation of consent? If the Law Society had a duty under section 27(1)(a), did the Law Society comply with that duty?

[para 42] On April 18, 2005, the Applicant wrote to the Law Society for the purpose of withdrawing consent to the use and distribution of all his personal information "between parties, Lawyers, Law Firms and various departments and staff within the Law Society of Alberta"

[para 43] The Law Society takes the position that it does not require the A/C's consent to use his personal information; therefore, it was not obliged to stop using the A/C's personal information by virtue of this withdrawal of consent. (This argument is in accordance with section 9(4) of the Act, which permits a withdrawal of consent, but not

where use and disclosure is permitted under the Act without consent.) It says that because a complainant does not have the carriage of the complaint under its rules, it is entitled to conclude complaints proceedings regardless whether a complainant wishes it to do so, and that it may share the complainant's personal information without his consent for this purpose.

[para 44] I agree with the Law Society's submission that it does not require the A/C's consent to use his information for the purpose of processing a complaint that he has brought (see Issue 10 below). I also agree that it may conclude a complaint proceeding regardless whether a complainant wants it to do so, especially where (as it says happened in this case) the complainant wants the complaint withdrawn possibly only temporarily. As the purported withdrawal of consent to use and distribution of his personal information was ineffective, I conclude that the Law Society was not obliged to inform other members of the A/C's withdrawal of his consent, or to ensure that they complied therewith.

Issue 10: Did the Law Society use the Applicant's/Complainant's personal information in contravention of the Act, having regard to sections 7(1)(c), 9 and 17 of the Act?

[para 45] In contrast to the rules for access under PIPA, the rules for complaints about improper use and disclosure of personal information do apply to this case. This is because, unlike the former rules, the application of the latter ones does not depend on the nature or scope of an information request. However, it is still the case that my jurisdiction over what was disclosed under this heading is only over that part of the information that was the A/C's personal information.

[para 46] Section 7(1)(c) provides that an organization shall not use personal information about an individual unless the individual consents to that use, and section 9 permits a person who has given such consent to withdraw or vary it.

[para 47] However, section 17 of the Act permits an organization to use the personal information of an individual without their consent, as follows:

17 An organization may use personal information about an individual without the consent of the individual but only if one or more of the following are applicable: ...

(b) the use of the information is pursuant to a statute or regulation of Alberta or Canada that authorizes or requires the use; ...

(d) the use of the information is reasonable for the purposes of an investigation or a legal proceeding;

[para 48] The Law Society says that it is authorized to use the personal information of the A/C by virtue of section 7(1) of the *Legal Profession Act* and Rule 2.1(3) of the Law Society Rules, in combination with section 17(b) and 17(d) of PIPA.¹⁰

[para 49] Section 7(1) of the *Legal Profession Act* provides the Benchers may make rules for the exercise or carrying out of the powers and duties conferred or imposed on the Society or the Benchers under that Act. Among its powers and duties is that to address the “unethical, incompetent or unauthorized practice of law”.

[para 50] The Benchers have passed rules for the use and disclosure of information relative to this power. Rule 2.1(3) provides that the Society may use information without consent of an individual to assist it in addressing such matters, and in serving the interests of justice within regulatory proceedings.¹¹

[para 51] The A/C complains that the Law Society misused his personal information. (I have not defined precisely what parts of the documents in the complaint files and appeal binders were the A/C’s “personal information”, but I will proceed on the basis that they contained some such information.) To the extent that I understand the A/C’s point about misuse, it is that the Law Society was using his personal information for the purpose of discrediting him, rather than for the purposes of enabling the lawyers complained against to respond, or the Appeal Committee members to make decisions.

[para 52] The Law Society replies that it was using the Applicant’s personal information for reviewing and administering his complaints against various members of the Law Society, and for responding to his requests regarding access to and correction of his personal information.

[para 53] The A/C’s submission about his allegation of misuse is unspecific. He says:

I willingly participated in this process until the point that it became clear to me that the LSA had no intentions of using my personal information and consent for the purposes for which it was intended. My Index of Records shows that instead the LSA turned the tables and spoke openly about their assessment of my character and publicly offered up opinions of me to the membership. They failed to ensure the promise of transparency and there is no evidence in these records to show that they contacted my lawyers for information regarding opposing counsel’s conduct throughout.

¹⁰ PIPA regulation section 5(d), says that “regulation” includes “a legislative instrument of a professional regulatory organization”. The Law Society Rules are thus regulations for the purposes of section 17(b).

¹¹ Rule 2.1(4) provides that the Society may disclose information without the consent of the individual where the interests of justice within regulatory proceedings, taking into consideration the protection of privacy, weigh in favour of disclosure. This rule is relevant to the disclosure issue, discussed under Issue 11, below.

[para 54] As well, in the A/C's index of the records that were disclosed to him, in the "Comments/Concerns" column, he frequently makes comments such as "improper disclosure to others", "improper use of my information", or "goes toward support of my Privacy Complaints". Sometimes he adds a short phrase by way of explanation (for example "relates to evidence given in confidential meeting"). However, even where this is so, it does not show that the use of his personal information was other than for the purpose of providing the other lawyers or Appeal Committee members with information relating to the complaints. I was not able, by a review of these comments, to see that the Law Society's use of the A/C's personal information contained in the documents it disclosed was for an improper purpose.

[para 55] I note that in correspondence with the A/C, the Law Society made efforts to obtain more details about his complaints, but was unsuccessful. For example, on April 18, 2005, the Information Officer asked the A/C to please specify "[t]he specific information you allege was "improperly collected and distributed" by the Law Society, and the reasons why you think it was "improper"....¹²

To this the A/C replied:

As to the nature of the items that need correcting I refer you to your original letter to me indicating some approximate 850-pages of documents which according to your letter were to be reviewed by yourself last month. Contained within those documents are my objections to the facts as reported by [a Law Society official] and the noted corrections I was seeking. Had you simply done your job as promised you would be more than well aware of the facts regarding the lack of care and control and or the misuse of my personal information by the Staff Lawyers of the Law Society of Alberta.

[para 56] I find the A/C has not provided sufficiently specific evidence or a sufficiently specific explanation to substantiate his complaint of improper use.

Issue 11: Did the Law Society disclose the Applicant's/Complainant's personal information in contravention of the Act, having regard to sections 7(1)(d), 9 and 20 of the Act?

[para 57] Section 7(1)(d) provides that an organization shall not disclose personal information about an individual unless the individual consents to that disclosure, and section 9 permits a person who has given such consent to withdraw or vary it. Section 20 provides:

20 An organization may disclose personal information about an individual without the consent of the individual but only if one or more of the following are applicable: ...

(b) the disclosure of the information is pursuant to a statute or regulation of Alberta or Canada that authorizes or requires the disclosure; ...

¹² The Law Society's request for specifics was repeated on April 26, 2005.

(m) the disclosure of the information is reasonable for the purposes of an investigation or a legal proceeding;

[para 58] The Law Society says that it is authorized to disclose the personal information of the A/C by virtue of section 7(1) of the *Legal Profession Act* and Rule 2.1(3) of the Law Society Rules, in combination with sections 20(b) and 20(m) of PIPA. It says it disclosed the A/C's personal information in the course of reviewing and administering his complaints against various members of the Law Society.

[para 59] Relative to this issue, the A/C says in his initial submission only that "the evidence and records speak for themselves". In his rebuttal, his main concern seems to be his idea that he received less information than the lawyers complained against, and the Appeal Committee members, received. The fact that personal information of others or privileged material was withheld from the A/C's copy of the material does not establish the Law Society was motivated by any improper purpose in the manner it distributed information to the respondent lawyers and Appeal Committee members.

[para 60] As with the A/C's complaint of improper use, my response to his complaint of improper disclosure is that he does not provide sufficiently specific evidence or a sufficiently specific explanation of this suggestion to allow me to make a finding that there was some problem. I therefore dismiss this complaint as well.

[para 61] I take this opportunity to make an observation about the inclusion of personal information, by regulatory bodies, in information shared for the purposes of their processes. In certain kinds of complaint proceedings, personal information of a complainant is likely to be part of information that is shared with the decision maker and with the respondents to complaints. In my view, a regulatory organization in such cases does not, generally speaking, have the obligation, before sharing information under its own processes, to sort through the material that documents a particular complaint and to excise items of personal information on the basis that they may not be strictly necessary to determine the final outcome. Where personal information is in these documents as part of the chronology of events that led to the complaint, the very fact the information is personal does not, in itself, prevent inclusion of the documents in materials that are provided to meet the goals of fairness for the purposes of the regulatory proceeding. However, in such cases, it may be useful for regulatory bodies to tell complainants at an early stage that their personal information can be used in this way.

Issue 12: Did the Law Society disclose another individual's personal information in contravention of the Act, having regard to sections 7(1)(d), 9 and 20 of the Act?

[para 62] I understand that this complaint relates to the inadvertent disclosure, in the materials provided by the Law Society to the A/C, of the name of a person unconnected with any of the complaints in this case. The person whose name was disclosed filed a complaint with this Office. An investigation was conducted and a conclusion was reached. I will therefore not consider this issue as part of the present inquiry.

Issue 13: Does section 27 of the Act (duty to assist) require that the Law Society decipher handwritten notes or remove from the records all information that has no value?

[para 63] For the reasons discussed at paragraphs 9 to 19 above, I do not regard the requests at issue in this inquiry that the A/C made to the Law Society for information to have been requests for his personal information. Therefore, the duty to assist in access requests for personal information, under section 27 of the Act, does not apply.

V. ORDER

[para 64] I make this Order under section 72 of the Act.

[para 65] I find the Law Society complied with section 6 of the Act.

[para 66] I find the Applicant's requests for information pertaining to the complaints and appeals were not requests for his personal information, and that the *Personal Information Protection Act* did not govern the question of what information the Law Society was required to provide to the Applicant pursuant to its own processes. Sections 4(5) and 20(m) of the Act support this conclusion. More specifically, I find that:

- the Law Society was not obliged to comply with sections 24(1)(a), (b) and (c) of the Act relative to the A/C's information request in this case;
- the Law Society was not obliged to apply sections 24(2)(a) and (c) of the Act relative to the A/C's information request in this case;
- section 24(3)(b) does not apply to the A/C's information request in this case.

[para 67] I find the Law Society had no obligation to assist the A/C by notifying its members that the A/C had withdrawn his consent to its use of his personal information, or to ensure that they complied with this variation.

[para 68] I find the Law Society did not use or disclose the A/C's personal information in contravention of the Act.

[para 69] I do not need to consider in this inquiry whether the Law Society disclosed the personal information of a particular other person in contravention of the Act.

[para 70] I find section 27 does not apply to the request for information in this case, and that the Law Society was not required to decipher the handwritten notes contained in the records it provided to the A/C further to his information request, or to remove any parts of the information.

[para 71] I make no order respecting the information requests and responses that were made and given after May 5, 2005. Neither have I explored whether some or all of them were for personal information under PIPA. However, I suggest that the A/C in deciding whether to bring a request for review relative to these requests, and the Law Society in responding to any such request for review by him, take into account the scope of the

term “personal information” as I have defined it in this Order, as well as the limits on my jurisdiction over the Law Society’s decision-making.

Frank Work, Q.C.
Information and Privacy Commissioner