



Order F25-97

## WORKERS' COMPENSATION BOARD

Lisa Siew  
Adjudicator

December 15, 2025

CanLII Cite: 2025 BCIPC 113  
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**Summary:** Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant requested the Workers' Compensation Board (Board) provide access to a record related to a conversation the applicant had with a Board employee. The Board refused access to the entire record under s. 14 (solicitor-client privilege) of FIPPA. At an inquiry to review the Board's decision, the adjudicator determined the Board had correctly applied s. 14 to refuse access to the information redacted in the requested record.

**Statute and section considered in order:** *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165, s. 14.

## INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant requested the Workers' Compensation Board (the Board) provide access to a record related to a phone conversation the applicant had with a Board employee.<sup>1</sup>

[2] The Board responded to the applicant's request by refusing access to the entire record under s. 14 (solicitor client privilege) of FIPPA. The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review the Board's decision. The OIPC's mediation process did not resolve the dispute between the parties, and the matter was forwarded to this inquiry.

## ISSUE AND BURDEN OF PROOF

[3] The issue I must decide in this inquiry is whether the Board is authorized to refuse access to the requested record under s. 14 of FIPPA. Section 57(1) of

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<sup>1</sup> The Workers' Compensation Board is listed as a public body in Schedule 2 of FIPPA. It does business as WorkSafeBC but I will refer to it in this order as the Board.

FIPPA places the burden on the Board to prove the applicant has no right of access to the information that it withheld under s. 14.

## DISCUSSION

### **Background**

[4] The Board is a provincial agency responsible for the administration of the *Workers Compensation Act* (the *Act*).<sup>2</sup> One of the Board's mandates is the adjudication and payment of compensation for workplace injuries and occupational diseases in BC without regard to fault.

[5] The *Act* requires the Board to make its decisions based on the merits and justice of each case, applying any applicable policy. The Board's decisions can be appealed to its Review Division and then to an independent appellate tribunal called the Workers' Compensation Appeal Tribunal.

[6] The *Act* allows a person, referred to as a "lay advocate", to advise and represent an injured worker in Board matters and proceedings.<sup>3</sup> The applicant is a lay advocate who has represented and advocated on behalf of injured workers before the Board.

[7] In November 2023, the applicant spoke over the phone with a Board employee (the Employee) about an injured worker the applicant was representing. During that conversation, the applicant allegedly made the Employee uncomfortable by asking the Employee certain personal questions and by refusing to change his behaviour after the Employee expressed their discomfort to the applicant.

[8] The Employee informed their senior manager (Manager) about the applicant's behaviour and their discomfort with the phone conversation. The matter was forwarded to the Director of Long-Term Disability Services (Director). The Director asked the Manager to arrange for the Employee to summarize the phone conversation in an email (the Email) and that summary was later forwarded to the Director.

[9] The Director eventually sent the applicant a "warning letter" regarding the telephone conversation with the Employee to inform the applicant, among other things, that his behaviour was inappropriate and the consequences the applicant faced if there were any further inappropriate interactions with Board employees.<sup>4</sup>

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<sup>2</sup> RSBC 2019, c. 1. The information in this background section is compiled from the parties' submissions and evidence.

<sup>3</sup> Section 354 of the *Act*, which also says lay advocates are exempt from the prohibition against engaging in the practice of law contained in s. 15 of the *Legal Profession Act*, SBC 1998, c. 9.

<sup>4</sup> Director's affidavit at para. 15.

**Record at issue**

[10] The record at issue in this inquiry is the Email, which the Employee drafted to summarize their telephone conversation with the applicant. The Board withheld the entire Email under s. 14.

**Solicitor-client privilege – s. 14**

[11] Section 14 of FIPPA states that a public body may refuse to disclose information that is subject to solicitor-client privilege. It is well-established that s. 14 encompasses both legal advice privilege and litigation privilege.<sup>5</sup> The Board claims legal advice privilege over the information that it withheld under s. 14.

[12] The Board chose not to provide the Email for my review. Instead, the Board described and discussed the Email in its submissions and provided an affidavit affirmed by the Director to support its claim of privilege. I find this combined information and evidence is sufficient for me to decide whether the Board has correctly refused access to the Email under s. 14 of FIPPA.<sup>6</sup>

**Legal advice privilege**

[13] Legal advice privilege applies to confidential communications between a solicitor and client for the purposes of obtaining and giving legal advice, opinion or analysis.<sup>7</sup> The Supreme Court of Canada explained that “without the assurance of confidentiality, people cannot be expected to speak honestly and candidly with their lawyers, which compromises the quality of the legal advice they receive.”<sup>8</sup> Therefore, the privilege has been characterized as “fundamental to the proper functioning of our legal system.” Given its importance, the Supreme Court of Canada has said the privilege “should only be set aside in the most unusual circumstances.”<sup>9</sup>

[14] It is well-established that legal advice privilege can only be claimed document by document, with each document being required to meet the following criteria:

1. A communication between a solicitor and client (or their agent);

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<sup>5</sup> *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [College] at para. 26

<sup>6</sup> When s. 14 is at issue, the OIPC makes an exception to its usual practice of requiring the public body to provide the OIPC with an unredacted copy of the records in dispute.

<sup>7</sup> *College*, *supra* note 5 at para. 31.

<sup>8</sup> *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53 (CanLII) at para. 34.

<sup>9</sup> *Ibid*, citing *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 (CanLII) at para. 17.

2. Which entails the seeking or giving of legal advice; and
3. Which is intended by the parties to be confidential.<sup>10</sup>

[15] However, it is not only the direct communication of legal advice between a solicitor and their client that may be privileged. Previous OIPC orders have also found that s. 14 applies to information that would reveal the content of privileged communications between a lawyer and their client.<sup>11</sup> As well, the Courts have found that legal advice privilege extends to communications that are “part of the continuum of information exchanged” between the client and the lawyer in order to obtain or provide the legal advice.<sup>12</sup> A “continuum of communications” involves the necessary exchange of information between a client and their solicitor for the purpose of obtaining and providing legal advice such as “history and background from a client” or communications to clarify or refine the issues or facts.<sup>13</sup>

*Parties’ arguments about legal advice privilege*

[16] The Board acknowledges the Employee did not send the Email to a lawyer;<sup>14</sup> therefore, I understand the Board is not arguing the Email is a direct communication between a lawyer and their client. Instead, the Board submits legal advice privilege applies to the Email because the Director used the Email to draft the warning letter that was then sent to the Board’s in-house lawyer (General Counsel) for legal advice. Among other things, the Board also says the Director, the Manager and General Counsel met to discuss the Email and the warning letter.<sup>15</sup> Therefore, the Board argues privilege applies to the Email because it was created “for the purpose of communicating effectively and seeking legal advice” from General Counsel about the warning letter.<sup>16</sup>

[17] The Director confirms they requested a summary of the phone conversation between the Employee and the applicant so they could draft a “warning letter” to the applicant that would be sent to and reviewed by General Counsel.<sup>17</sup> The Director also discusses, among other things, the applicant’s allegedly contentious history with the Board and his past interactions with other Board employees. I will discuss Director’s evidence further below in my analysis.

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<sup>10</sup> *Solosky v. The Queen*, 1979 CanLII 9 (SCC) at p. 838, [1980] 1 SCR 821 at p. 13.

<sup>11</sup> For example, Order F20-19, 2020 BCIPC 22 (CanLII) at para. 24 and Order F22-16, 2022 BCIPC 18 (CanLII) at para. 31.

<sup>12</sup> *Huang v. Silvercorp Metals Inc.*, 2017 BCSC 795 at para. 83; *Camp Development Corporation v. South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 [*Camp Development*] at paras. 40-46.

<sup>13</sup> *Camp Development*, *supra* note 12 at para. 40.

<sup>14</sup> Board’s submission dated August 5, 2025 at para. 24.

<sup>15</sup> Board submission dated August 5, 2025 at paras. 14 and 20.

<sup>16</sup> Board submission dated August 5, 2025 at paras. 20-21.

<sup>17</sup> Director’s affidavit at para. 12.

[18] The applicant does not appear to dispute the Board's arguments and evidence about s. 14. Instead, among other things, the applicant alleges that he was wrongfully persecuted by the Board and that Board employees made false claims against him.<sup>18</sup>

*Analysis and findings about legal advice privilege*

[19] The communication at issue here is the Email; therefore, I must consider whether the Email is a privileged communication between a lawyer and their client or would reveal that kind of information. The evidence indicates neither the Employee nor the Director sent the Email directly to General Counsel.<sup>19</sup> Therefore, the Email is not a communication between a lawyer and their client.

[20] The Board, however, says privilege applies because the Director, the Manager and General Counsel met to discuss the warning letter and the Email, and that General Counsel gave legal advice and instruction about the letter.<sup>20</sup> The challenge with the Board's statements is that the Board did not provide any supporting evidence to show that a meeting did take place where legal advice was sought and given. Specifically, the Director did not corroborate the Board's assertion that a meeting took place with General Counsel to discuss the Email or the warning letter. The Director also did not say General Counsel gave them legal advice, verbally or in writing, about the warning letter or the related dispute.

[21] However, as I will explain, I find it reasonable to conclude that a meeting did take place between the Director, the Manager and General Counsel where legal advice was sought and given. I note the Director says they intended to seek legal advice about the warning letter, that the draft letter was sent to General Counsel and that a warning letter was later sent to the applicant.<sup>21</sup> The Director also provided for my review a copy of the warning letter that was eventually sent to the applicant and, in the letter, the Director talks about what the applicant said during the telephone conversation with the Employee.<sup>22</sup>

[22] The Director also discusses the circumstances that influenced their decision to draft a warning letter and to send that letter to General Counsel. The Director explains that, in the past, other Board employees have complained about the applicant's behaviour. The Director says these complaints resulted at one point in the Board banning the applicant from acting as a lay advocate, but that the applicant successfully challenged that decision on judicial review.<sup>23</sup> The Director explains that this contentious history and the Court's judgment

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<sup>18</sup> Applicant's emails to OIPC registrar of inquiries dated August 11 and 26, 2025.

<sup>19</sup> Board's submission dated August 5, 2025 at para. 24 and Director's affidavit at paras. 12-14.

<sup>20</sup> Board submission dated August 5, 2025 at paras. 14 and 30.

<sup>21</sup> Director's affidavit at paras. 12-14 and 17-18.

<sup>22</sup> Exhibit E of Director's affidavit.

<sup>23</sup> Director's affidavit at para. 7.

influenced their decision to draft a warning letter regarding the applicant's behaviour towards the Employee, and to seek legal advice from General Counsel regarding the proposed warning letter.

[23] Considering the Director's stated intention to obtain legal advice about the warning letter and the contentious history between the Board and the applicant, I find it more probable than not that the Director did speak with General Counsel before sending the warning letter to the applicant. I am persuaded that the Director probably would not have sent the warning letter to the applicant without first discussing its contents with General Counsel and seeking their advice about the letter. Moreover, it is clear to me that the warning letter is a response to the circumstances described in the Email. Therefore, I find the Email and the warning letter are so closely related that it would be highly unlikely that a discussion about the warning letter could occur without also discussing the Email. As a result, I am satisfied the Director, the Manager and General Counsel could not have discussed the proposed warning letter without also discussing the Email and its contents. For all those reasons, I accept the Board's assertion that the Director, the Manager and General Counsel met to discuss the warning letter and the Email.

[24] I will next consider whether General Counsel was acting in their legal capacity when the Director consulted with them about the warning letter. Legal advice privilege extends to communications with in-house counsel provided the lawyer is acting in a legal capacity and not in a different capacity such as a business or policy advisor.<sup>24</sup> To determine whether General Counsel was acting in their legal capacity at the relevant time, I must consider general evidence of the nature of the relationship, the subject matter of the advice and the circumstances in which the advice was sought or rendered.<sup>25</sup>

[25] The Board identifies General Counsel's official title as, "Head of Law and Policy and General Counsel."<sup>26</sup> While it appears from this official title that General Counsel acts as more than the Board's in-house legal advisor, the Director clearly states their intention was to seek legal advice about the warning letter. The Director's evidence discussed above also helps me understand the circumstances in which they consulted with General Counsel. All this evidence persuades me that the Director was seeking General Counsel's legal expertise. Therefore, I am satisfied General Counsel was acting in their legal capacity when the Director consulted with General Counsel about the warning letter.

[26] In terms of confidentiality, both the Board and the Director say the Email was intended to be confidential and was treated as a confidential communication

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<sup>24</sup> *Keefer Laundry Ltd. v. Pellerin Milnor Corp. et. al.*, 2006 BCSC 1180 (CanLII) at para. 63.

<sup>25</sup> *R v. Campbell*, 1999 CanLII 676 (SCC) at para. 50.

<sup>26</sup> Board's submission dated August 5, 2025 at para. 12.

by the individuals who received it.<sup>27</sup> I was not provided with any evidence that contradicts the Board's position and the Director's evidence about the confidentiality of the Email. There is also nothing in the materials before me that indicates what was said in the meeting between the Director, the Manager and General Counsel was shared with people outside the solicitor-client relationship. Furthermore, it makes sense to me that if the Email was intended to be a confidential communication, then a meeting between a lawyer and their client discussing the Email would also be confidential. As a result, I accept the Director, the Manager and General Counsel intended their discussions about the warning letter and the Email to be confidential, and those discussions were treated in that manner.

[27] Taking all the above into account, I accept there was a meeting where privileged communications occurred between the Director, the Manager and General Counsel about the warning letter and the Email. Therefore, I conclude disclosing the Email would risk revealing those privileged communications. Accordingly, I am satisfied the information at issue properly falls within the scope of legal advice privilege and that s. 14 applies.

## **CONCLUSION**

[28] For the reasons given above, I conclude the Board is authorized to refuse access to the information at issue under s. 14 and make the following order:

1. Under s. 58(2)(b) of FIPPA, I confirm the Board's decision to refuse access to the information redacted in the Email under s. 14.

December 15, 2025

## **ORIGINAL SIGNED BY**

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Lisa Siew, Adjudicator

OIPC File No.: F24-97912

<sup>27</sup> Board's submission dated August 5, 2025 at paras. 33-34 and Director's affidavit at para. 18.