



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

Order F08-08

**COLLEGE OF PSYCHOLOGISTS OF BRITISH COLUMBIA**

Celia Francis, Senior Adjudicator

April 21, 2008

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**Summary:** The applicant requested access to a citation which the College had issued against the third party psychologist but later withdrew. The College decided to disclose the citation in severed form. The third party requested a review of this decision, saying the entire record should be withheld. The information in dispute falls under s. 22(3)(d). While ss. 22(2)(e) and (g) apply to some degree, the presumption in s. 22(3)(d) is overcome by the factors in ss. 22(2)(a) and (c) which favour disclosure. The College is required to give access to the record as severed.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(2)(a),(c), (e), (f), (h), 22(3)(d), 22(4)(a).

**Authorities Considered:** **B.C.:** Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order 02-56, [2002] B.C.I.P.C.D. No. 58; Order 02-01, [2002] B.C.I.P.C.D. No. 1; Order F07-22, [2007] B.C.I.P.C.D. No. 36; Order 01-07, [2001] B.C.I.P.C.D. No. 7; Order 02-21, [2002] B.C.I.P.C.D. No. 21.

## 1.0 INTRODUCTION

[1] This order flows from the third party's request for review of a decision by the College of Psychologists of British Columbia ("College") to disclose, in severed form, a "Citation and Notice of Hearing" ("citation") that the College issued against the third party, a College registrant, and later withdrew. The matter did not settle in mediation, so a written inquiry was held under Part 5 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). This Office issued the notice of inquiry to the third party, the College and, as an

appropriate person, the original applicant (the individual who requested access to the citation).

## 2.0 ISSUE

[2] The issue before me in this case is whether the College is required by s. 22(3)(d) of FIPPA to withhold the citation. Under s. 57(3)(a), the applicant has the burden of proof regarding third-party personal information.

## 3.0 DISCUSSION

[3] **3.1 Preliminary Matter**—After this inquiry closed, the third party asked for permission to make a further submission, providing information he said had not been available to him at the time he submitted his response.<sup>1</sup> The Registrar of Inquiries for this Office told the third party that the adjudicator would decide whether or not to accept the additional submission. The applicant and College were then invited to comment on the third party's further submission. Neither objected to the third party's further submission and each commented briefly on it.<sup>2</sup> As no one objected to my doing so and all participants provided submissions, I have considered the third party's further submission and the others' responses.

[4] **3.2 The College's Complaint Process**—The College says it is a "self regulated health profession governed by the *Health Professions Act*" ("HPA").<sup>3</sup> Under s. 16 of the HPA, it has a duty to serve and protect the public and to discharge its responsibilities in the public interest, including by "superintending" the practice of the profession and governing registrants.

[5] Complaints about a registered psychologist must be in writing.<sup>4</sup> The College investigates all formal complaints. If the matter proceeds to the Inquiry Committee, the Committee first "identifies areas in which an ethical violation may have occurred" and then requests information from the registrant. Its investigation may include a review of the registrant's clinical records or practice records and informal resolution or dismissal of the complaint. The Inquiry Committee may also have a "without prejudice meeting" with the registrant. It has a number of options for closing a complaint file: dismissal of the complaint; consensual resolution; or, "in serious cases", the Inquiry

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<sup>1</sup> Third party's letter of September 27, 2007.

<sup>2</sup> Applicant's letter of November 5, 2007 and College's further submission of November 20, 2007.

<sup>3</sup> The information in this paragraph on the College's legislative framework comes from paras. 5 & 6 of the College's initial submission.

<sup>4</sup> The information in this paragraph on the complaint process comes from the text of a brochure reproduced at p. 6 of an issue of the College's newsletter, a copy of which the College attached to its initial submission. In the newsletter, the College says it routinely mails the brochure to registrants when it informs them of a complaint.

Committee directs the Registrar to issue a citation under s. 37 of the HPA and refers the matter to the Discipline Committee for a formal hearing under s. 38 of the HPA. The College says that “[c]omplaints that are dismissed do not become a part of the record of the registrant”.

[6] Under s. 38(3)(a) of the HPA, a hearing is, as the College termed it, “presumptively public”.<sup>5</sup> Under s. 59 of the College’s bylaws, the Registrar must, on request, provide the date, time and subject matter of any discipline hearing to any person. Under s. 39 of the HPA, the discipline hearing may, among other things, result in: dismissal of the matter; reprimand of the registrant; suspension or cancellation of the registrant’s registration as a member of the College.<sup>6</sup>

[7] **3.3 Background**—I was able to glean some background information on the events leading to this inquiry from the parties’ submissions. Their accounts differed in some respects, as may be seen below.

[8] The applicant explained that, in mid-July 2005, she and the father of her daughter engaged the third party to prepare a “psychological assessment” of her, the father and their daughter, which included custody and access recommendations (the “custody and access report”). At the time of the assessment, she said, the third party told her that he was “semi-retired” but he did not “state or suggest” that he was no longer registered with the College. It was not until her final meeting with the third party,<sup>7</sup> the applicant said, that he told her he was no longer a registered psychologist and that he had resigned from the College on June 30, 2005. She said that, despite this, the third party claimed that he had told her in July 2005 that he was no longer registered with the College. The applicant also said she raised concerns about the third party’s behaviour with the College, although it is not clear at what point she did this.<sup>8</sup>

[9] The third party’s custody and access report recommended that the parents have joint custody of the daughter with equal access rights.<sup>9</sup> In her July 2006 decision, the presiding judge gave the third party’s report “very little weight”, based on the following: the fact that the third party was not a registered psychologist and misrepresented himself when he prepared the report; there was no opportunity to cross-examine the third party on his report; the large number of decisions in British Columbia which had rejected his evidence “in strong language”; and the errors in the report. She awarded sole custody and guardianship to the mother and access rights to the father.<sup>10</sup>

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<sup>5</sup> Unless a party requests the hearing be in private and the Committee is satisfied that it should be held in private.

<sup>6</sup> Paras. 5 & 6, College’s initial submission.

<sup>7</sup> This appears to have been in September 2005; para. 2, applicant’s initial submission.

<sup>8</sup> Pages 1-3, initial submission.

<sup>9</sup> Page 32, third party’s custody and access report, copy attached to the applicant’s initial submission.

<sup>10</sup> Paras. 47-62 & 76-77, Reasons for Judgement, copy attached to applicant’s initial submission.

[10] The applicant said that the father has appealed the judge's decision. The appeal had not yet been heard at the time of the last correspondence on this inquiry.<sup>11</sup>

[11] The third party acknowledged that he "acted as a psychologist in a custody & access case" involving the applicant and the father of her daughter, a case which, he said, was "extremely bitter". He said he told both parents at the time they engaged him that he was longer a College registrant and neither was troubled by this. The third party said that the custody and access dispute has since been resolved in court and that matter is over. The third party confirmed he resigned from the College in June 2005 and that the College reported this in its newsletter. He is no longer in the province, he said, and is not now working as a psychologist. The third party said he has had a number of issues with the College, including litigation<sup>12</sup> and reviews with this Office. He suggested that the College has contravened its normal practice of non-disclosure in response to access requests<sup>13</sup> because of its "continual hostility towards [him] personally".<sup>14</sup>

[12] The College said that, as a result of the investigation of a complaint against the third party, the Inquiry Committee directed the Registrar to issue the citation.<sup>15</sup> It said it issued the citation against the third party on April 29, 2005 and withdrew it before a discipline hearing was convened and so no findings were made. (The College did not say why it issued the citation nor what led to its withdrawal.) The College said that the third party resigned from the College on June 30, 2005 and had not since been readmitted as a registrant.<sup>16</sup> The College said that it had published these facts in its newsletter, a copy of which it attached to its submission.<sup>17</sup>

[13] The newsletter states that the citation in question was for "professional misconduct".<sup>18</sup> The reasons for judgement in the applicant's custody and access case say "the College was restricted from revealing the reason for [the third party's] resignation".<sup>19</sup> The reasons also state that the applicant's legal counsel learned from the regulatory body in another province (not the one he is living in

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<sup>11</sup> Applicant's representative's access request of September 6, 2006; para. 2, applicant's reply submission; applicant's letter of November 5, 2007.

<sup>12</sup> The College responded that the third party withdrew his lawsuit and there was a Consent Dismissal Order (a copy of which it provided) confirming that the third party's suit was dismissed without costs; para. 1.(b), reply submission.

<sup>13</sup> The College denied that it has a blanket policy to refuse access requests and referred to s. 37 of its bylaws in this regard; para. 1.(b), reply submission.

<sup>14</sup> Paras. 1-5 & 17, initial submission; paras. 4 & 10, reply submission.

<sup>15</sup> Para. 3.(a), initial submission.

<sup>16</sup> The third party noted that he has not applied to be readmitted; para. 2, reply submission.

<sup>17</sup> Para. 4, initial submission.

<sup>18</sup> Page 3, newsletter attached to College's initial submission.

<sup>19</sup> Para. 47, reasons for judgement; copy attached to the applicant's initial submission.

now) that the third party was a former member of that body. They add that the third party's

... certificate of registration was suspended in 1996 for non-payment of College fees and at the time of his suspension the certificate contained a limitation such that [the third party] was only permitted to provide services in the area of custody and access under supervision. There was no evidence that that limitation had ever been lifted.<sup>20</sup>

[14] **3.4 Record in Dispute**—The disputed record to which the applicant requested access is a “Citation and Notice of Hearing”, issued April 29, 2005 against the third party, a registrant of the College at that time. It includes “Schedule A” to the citation, which contains “particulars” of the allegations against the third party. The College said it had decided to disclose a “redacted” copy of the citation, a copy of which it provided to me. It said it would sever from the record the identifying information of the complainant<sup>21</sup> who had precipitated the investigation which led to the issuance of the citation, but otherwise disclose the citation's contents, including the allegations against the third party, to the applicant.<sup>22</sup>

[15] The material before me indicates that the applicant in this inquiry is not the complainant in the College complaint process. As far as I can tell, there is no connection between the applicant and the complainant, nor between her and the complaint itself.

[16] **3.5 Application of Section 22**—The relevant parts of s. 22 of FIPPA read as follows:

**Disclosure harmful to personal privacy**

- 22(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.
- (2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether
- (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny, ...

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<sup>20</sup> At para. 48.

<sup>21</sup> The applicant agreed to accept the citation with the complainant's identifying information removed; email of January 24, 2007 from applicant to this Office.

<sup>22</sup> Para. 3.(a), initial submission.

- (c) the personal information is relevant to a fair determination of the applicant's rights, ...
  - (e) the third party will be exposed unfairly to financial or other harm,
  - (f) the personal information has been supplied in confidence, ...
  - (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.
- (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if ...
- (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation, ...
  - (d) the personal information relates to employment, occupational or educational history, ...
- (4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if ...
- (c) an enactment of British Columbia or Canada authorizes the disclosure, ....

[17] Many orders have considered the application of s. 22 and I have applied here, without repeating them, the principles set out in those orders.<sup>23</sup>

[18] **3.6 Does Section 22 Apply?**—The first step in the s. 22 analysis is to determine if the record in dispute contains personal information and, if so, whose it is.

***Does the record contain personal information?***

[19] The College said that “it would appear that the Citation does contain personal information within the meaning of *FIPPA*”.<sup>24</sup> I agree with the College that the citation contains “personal information” of the third party as defined in FIPPA, as the third party is named in the record and it contains the particulars of allegations against him.

[20] Because of the way in which the College has severed information from the record in preparing it for disclosure, the individual who complained to the College about the third party is not identifiable. I therefore find that the record does not also contain the complainant's personal information.

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<sup>23</sup> See, for example, Order 01-53, [2001] B.C.I.P.C.D. No. 56, and Order 02-56, [2002] B.C.I.P.C.D. No. 58.

<sup>24</sup> Para. 7.(a), initial submission.

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**Disclosure authorized by an enactment**

[21] The parties did not directly address s. 22(4) in their submissions but I have considered it as part of the s. 22 analysis.

[22] The College argued that, once disciplinary matters reach the citation stage, “they should be available to the registrants and members of the public, subject to removing any third-party information”.<sup>25</sup> The College did not, however, point to any explicit authority in the HPA or the College’s bylaws for it to disclose citations to its members or the public. I found none in those sources.

[23] Indeed, the College admitted obliquely that it has no such authority, during its discussion of Order 02-01:<sup>26</sup>

...Unlike the *College of Psychologists*, the *Law Society of British Columbia* has specific provisions about when a citation is to be disclosed. Given that there is no real similarity between the legislative regime [*sic*], that decision is of little assistance. It is notable however, that the *Rules* of the Law Society provide for publication of a citation whether the matter proceeds to hearing.<sup>27</sup> [*italics in original*]

[24] I find that s. 22(4)(c) does not apply. I can see no basis for the application of any of the other aspects of s. 22(4) either.

[25] **3.7 Presumed Unreasonable Invasion of Privacy**—Both the College and the third party made submissions on this issue.

**Investigation into possible violation of a law**

[26] The College submits that s. 22(3)(b) does not apply because the citation is the “culmination” of an investigation into a possible violation of law, not a part of it.<sup>28</sup>

[27] It is not necessary for me to make a finding on this issue, as I find below that s. 22(3)(d) applies to the disputed record.

**Occupational history**

[28] The College apparently considers that the citation falls under s. 22(3)(d) of FIPPA, as it said this:

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<sup>25</sup> Para. 1.(n), reply submission.

<sup>26</sup> [2002] B.C.I.P.C.D. No. 1.

<sup>27</sup> Para. 1. (d), reply submission.

<sup>28</sup> Para. 6, initial submission.

... [the s. 22(3)(d) presumption] appears to have been determined in Order 02-01 at paragraph 121 in which the Commissioner determined that personal information arising from a disciplinary investigation by a regulatory body involving an individual subject to that body's authority is information that relates to the individual's occupational history. ...<sup>29</sup>

[29] The third party was more direct and drew parallels between this case and orders dealing with "unproven complaints", including Order 02-01,<sup>30</sup> a case where the Commissioner found complaint information about lawyers fell under s. 22(3)(d). Both parties noted that the Law Society does not publicly disclose information pertaining to a complaint but, when a matter reaches the citation stage, it becomes public.<sup>31</sup>

[30] The records in dispute in Order 02-01 were member history printouts, some of which contained complaint (occupational history) information and some of which did not. The issue was whether they could be disclosed in severed form without unreasonably invading the privacy of the lawyers in question. The Commissioner concluded that disclosure of the severed printouts would reveal the existence or non-existence of complaint information and would thus be an unreasonable invasion of the lawyers' privacy.<sup>32</sup>

[31] In this case, however, it is known that there was a complaint against the third party. It is also known that the College issued a citation against the third party, initiating the formal discipline hearing phase, and later withdrew the citation. The record in dispute, although it arose out of the complaint investigation, is that citation.

[32] Section 33 of the HPA directs the College's Inquiry Committee to investigate complaints and gives it the authority to do a number of things, one of which is to direct the Registrar to issue a citation under s. 37 of the HPA. Under s. 38 of the HPA, the Discipline Committee must hear a matter set by citation and may, under s. 39, deal with the matter in a number of ways, including suspending or cancelling the registrant's registration. Under s. 59(4) of the College's bylaws, the Registrar must notify all registrants of the outcome of a disciplinary proceeding.

[33] There is no dispute that the third party was a registrant of the College, a self-governing body listed in Schedule 3 of FIPPA, at the time the College issued the citation. The citation shows that the College's Inquiry Committee directed the Registrar to issue the citation against the third party under s. 37 of the HPA and that a Discipline Committee hearing under s. 38 of the HPA had been scheduled.

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<sup>29</sup> Paras. 7-8, initial submission.

<sup>30</sup> Paras. 7-9, initial submission.

<sup>31</sup> Para. 1.(d), reply submission.

<sup>32</sup> At paras. 120-123.

[34] I am satisfied that the citation, as the outcome of the College's investigation of a complaint against the third party and the document initiating the discipline hearing phase, relates to the third party's occupational history. I find that s. 22(3)(d) applies to it. Disclosure of the citation is therefore presumed to be an unreasonable invasion of the third party's privacy.

[35] **3.8 Relevant Circumstances**—The parties raised a number of arguments which appeared to be directed at the relevant circumstances in s. 22(2).

### ***Public scrutiny***

[36] The third party's main concern about disclosure in this case is that the citation against him has been withdrawn. This essentially means, he argued, that, in the absence of disciplinary action, the complaint remains unproven.<sup>33</sup> He also said that he had challenged the legality of the method by which the College acquired the information in Schedule "A". The third party said he refused to respond to the College on the complaint and that it told him he was as a result to be cited for his lack of co-operation. This was a long way, he said, from the College's contention that the allegations set out in Schedule "A" were the "core issue". He also claimed, giving few particulars, that "one of the three judges assigned to the hearing panel knew me well and had reason to be biased against me. We had once been friends but then had a falling out." He said the College refused to consider this concern which was, according to the third party, "a star-chamber tactic".<sup>34</sup> In any case, he reiterated, the citation was withdrawn before any discipline hearing took place.<sup>35</sup>

[37] The College did not comment on the third party's concerns and, as mentioned elsewhere, did not explain why it first issued and then withdrew the citation. I note however that the citation sets out a number of allegations.

[38] The applicant said her daughter's welfare was the focus of the judge's decision in the custody and access decision. The applicant emphasized her concern about the third party's behaviour:

3. I must reiterate the need for this information is not about [the third party] but rather my daughter's welfare. ... [The third party's] behaviours were bizarre and from a professional perspective, concerning. He states in his submission that he is "not now working full time" which suggests he may

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<sup>33</sup> Para. 6, initial submission.

<sup>34</sup> The third party is referring here to para. 9.(e) of the College's initial submission where the College says that a citation is the subject matter of a discipline hearing and is the document that initiates a hearing.

<sup>35</sup> Para. 7, reply submission.

be working part time. Based on my observations of [the third party's] behaviours it would be in the public's best interest for him to have a regulatory body overseeing his work. In my case he was working in the capacity of a psychologist and yet was not registered. This left me and my daughter vulnerable and damaged the case. That is, it potentially left room for appeal. [The third party] suggests that [my lawyer] would wish to spread rumours that would result in his not being accepted by [the regulatory body for psychologists in the province in which the third party is now living]. Such an act would be senseless as it could potentially leave individuals accessing his services without a regulatory body to turn to and therefore leave them vulnerable. [The third party] disclosed in his submission that he and the CPBC had "several years of very hostile relations." It is my hope that he either retires or is under the watchful eye of a regular [*sic*] body such as the [other provincial regulatory body]. I trust that this brings clarity to the issue that this request is not for the purposes of interfering with [the third party's] pursuit of registering in [the other province], but rather this is a child welfare issue for an appeal that was brought forth in the original case [the third party] was involved with.<sup>36</sup>

[39] The College argued that it must not only regulate its members but be seen to regulate appropriately. It said it must therefore strike a balance between its members' right to privacy and the public's right to know. The College said that its members are in a position of trust and authority with their clients and are therefore subject to a more rigorous standard of behaviour. The College said it must demonstrate to its members and the public which behaviours are unacceptable, that it does not tolerate these behaviours and that it is taking measures to prevent a recurrence.<sup>37</sup> It concluded that

... the fact of the Citation being withdrawn and its disclosure must be considered in light of the public interest in being able to know the manner in which the Public Body regulates its members. In the College's submission, once disciplinary matters reach the Citation stage, they should be available to the registrants and members of the public, subject to removing any third-party information. It is important for registrants and members of the public to be aware of the manner in which the College regulates i[t]s members. A Citation gives precise factual information about regulation, regardless of the eventual disposition.<sup>38</sup>

[40] I agree with the College that these things are important and note that the College's perspective is consistent with Investigation Report P99-013, an investigation into disclosure of discipline matters by the British Columbia College of Teachers.<sup>39</sup> That report suggested that a self-governing regulatory body should be guided by FIPPA's principles of openness and accountability in the

<sup>36</sup> Reply submission.

<sup>37</sup> Para. 9, initial submission.

<sup>38</sup> Para. 1.(n), reply submission.

<sup>39</sup> <http://www.oipc.bc.ca/investigations/reports/invrpt13.html>.

conduct of its business, both generally and in any disclosure of complaint, investigation and discipline information to its members and the public.

[41] More recently, Order F07-22<sup>40</sup> echoed the same theme, in the context of a registrant's response to a complaint:

[34] The College of Chiropractors, like a number of other professions, has been given the special power of self-regulation. This privilege has been extended through laws passed by the Legislature. This privilege is accompanied by the College's responsibility to protect the public interest within its regulatory role. The public scrutiny objective expressed in s. 22(2)(a) is consistent with ensuring that the College's actions and practices in exercising its privilege of self-regulation are consistent with the public interest in protecting patients of College members.

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[36] In the circumstances of this case, including given the nature of the third-party personal information in the record, public scrutiny of the College is advanced by lifting what appears by the College's own submission to be a blanket policy of non disclosure. This will enhance the public's trust and confidence in the College's process. It is also useful to remember that one of the main purposes of FIPPA, explicitly stated in s. 2(1), is to make public bodies "more accountable to the public", including patients who complain to the College. This is not to say the College must in all future cases disclose all information in such records or respecting all aspects of its processes. Previous orders make it clear that public scrutiny is not itself determinative under s. 22. Rather, in the circumstances of this case, I find that s. 22(2)(a) is a relevant circumstance and that it favours disclosure of the personal information in issue. [citations omitted]

[42] Self-governing bodies are responsible for regulating and serving their members. They also have a duty to serve and protect the public and to have regard to the public interest in carrying out this mandate. This overarching concern with the public interest is reflected in legislative provisions such as s. 16 of the HPA.

[43] Members of self-governing professions are often in positions of power, authority and trust with members of the public, whether they are clients, patients or students. The bodies which regulate self-governing professions are subject to a high level of scrutiny about their actions, in part because they are self-governing. They are expected to be accountable, both to the public, in how they serve and protect the public interest, and to their members, in how they regulate their members. They must not only act but be seen to act. Thus, they should be as open and transparent as possible about their operations and

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<sup>40</sup> [2007] B.C.I.P.C.D. No. 36.

processes. The obligation for both self-governing bodies and their members to be accountable and transparent will often translate into diminished privacy for a member, where there is an allegation that the member has transgressed and the matter proceeds through investigation and to the formal disciplinary stage.

[44] With the issuance of the citation in this case, the College's handling of the complaint against the third party had progressed beyond the investigation stage to the disciplinary stage. According to the College's complaint brochure, the issuance of a citation occurs only "in serious cases". Had the College not withdrawn the citation, the matter could well have proceeded to a discipline hearing. This could in turn have resulted, among other things, in the suspension or cancellation of the third party's registration.

[45] I acknowledge the third party's observation that the allegations in the citation were "unproven", because the citation was withdrawn before a discipline hearing took place (by which he appears to suggest that there was no merit to the complaint). Allegations are by their nature unproven, but it may be that the College withdrew the citation for any number of reasons. The withdrawal does not mean the complaint was substantiated or that it was not. In any event, in the circumstances of this case, the third party's concerns do not, in my view, outweigh the importance of public scrutiny of the College's actions in issuing the citation in the first place, a serious step which could have had significant consequences for the third party, as well as the public, as the applicant points out.

[46] Disclosure of the citation would shed light on whether the allegations in the citation were similar to the concerns about the third party's behaviour which the applicant had raised with the College and would assist in subjecting the College's activities to public scrutiny by assisting the applicant in determining whether the College had taken appropriate steps in its response to her concerns. Disclosure would also, in this case, promote the public's trust and confidence in the College's regulation of its registrants and, by extension, in the College's fulfillment of its mandate to protect the public interest in the conduct of its complaint and discipline processes. This is especially so in a case such as this where more than one regulatory body has apparently had concerns with the third party's actions, going back some years.

[47] For the reasons given above, I find that s. 22(2)(a) is a relevant factor in this case, weighing in favour of disclosure.

### ***Section 33.2(a)***

[48] The College also said that s. 33.2(a) was a relevant factor to consider. Beyond adding that the information in the citation had been obtained or compiled

for the purposes of public protection,<sup>41</sup> however, the College did not develop this point.

[49] Section 33.2(a) says this:

**Disclosure inside Canada only**

33.2 A public body may disclose personal information referred to in section 33 inside Canada as follows:

- (a) for the purpose for which it was obtained or compiled or for a use consistent with that purpose (see section 34); ...

[50] This provision is found in Part 3 of FIPPA, which governs the collection, use and disclosure of personal information by public bodies. The purpose of the disclosure provisions is, generally, to give public bodies statutory authority to disclose personal information in the course of carrying out their duties and functions. Section 33.2(a) does not relate to interpretation or application of the exceptions to the right of access to information found in Part 2 of FIPPA.

***Fair determination of applicant's rights***

[51] The applicant said she was concerned that the third party had misrepresented his status as a registered psychologist while carrying out his assessment. She said that she had “detailed some of [her] observations and concerns” about “issues that pertained to boundaries” to the College. She added that the custody and access report was biased and that the third party “made statements of fact that were false”.<sup>42</sup> She said that she had requested the citation for the purposes of the original civil trial as the third party’s “behaviours and subsequent disclosures” led her to question his judgement and “professional abilities”.<sup>43</sup> The applicant stated that she still needs the record, as the father has appealed the judgement, in part because the judge had given “little weight” to the third party’s report. She argues that there is therefore a “need to know” regarding the citation and that the citation would be “constructive” to the judge reviewing the custody and access decision.<sup>44</sup>

[52] The third party’s behaviour left her and her daughter “vulnerable and damaged the case”, the applicant said, in that “it potentially left room for appeal”.<sup>45</sup> The applicant added that, while the third party may not be called as a witness, the third party’s “report and involvement with the College of

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<sup>41</sup> Para. 8, initial submission.

<sup>42</sup> Para. 3, initial submission.

<sup>43</sup> Para. 1, reply submission.

<sup>44</sup> Para. 2, reply submission.

<sup>45</sup> Para. 3, reply submission.

Psychologists are listed” in the factum of the lawyer representing the father in the appeal,<sup>46</sup> by which she appears to mean they will be issues in the appeal.

[53] The third party said that the custody and access matter is concluded and he will not be called as a witness at the appeal.<sup>47</sup> Although he has an ongoing fee dispute with the applicant’s lawyer, the third party said he has no further “ongoing professional activity” involving the applicant. For these reasons, he argued, the applicant has no “need to know” the information in the citation.<sup>48</sup>

[54] Countering the third party’s claim that the custody and access case is over, the College says it was told legal proceedings were ongoing, both at the time of the request and this inquiry.<sup>49</sup>

[55] The test for applying s. 22(2)(c) is set out in a number of orders, such as Order 01-07:<sup>50</sup>

[31] In Ontario Order P-651, [1994] O.I.P.C. No. 104, the equivalent of s. 22(2)(c) was held to apply only where all of the following circumstances exist:

1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds;
2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed;
3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question; and
4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.

[32] I agree with this formulation. I also note that, in *Greater Vancouver Mental Health Service Society v. British Columbia (Information and Privacy Commissioner)*, [1999] B.C.J. No. 198 (S.C.), at paras. 85-89, Lynn Smith J. concluded that a complainant’s “fairness” concerns, related to the conduct of a complaint investigation, did not activate s. 22(2)(c).

[56] I accept that the applicant has satisfied the first two elements of this test, as the custody and access appeal was outstanding at the time of the request and this inquiry. As for the remaining two elements, the applicant states that the father of her daughter will raise the third party’s report and his “involvement” with

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<sup>46</sup> Reply submission; Letter of November 5, 2007.

<sup>47</sup> Letter of September 27, 2007.

<sup>48</sup> Paras. 3-4, initial submission.

<sup>49</sup> Para. 1.(a), reply submission.

<sup>50</sup> [2001] B.C.I.P.C.D. No. 7.

his former regulatory body in the upcoming appeal. I therefore accept that the citation has a bearing on the applicant's rights in that case and the citation is necessary for her to provide a complete response to the issues the father will be raising. I therefore find that s. 22(2)(c) applies here.

***Unfair harm or damage to reputation***

[57] The third party stressed that

The first, and most significant factor, is that the citation against me was withdrawn. In terms of Law, this is tantamount to situations the Commissioner has often dealt with in which complaints were made but no disciplinary action taken.<sup>51</sup>

[58] The third party referred to a number of this Office's orders and reports which he considers support his position.<sup>52</sup> He said that complaints against psychologists are "highly sensitive matters" and that the College's complaint process—for good reason, in his view—contemplates confidentiality.<sup>53</sup> The third party expressed concern that disclosure of "the details of an unproven complaint" could be "devastating" for his reputation, even though he no longer lives in the province. Disclosure could, in his view, also have a detrimental affect on any future application he may make to register as a psychologist in the jurisdiction in which he is currently living. It could also, he said, affect his chances of being hired by a future employer and could have a damaging effect on a family member's employment situation as well.<sup>54</sup>

[59] The third party also questioned why the College has not been "vigorous in defence of protecting from disclosure information about [him] with respect to a citation which was, in fact withdrawn", when it is normally so protective. He then remarked that he and the College "have had a long history of a hostile nature" and suggested that the College was acting out of "personal animosity" towards him "rather than mature principles".<sup>55</sup>

[60] The College argued that any potential damage to the third party's reputation should be considered in light of the court's comments at paras. 54-57

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<sup>51</sup> Para. 6, initial submission.

<sup>52</sup> The third party referred here to Order 02-35, [2002] B.C.I.P.C.D. No. 35, Order 02-01, Order No. 71-1995, [1995] B.C.I.P.C.D. No. 44, Order No. 227-1998, [1998] B.C.I.P.C.D. No. 20 and Investigation Report P99-013. The College responded that the third party's comments on those orders and reports bear no relation to this situation; paras. 1.(c)-(g) & (l), reply submission.

<sup>53</sup> The College pointed out again that its discipline hearings are "presumptively public"; para. 1.(h), reply submission. I note, however, that the College's bylaws state that an Inquiry Committee's proceedings—which are different from discipline hearings—are not open to the public.

<sup>54</sup> Paras. 13-18, initial submission.

<sup>55</sup> Para. 5, reply submission.

of the reasons for judgement on the custody and access case.<sup>56</sup> (This is where the judge reviewed previous cases in which the courts had rejected the third party's evidence.) The College cast doubt on the third party's concern for potential damage to the reputation of the third party's family member, on the grounds that the public would have no way of knowing about any family connections.<sup>57</sup>

[61] While it is true that, for a number of reasons, the court gave little weight to the third party's custody and access report in its decision, I do not think this is of much assistance in deciding the issue of possible harm to the third party from disclosure of the citation.

[62] As noted above, members of self-governing professions are often in a position of power and authority over their clients and patients and are subject to a rigorous standard of behaviour and to a high level of scrutiny. This may translate into some diminution of members' privacy, where they are alleged to have transgressed and the matter proceeds to a disciplinary hearing.

[63] I am mindful that the citation was withdrawn before a disciplinary hearing took place and thus before the third party had an opportunity to respond to the complaint and before the College made any findings on the merits of the complaint. In stressing this point, as noted earlier, the third party appears to suggest that the withdrawal of the citation before the hearing means, in effect, that there was no merit to the complaint.

[64] This ignores the fact that the College did not dismiss the complaint, but, after investigation, issued a citation, the first step in the discipline phase, from which a "presumptively public" hearing and discipline could have flowed. While the College later withdrew the citation, this could have been for any number of reasons. It does not support the third party's contention that his situation is "tantamount" to those involving complaints where no disciplinary action was taken.

[65] As for the third party's concerns about the College's handling of the complaint and panel processes, these relate more to fairness issues. As the Commissioner said in Order 02-21,<sup>58</sup> "it is not open to me to consider general fairness concerns in a s. 22 analysis". There is also no evidence to support the third party's suggestion that the College has a personal vendetta against him.

[66] I accept that disclosure of the citation's contents could possibly lead to some harm to the third party within the meaning of ss. 22(2)(e) and (h). The fact that the allegations were unproven, and there was never a public hearing where they could be refuted, raise the potential for this to be "unfair harm". That said,

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<sup>56</sup> para. 1.(i), reply submission.

<sup>57</sup> Para. 1.(o), reply submission.

<sup>58</sup> [2002] B.C.I.P.C.D. No. 21, at para. 19.

however, the third party did not provide any details on how the complaint arose, his position on the allegations or an account of the reasons for the withdrawal of the citation. Nor did he suggest that he was in any way precluded from disclosing any details on these matters. He also did not explain how, in his view, the potentially negative consequences he described might flow from disclosure, including given that the College has already published the fact that it issued a citation for professional misconduct against him. I make these observations without placing a legal burden of proof on the third party, but to note that the third party has not provided evidence to assist me on the issue of “unfair harm”. In view of the language of ss. 22(2)(e) and (h), I conclude that, while harm might flow from disclosure, I do not give great weight to these considerations.

[67] As for the family member, there is no reason to suppose this individual would be harmed financially or otherwise by disclosure of the citation. The third party’s arguments in this respect are speculative and I am not persuaded that any s. 22(2)(e) harm could extend to this individual. Moreover, this family member is not mentioned in the citation and there is therefore no basis on which s. 22(2)(h) could apply.

### ***Confidential supply***

[68] The parties addressed this issue only indirectly. The third party said that the College’s legislation “contemplates, or mandates, private investigations or proceedings”.<sup>59</sup> The College acknowledged that investigations are “presumptively private” but said that disciplinary hearings are “presumptively public”.<sup>60</sup>

[69] None of the parties provided me with any evidence to show how the College conducts its complaint investigations, for example, whether complainants submit complaints in confidence and the College undertakes to treat complaints and investigations in confidence.

[70] The College’s bylaws say that the Inquiry Committee’s proceedings are not open to the public. Section 53 of the HPA generally imposes confidentiality with respect to matters that come to an individual’s knowledge while carrying out duties or functions under the HPA. This does not suffice in my view to establish that the factor in s. 22(2)(f) is present in this case.

### ***Is the applicant entitled to have access to the citation?***

[71] I have found that s. 22(3)(d) applies to the record in dispute. I have found that ss. 22(2)(e) and (h) apply regarding the third party, favouring withholding the

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<sup>59</sup> Para. 10, initial submission.

<sup>60</sup> Para. 1.(h), reply submission.

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record, but I do not give them great weight. I consider that the relevant circumstance in s. 22(2)(a), which favours disclosure, is sufficient on its own to outweigh the factors in ss. 22(2)(e) and (h) and rebut the presumption of unreasonable invasion of privacy in this case and that s. 22(2)(c) is an additional factor weighing in favour of disclosure. I therefore find that s. 22(1) does not apply to the information in the record, as the College severed it.

#### **4.0 CONCLUSION**

[72] For the reasons given above, under s. 58 of FIPPA, I require the College to, within 30 days of the date of this order, as FIPPA defines “day”, that is, on or before June 3, 2008, give the applicant access to the citation and Schedule “A”, as severed in the copy the College provided to me with its initial submission and, concurrently, to copy me on its cover letter to the applicant, together with a copy of the record.

April 21, 2008

#### **ORIGINAL SIGNED BY**

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Celia Francis  
Senior Adjudicator

OIPC File: F06-29778