



No. *Court File No. VLC-S-S-176347*

Vancouver Registry

In the Supreme Court of British Columbia

Judicial review of administrative decision

Order F17-29 of May 11, 2017

Of Commissioner,

Office of the Information and Privacy Commissioner

Between

Stephen John Aston Sloan, Petitioner

and

**Commissioner, Office of the Information & Privacy Commissioner,
Respondent**

PETITION TO THE COURT

ON NOTICE TO:

The Commissioner c/- chamilton@oipc.bc.ca

This proceeding is brought for the relief set out in Part 1 below, by

the person named as petitioner in the style of proceedings above

If you intend to respond to this petition, you or your lawyer must

(a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and

(b) serve on the petitioner

(i) 2 copies of the filed response to petition,
and

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(ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner,

(a) if you were served with the petition anywhere in Canada, within 21 days after that service,

(b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the petition anywhere else, within 49 days after that service, or

(d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: 800 Smithe Street Vancouver BC
(2)	The ADDRESS FOR SERVICE of the petitioner(s) is: PO Box 114 Kurrajong NSW 2758 Australia Fax number address for service (if any) of the petitioner(s): NA E-mail address for service (if any) of the petitioner(s): sjasloan@gmail.com
(3)	The name and office address of the petitioner's(s') lawyer is: NA

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Claim of the Petitioner

Part 1: ORDER(S) SOUGHT

- 1 Set aside the Commissioner's Order F17-29 of May 11, 2017 (the "Order")
- 2 The Commissioner to make a new Order on a proper lawful basis in substitution for the May 11, 2017 Order within 28 days of the date of these orders
- 3 Costs

Part 2: FACTUAL BASIS

- 1 In early 2015 I applied under the Freedom of Information and Personal Privacy Act for access to several documents in the custody possession or control of the Law Society of British Columbia relating directly and indirectly to evidence filed for the plaintiff and led by the plaintiff in BCSC proceedings S053343 *Maddess v Racz*.
- 2 Those proceedings concerned the validity of a testamentary document made by Rozalia Racz on June 30, 1993 in West Vancouver.
- 3 That document was prepared by W Gerald Mazzei, a West Vancouver lawyer in practice at the time (and still practicing today) as Goluboff & Mazzei.
- 4 The evidence in BCSC proceedings S053343 which was not contradicted was that Rozalia Racz attended on Mr Mazzei on June 30 1993 and on no other date for the preparation of that document and swore the document on that same date.
- 5 Mr Mazzei is a lawyer member of the Law Society.
- 6 Mr Mazzei and his employed secretary / PA Ms Sandra Johnson were the attesting witnesses to the execution of the June 1993 testamentary document.
- 7 I infer from the circumstances and the documentary evidence available to me that the Law Society in its capacity as PI insurer of its

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lawyer-members interfered with the evidence of Mr Mazzei and most likely attempted to, or did, interfere with the evidence of Ms Johnson.

8 I infer that Mr Ernest Racz attended with his mother Rozalia Racz on June 30, 1993 and that he, Ernest Racz, instructed Mr Mazzei. Rita Racz, the widow of Ernest Racz admitted in her evidence in chief that Ernest Racz drove his mother to see Mr Mazzei on June 30, 1993.

9 There was no evidence as to how Rozalia made her way home after meeting Mr Mazzei. Rozalia was 83 years old at the time. Rozalia could not drive. And she was elderly. I infer that her son drove her home.

10 I met Rozalia myself on many occasions in 2003 and 2004. She could not speak English at all fluently. I believe she spoke Hungarian and Slovakian. Mr Mazzei admits he cannot speak Hungarian. I doubt Mr Mazzei speaks Slovakian either.

11 The testamentary document very significantly benefitted Ernest Racz.

12 I infer the Law Society interfered with Mr Mazzei's evidence for its own commercial / financial benefit as PI insurer - to preemptively defeat any claim in negligence against its lawyer-member Mr Mazzei. The Law Society would say I am re-litigating S053343. For the record may I say that the reality is that I am investigating a highly probable, serious fraud.

13 I believe there was interference with Ms Johnson's evidence either by the Law Society or some third person to ensure that Ms Johnson corroborated Mr Mazzei.

14 These matters are dealt with at very much greater length in my submission to the Commissioner leading up to May 11, 2017 Order. I go through the documentary evidence in detail there. As a note of caution may I say there is rather more to say about the evidence than I have discussed there. That submission was strictly for the purposes of my FOIPP Act application. There were length limits applying to that submission so much was necessarily left out.

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15 Following my FOIPP Act application, the Law Society applied to the Commissioner for "summary dismissal" of my application under section 56 FOIPP Act. The Commissioner refused that application in July 2016.

16 The Law Society next instructed external counsel.

17 Subsequently the Law Society opposed my application on the grounds of 1. Section 8(2)(b) 2. Section 22 and 3. Section 14 FOIPP Act.

18 It is, to say the least, problematic in terms of the rules of pleadings to plead those three grounds together. That is a looming issue

19 The Commissioner decided to deal with each ground in turn, beginning with section 8(2)(b).

20 In her Order of May 11, 2017 the Commissioner found in favour of the Law Society regarding section 8(2)(b).

21 I am "appealing" that Order to the Court under its administrative law jurisdiction.

Part 3: LEGAL BASIS

1 I am applying for judicial review of an administrative decision - Order F17-29.

2 The Commissioner must re-make her decision on a lawful basis after having properly and fully considered all relevant considerations.

3 The Commissioner failed to consider the following relevant considerations either properly or at all (non-exhaustive list):

- The effect of incorporation of formerly personal legal practices
- That the Law Society's PI insurance activities were outside power and that its lawyer members knew that fact
- The relevant lawyer members either knew or reasonably suspected that the Law Society was engaged in a fraudulent scheme in which they participated

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- The Law Society apparently warned its member W Gerald Mazzei about my inquiries likely in late 2013 or early 2014 (prior to lodging my FOIPP Act application)
- The Law Society pleaded section 8(2)(b) together with sections 14 and 22. In pleading sections 14 and 22 the Law Society impliedly admitted having custody possession or control of relevant documents the subject of my application. In those circumstances, the Law Society abused the rules of pleading in pleading section 8(2)(b)
- The Commissioner made a serious error of law (statutory interpretation) in reading section 8(2)(b) subject to section 22.
- If that was not an error, nevertheless the Law Society failed to provide any declaration in the terms required under section 22(2) by its President.
- I challenged Ms Suzanne Kennedy (the actual author of the two submissions for the Law Society) to produce documentary evidence of her actual authority to represent the Law Society (as opposed to ostensible authority). In the difficult circumstances of this matter she either had to do so or withdraw. She did neither. The Commissioner failed to take notice.
- In any event Ms Kennedy's second submission should strictly have only dealt with matters raised in my submission which she could not reasonably have anticipated. Her submission did no such thing. Her second submission essentially only elaborated her first submission. The Commissioner read that second submission without comment on that aspect. The Commissioner should not have read large parts of that submission – it may even be that the Commissioner should not have read the whole of that submission at all.

4 The Commissioner made her Order without any regard whatsoever to any evidence before her or any material facts or circumstances.

5 The true effect of her Order is to exempt the Law Society at its own sole discretion from the application of the FOIPP Act regarding

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production of documents. The BC Parliament never intended to exempt the Law Society from the FOIPP Act in any way. If that was its intention then Parliament would have said so. If the Order is confirmed then the gate is open and every other public body will march through. The Order nullifies the FOIPP Act – at least regarding the rights of any applicant under the Act.

6 The Order cannot be correct in law.

Part 4: MATERIAL TO BE RELIED ON

- 1 There were three submissions – in order: 1. for the Law Society 2. my submission and 3. the Law Society's second submission (in reply to my submission). I shall copy those submissions for the Court file.
- 2 The only other material is my own affidavit (to be sworn, filed and served shortly) annexing recent correspondence with the Commissioner as evidence of a justiciable dispute.

The petitioner estimates that the hearing of the petition will take nil days.

The petitioner requests that the Court deal with this matter on paper by way of short written submissions (say 10 pages maximum double-spaced). The issues themselves are relatively straightforward.

Date: May 23, 2017

S J A Sloan

SJA Sloan , Petitioner

To be completed by the court only:

Order made

[] in the terms requested in paragraphs of Part 1 of this petition

[] with the following variations and additional terms:

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.....
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Date:[dd/mmm/yyyy].....

.....

Signature of [] Judge [] Master
