

ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 97-003

August 26, 1997

CREDIT UNION DEPOSIT GUARANTEE CORPORATION

Review Numbers 1128 and 1165

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BACKGROUND:

[1.] The individual Applicant (the “Applicant”) managed three of the Applicant’s own companies and the Applicant’s spouse’s company.

[2.] Two separate judgments were issued against the Applicant and two of the Applicant’s companies. A credit union (the “Credit Union”, which is a third party to this inquiry) ultimately held one of the judgments. The Credit Union Deposit Guarantee Corporation (the “Public Body”) acquired the other judgment from a credit union under its supervision. The Public Body subsequently assumed management of both the judgments, and sold them to X. Corp. (also a third party to this inquiry). As X. Corp. was indebted to the Applicant, X. Corp. attempted to set off the judgments against the debt X. Corp. owed to the Applicant. The Applicant alleged that the Applicant and the Public Body had an agreement regarding settlement of the judgments, and that the Public Body wrongfully sold the judgments to X. Corp.

[3.] Consequently, the Applicants wanted access to the Public Body’s policies, as well as the Public Body’s records, to see if the policies were followed in making the decision to sell the judgments. The Applicant, the Applicant’s three companies (A1 Ltd., A2 Ltd. and A3 Ltd.) and the Applicant’s spouse’s company (AS Ltd.) requested records from the Public Body under five separate requests under the *Freedom of Information and Protection of Privacy Act* (the “Act”), all dated April 19, 1996.

[4.] The Applicants were not satisfied with the Public Body’s disclosure of records. On September 20, 1996, the Applicants agreed to this Office’s consolidating and reviewing the Public Body’s decisions on all five applications for access.

[5.] Mediation was authorized but was not successful. The matter was set down for inquiry on January 22, 1997. I received the Public Body’s submission and the Credit Union’s submission on January 8, 1997. The Applicants said that the Applicants’ submission was contained in an October 16, 1996 letter sent to this Office. X. Corp. relied, for its submission, on a July 17, 1996 letter sent to this Office, but did not otherwise participate in the inquiry.

[6.] After the inquiry, I asked for further submissions on interpretation of the relevant legislation. I received further submissions from the Public Body, the Applicants and the Credit Union on February 12, 1997.

RECORDS AT ISSUE:

[7.] The Public Body numbered the five applications for access as Application 001-96 through Application 005-96, and completed a “Records Review” for each of the five applications. Each “Records Review” consists of a list of documents, a description of the documents, and an indication of whether each document has been disclosed, excluded, excepted or severed under the Act. The Public Body provided those lists to the Applicants.

[8.] I intend to refer to each “Records Review” by the application number given to it by the Public Body, namely, “Records Review 001-96” through “Records Review 005-96”. Records Reviews 001-96, 002-96, and 003-96 concern the Applicant’s companies (A1 Ltd., A2 Ltd., and A3 Ltd., respectively) and relate to Request for Review #1165. Records Review 005-96 concerns the Applicant and also relates to Request for Review #1165. Finally, Records Review 004-96 concerns the Applicant’s spouse’s company (AS Ltd.) and relates to Request for Review #1128.

[9.] The following two tables summarize the document count and the page count of the Records Reviews:

Records Review	Total number of documents	Total number of documents disclosed entirely	Total number of documents severed and disclosed	Total number of documents withheld entirely
001-96 (A1 Ltd.)	5	5	None	None
002-96 (A2 Ltd.)	1	1	None	None
003-96 (A3 Ltd.)	5	4	None	1
004-96 (AS Ltd.)	22	16	1	5
005-96 (Applicant)	238 (three duplicate documents not included)	54	3	181
Totals	271	80	4	187

Records Review	Total number of pages	Total number of pages disclosed entirely	Total number of pages severed and disclosed	Total number of pages withheld entirely
001-96 (A1 Ltd.)	191	191	None	None
002-96 (A2 Ltd.)	1	1	None	None
003-96 (A3 Ltd.)	5	4	None	1
004-96 (AS Ltd.)	23	17	1	5
005-96 (Applicant)	1201 (five duplicate pages not included)	838	6	357
Totals	1421	1051	7	363

[10.] I will refer to these five records collectively as the “Records”, and individually by their respective Records Review numbers.

[11.] In its supplementary submission, the Public Body provided the following correction of the Records Reviews:

Records Review 005-96 (the Applicant’s application)

Document Number 129-A was mistakenly categorized as the same as Document Number 83. Document Number 129-A is the same as Document Number 113.

[12.] I corrected the following:

Records Review 003-96 (A3 Ltd.’s application)

Document Number 1 was excepted instead of severed under section 26(1)(a) and section 26(1)(b) of the Act.

Records Review 005-96 (the Applicant’s application)

Document Number 128-A was added. Document 128-A was attached to Document Number 128, and is a duplicate of Document Number 108.

[13.] The Public Body said that Document Number 73-D in Records Review 005-96 was not applicable to the Applicant’s request. I have reviewed the document and agree with that conclusion.

ISSUES:

[14.] There are four issues in this inquiry. I have set out the Public Body's summary of the issues identified as B to D in the following list, and have added Issue A.

A. Who is a "third party" for the purposes of this inquiry?

B. Do Records Reviews 001-96 through 005-96 constitute a complete list of all records in the custody or under the control of the Public Body that pertain to the Applicants' requests for access under the Act? In other words, did the Public Body conduct an adequate search for records responsive to the Applicants' requests?

C. Has the Public Body correctly interpreted the Act in relation to the exclusions, exceptions and severing indicated on Records Reviews 003-95, 004-96 and 005-96? In other words, did the Public Body correctly apply the following sections of the Act:

Section 4(1)(n) (record of a credit union in the custody or control of the Public Body)

Section 5(1) (disclosure prohibited or restricted by another enactment)

Section 15(1) (disclosure harmful to the business interests of a third party)

Section 16 (personal information)

Section 23(1) (advice, etc.)

Section 26 (privilege)

D. Is Application 005-96 in whole or in part "a request for the Applicant's own personal information" within the meaning of section 87(2) of the Act, so that disclosure where made is to be without fees for services except for the cost of producing copies?

DISCUSSION OF ISSUES:

Issue A: Who is a “third party” for the purposes of this inquiry?

[15.] The Applicant argued that only X. Corp. was a third party to this inquiry, and not the Credit Union.

[16.] Under section 1(1)(r) of the Act, “third party” is defined to mean “a person, a group of persons or an organization other than an applicant or a public body”. In effect, the Applicant is saying that the Credit Union is not a “person”, “a group of persons” or an “organization”.

[17.] In Order 96-019, I adopted the broad definition of “person”, as set out in section 25(1)(p) of the *Interpretation Act*, R.S.A. 1980, c. I-7. I said that “person” can include an individual or a corporation.

[18.] Under section 1(1)(p) of the *Credit Union Act*, the Credit Union is considered to be a type of corporation (although perhaps not a “corporation” in the corporate law sense of that word). Therefore, a credit union may be a “person” for the purposes of the definition of “third party” under the Act.

[19.] The Credit Union is made up of members who, for the most part, are individuals. (For a discussion of the structure of a credit union, see the discussion under Issue C in this Order.) Therefore, it is possible for a credit union to be “a group of persons” for the purposes of the definition of “third party” under the Act. However, this may not be the best way of describing a credit union, which has a more defined structure than that implied by the words “a group of persons”.

[20.] A “third party” under the Act may also be an “organization”. “Organization” is not defined in the Act, but the ordinary meaning is “a systematic arrangement”, such as an “organized body”. If not a “person” or “a group of persons”, a credit union would certainly be an “organization”. Therefore, the Credit Union is a “third party” for the purposes of the Act.

[21.] The Applicant nevertheless says that the Credit Union is a public body under the Act. I disagree. Credit unions are not included in the definition of “public body” in section 1(1)(p) of the Act, nor are they designated as public bodies in the regulations to the Act. A credit union is not a public body for the purposes of the Act, but it may be a third party. In this case, the Credit Union is a third party.

Issue B: Do Records Reviews 001-96 through 005-96 constitute a complete list of all records in the custody or under the control of the Public Body that pertain to the Applicants' requests for access under the Act?

[22.] The Applicants question whether the Public Body conducted an adequate search for responsive records. The Applicants are particularly concerned that there may have been an E-mail system that was not searched.

[23.] Section 9(1) of the Act requires that a public body make every reasonable effort to respond completely to an applicant. Section 9(1) reads:

s. 9(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.

[24.] In Order 96-022, I discussed the issue of a public body's adequate search for responsive records. In that Order, I adopted criteria for determining whether or not a public body has carried out a proper search. I said that a public body must make every reasonable effort to search for the actual records that have been requested.

[25.] In Order 96-022, I also said that although section 67 of the Act is silent on the issue of burden of proof, the burden of proof is on the public body because it is in a better position to address the adequacy of a search. Nevertheless, section 7(2) requires that the Applicant provide sufficient clarification of its request to enable the Public Body to locate the appropriate records. There does not appear to be any issue concerning the clarity of the Applicants' requests in this case.

[26.] I have also reviewed Ontario Order P-1186, which holds that in order to properly discharge its obligations under the equivalent section of the Act, a public body must provide the Commissioner with sufficient evidence to show that the public body has made a reasonable effort to identify and locate records responsive to the request.

[27.] The Public Body said that it was certain that all records were produced. It gave evidence that it has only one office, which is in Edmonton. All records regarding the Applicants had been maintained at that office because there was ongoing litigation involving the Applicants. Furthermore, the Public Body uses a paper-based system; it does not now, nor did it ever have, an E-mail system.

[28.] As to records management, since 1993, the Public Body has been obliged to follow the provincial records management system since the Public Body is part of the provincial government.

[29.] In order to locate relevant records, the Public Body sent a memorandum to each department head within the Public Body. Employees named in the Applicants' requests were also asked to search their records. The person responsible for collecting the records also gave evidence about that person's qualifications, and indicated satisfaction with the Public Body's having turned up all the records.

[30.] The Public Body gave evidence that records pertaining to the judgments, along with the judgments, were transferred to X. Corp. under the agreement for sale of the judgments. The Public Body said it did not have custody or control of those records since the Public Body retained no right to those records. The Public Body also gave evidence that X. Corp. had been asked but refused to return the records.

[31.] At the conclusion of the Public Body's presentation of its evidence, the Applicants acknowledged that the Public Body searched diligently. Based on the evidence, I find that the Public Body has made every reasonable effort to identify and locate records responsive to the Applicants' requests.

Issue C: Has the Public Body correctly interpreted the Act in relation to the exclusions, exceptions and severing indicated on Records Reviews 003-95, 004-96 and 005-96?

[32.] In general, the Public Body applied the following sections of the Act to Records Reviews 003-96, 004-96 and 005-96:

- Section 4(1)(n) (record of a credit union in the custody or control of the Public Body)
- Section 5(1) (disclosure prohibited or restricted by another enactment)
- Section 15(1) (disclosure harmful to the business interests of a third party)
- Section 16 (personal information)
- Section 23(1) (advice, etc.)
- Section 26 (privilege)

[33.] The Public Body said, and I agree, that there are no remaining issues related to Records Reviews 001-96 and 002-96. All those records have been disclosed to the Applicants A1 Ltd. and A2 Ltd., respectively.

1. Did the Public Body correctly apply section 4(1)(n) of the Act (record of a credit union in the custody or control of the Public Body)?

[34.] The Public Body applied section 4(1)(n) of the Act to the following:

Records Review 005-96 (the Applicant's application)
Document Numbers 118 and 120-A

[35.] Section 4(1)(n) of the Act reads:

s. 4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

(n) a record of a credit union in the custody or control of the Credit Union Deposit Guarantee Corporation other than a record that relates to a non-arm's length transaction between the Government of Alberta and another party.

[36.] Section 4(4) is also relevant, and reads:

s. 4(4) For the purposes of subsection (1)(n), "record of a credit union" means a record that originates from a credit union that is submitted to, or received by, the Credit Union Deposit Guarantee Corporation.

[37.] The Applicant does not contest the application of section 4(1)(n) to Document Number 118 and Document Number 120-A in Records Review 005-96. In any event, I have reviewed those two documents and find that they are excluded from the application of the Act by section 4(1)(n). Therefore, the Public Body correctly applied section 4(1)(n) of the Act to Document Number 118 and Document Number 120-A in Records Review 005-96, and I have no jurisdiction over those two documents.

2. Did the Public Body correctly apply section 5(1) of the Act (disclosure prohibited or restricted by another enactment)?

[38.] The Public Body applied section 5(1) of the Act to the following:

Records Review 005-96 (the Applicant's application)
Document Numbers 5, 10, 12, 13-21, 21-A, 21-B, 22-24, 24-A, 24-B, 25, 25-A, 26, 26-A, 26-D, 27, 27-A, 28-30, 31, 33, 34, 36-40, 41-A, 43, 44-48, 51-55, 55-A, 55-B, 56, 56-A, 56-B, 56-D, 56-E, 57, 58, 58-A, 59, 59-A, 60,

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[39.] I have included Document Numbers 11, 41, 72-C, 72-D, 96 and 128-A. Because section 5(1) of the Act is mandatory (“must”), I believe that I have jurisdiction to consider any documents that would fall under section 5(1): see Order 96-008 in which I set out my jurisdiction regarding mandatory exceptions.

[40.] I have already found that the Public Body correctly applied section 4(1)(n) of the Act to Document Number 118 and Document Number 120-A in Records Review 005-96. Consequently, I do not find it necessary to consider those two documents under section 5(1) of the Act.

[41.] Section 5(1) of the Act reads:

s. 5(1) The head of a public body must refuse to disclose information to an applicant if the disclosure is prohibited or restricted by another enactment of Alberta.

[42.] The Public Body says that the “enactment of Alberta”, for the purposes of section 5(1) of the Act, is section 16(1) of the *Credit Union Act*, S.A. 1989, c. C-31.1.

[43.] Section 16(1) of the *Credit Union Act* reads:

s. 16(1) Subject to this section, where the Minister or the Corporation obtains information or documents, other than registered or registrable information or documents, regarding the business or affairs of a body corporate or a person dealing with a body corporate as a result of administering or enforcing this Act, the Minister or the Corporation shall not disclose that information or provide those documents or a copy of them or disclose any information contained in, or allow access to, those documents, to any person other than that body corporate or person.

[44.] If section 16(1) of the *Credit Union Act* applies to information or documents, then section 5(1) of the *Freedom of Information and Protection of Privacy Act* says that the Public Body must not disclose that information under the *Freedom of Information and Protection of Privacy Act*. In order to decide whether section 16(1) applies, I must answer the following questions:

- a. “Who” obtained information or documents?
- b. Did the Public Body obtain information or documents “as a result of administering or enforcing” the *Credit Union Act*?
- c. Did the Public Body obtain information or documents
 - (1) regarding “the business or affairs of a body corporate”, or
 - (2) regarding “a person dealing with a body corporate”?
- d. To whom may the Public Body disclose information or provide documents under section 16(1) of the *Credit Union Act*?
- e. Does section 16(1) of the *Credit Union Act* apply to records that were in existence before section 16(1) came into force?

[45.] Once I have answered these questions, I will summarize my conclusions as follows:

- f. Conclusions under section 16(1) of the *Credit Union Act*
- g. Conclusions under section 5(1) of the *Freedom of Information and Protection of Privacy Act*

a. “Who” obtained information or documents?

[46.] Under section 16(1) of the *Credit Union Act*, either the Minister or the Corporation may obtain information or documents. We are not concerned with the Minister in this case. Only the Corporation is relevant.

[47.] Section 1(1)(m) of the *Credit Union Act* defines “Corporation” to mean the Credit Union Deposit Guarantee Corporation, which is the Public Body in this case. Therefore, the Public Body is doing the “obtaining”.

[48.] “Obtain” should be given its ordinary meaning. I interpret “obtain” to mean acquiring information or documents from outside of the Public Body.

[49.] The words “information or documents” also need to be considered. In Order 97-008, which was issued before this Order, I dealt with the distinction between “information” and “record” under the *Freedom of Information and Protection of Privacy Act*. In that Order, I said that “record” means a record of information in any form, that the same information can appear in any one of a number of forms of record, and that a record is merely the conduit (or vehicle) for the information.

[50.] Similarly, under section 16(1) of *the Credit Union Act*, “information” can be in any form of record, including a “document”. A “document” is merely a vehicle for the information. The distinction is important because I believe the intent of section 16(1) is to keep confidential not only documents, but information in any form of record. It follows that information, once obtained, must thereafter be kept confidential regardless of the record, including the document, in which that same information subsequently appears.

b. Did the Public Body obtain information or documents “as a result of administering or enforcing” the *Credit Union Act*?

[51.] The “threshold” test under section 16(1) of the *Credit Union Act* is that information or documents must be obtained “as a result of administering or enforcing” the *Credit Union Act*. The words “as a result of” imply a causal relationship between what the Public Body does under the *Credit Union Act* and the Public Body’s ability to obtain information or documents.

[52.] The intent of section 16(1) is to keep confidential only that information or those documents that the Public Body obtains as a result of administering or enforcing the *Credit Union Act*. If the Public Body is not administering or enforcing the *Credit Union Act* when it obtains information or documents, that information or those documents do not have to be kept confidential under the *Credit Union Act*.

[53.] Before considering what “administering or enforcing” may mean, I first want to consider the syntactic (structural) problem with the placement of the words “as a result of administering or enforcing this Act” in section 16(1). From their placement, it appears that the words refer either to “body corporate” or to “person”.

[54.] The Public Body and the Credit Union both say that regardless of the placement of these words in section 16(1), the words can only refer to the Minister or the Public Body because they are the only two persons who have the power to administer or enforce the *Credit Union Act*, as provided by section 6(1) of the *Credit Union Act*. Any other interpretation of the words would be absurd.

[55.] I agree with the Public Body and the Credit Union. Their interpretations are also supported by section 257(1) of *the Loan and Trust Corporations Act*, S.A. 1991, c. L-26.5, which has wording similar to section 16(1) of the *Credit Union Act*. Section 257(1) places the words “as a result of administering this Act” at the beginning of the section, where the words clearly relate to the person who is administering that legislation.

[56.] For the purposes of this inquiry, I need only consider any “administering or enforcing” done by the Public Body, not the Minister.

[57.] Did the Public Body obtain the information or documents as a result of administering or enforcing the *Credit Union Act*?

[58.] The Concise Oxford Dictionary, Ninth Edition, defines “administer” to mean “attend to the running of; manage; be responsible for the implementation of; apply”. “Enforce” is defined to mean “compel observance of; impose”.

[59.] I do not think that “enforcing” is relevant to this inquiry. As to “administering”, section 146 of the *Credit Union Act* specifically sets out the Public Body’s purposes and business activities. Section 146 of the *Credit Union Act* reads:

s. 146(1) The purposes of the Corporation [the Public Body] are, subject to and in accordance with this Act and the regulations,

(a) to regulate and enforce this Act and the regulations to the extent provided in relation to it by or under section 6,

(b) to guarantee the repayment of deposits held with credit unions in accordance with section 154,

(c) to adopt measures designed to obviate or to minimize the risk and size of claims under that guarantee,

(d) to stabilize credit unions in financial difficulties,

(e) to assist credit unions to avert or alleviate financial difficulties on their part by advising them on their business practices and reviewing their business practices and by such other means as the Corporation considers appropriate,

(f) where so appointed under Part 14, to supervise or administer the business and affairs of credit unions,

(g) to purchase all or any of the assets and assume all or any of the liabilities of credit unions that are

in the process of liquidation or being dissolved or that are in need of assistance for the purposes of Part 14,

(h) where so appointed under Part 16, to act as the liquidator of a credit union,

(i) to maintain a long-term unclaimed balances account in accordance with this Act,

(j) to provide the services of special loans committees for the purposes of this Act.

(2) The Corporation or its subsidiary shall not carry on any business other than business that is involved in fulfilling any of the Corporation's purposes or reasonably ancillary to the fulfilment of any of those purposes.

(3) Subject to subsection (2), the Corporation may acquire and hold the rights of a lender under existing mortgages or loan agreements.

[60.] As can be seen from section 146, the *Credit Union Act* gives the Public Body extensive powers to regulate and supervise credit unions.

[61.] The Public Body says that it acquired a judgment, against the Applicant and one of the Applicant's companies, from another credit union under the Public Body's supervision. Supervising or administering the business and affairs of credit unions (section 146(1)(f) of the *Credit Union Act*) and purchasing any assets of a credit union under supervision (section 146(1)(g)) are two of the Public Body's purposes under the *Credit Union Act*.

[62.] The Public Body also says it negotiated the sale of that judgment and the judgment held by the Credit Union, on behalf of both itself and the Credit Union, to simplify matters and to reduce costs. Another of the Public Body's purposes under section 146(1)(e) of the *Credit Union Act* is to assist credit unions to avert or alleviate financial difficulties. According to the Public Body, the Credit Union is under the Public Body's supervision, as provided by Part IV of the *Credit Union Act*.

[63.] Section 146(2) of the *Credit Union Act* allows the Public Body to carry on business involved in fulfilling any of the Public Body's purposes or reasonably ancillary to fulfilling any of those purposes.

[64.] In the present case, the Public Body negotiated with the Applicant for the purpose of settling the two judgments against the Applicant and two of the Applicant's companies. The Public Body was involved in and monitored ongoing litigation that affected the two judgments. In carrying out those functions, the Public Body was carrying on business reasonably ancillary to fulfilling its purposes under section 146(1)(e), section 146(1)(f), and section 146(1)(g). Therefore, I find that the Public Body was "administering" the *Credit Union Act* for the purposes of section 16(1), and that the Public Body obtained the information or documents as a result of administering the *Credit Union Act*.

**c. Did the Public Body obtain information or documents
(1) regarding "the business or affairs of a body corporate", or
(2) regarding "a person dealing with a body corporate"?**

[65.] Section 16(1) of the *Credit Union Act* applies to prevent disclosure only if the Public Body obtains certain types of information or documents. Section 16(1) sets out, in the alternative, two types of information or documents: (i) regarding "the business or affairs of a body corporate", or (ii) regarding "a person dealing with a body corporate". As such, section 16(1) requires a determination of whose information or documents and the kind of information or documents that the Public Body obtains.

(1) Information or documents regarding "the business or affairs of a body corporate"

[66.] Information or documents regarding "the business or affairs of a body corporate" must be that information or those documents regarding "the business or affairs" of a "body corporate".

[67.] The Public Body says that the following documents are included in this category:

Records Review 005-96 (the Applicant's application)

Document Numbers 5, 10, 12, 13-21, 21-A, 21-B, 22, 23, 25, 25-A, 26, 26-A, 26-D, 27, 27-A, 28-30, 31, 33, 34, 36-40, 41-A, 43, 44-48, 51-55, 55-A, 55-B, 56, 56-A, 56-B, 56-D, 56-E, 57, 58, 58-A, 59, 59-A, 60, 60-A, 61, 61-A, 63, 63-A, 63-B, 63-C, 63-D, 63-E, 64, 64-A, 65, 65-A, 65-B, 68-70, 70-A, 71, 71-B, 72, 72-A, 72-B, 73, 73-A, 73-B, 73-C, 75, 76, 78, 79, 79-A, 79-B, 79-C, 79-D, 79-E, 79-F, 80, 81, 82, 82-A, 82-B, 82-D, 83, 83-A, 83-B, 84, 85, 85-C, 86, 87, 88-90, 90-A, 91-94, 97, 97-A, 97-B, 98-B, 99-110, 110-A, 111-115, 115-E, 116, 116-A, 116-B, 116-C, 117, 117-A, 117-B, 119, 119-A, 119-B, 119-C, 119-D, 120, 120-B, 121-124, 124-A, 124-

B, 125, 126, 126-A, 127, 128, 129, 129-A, 130, 130-A,
C-4

[68.] I have included Document Number 41 and Document Number 128-A.

[69.] I have already held that the Public Body correctly applied section 4(1)(n) of the Act to Document Number 118 and Document Number 120-A. Therefore, I do not find it necessary to consider those two documents here.

(a) Meaning of “body corporate”

[70.] Section 1(1)(h) of the *Credit Union Act* defines “body corporate” to mean “a credit union, the Corporation [that is, the Public Body] or Central [that is, the Credit Union Central Alberta Limited] or all or any of them, as the case may be”. We are not concerned with the Credit Union Central Alberta Limited in this case. Only the Credit Union and the Public Body are relevant.

[71.] If I were to substitute “the Credit Union” or “the Public Body” for “a body corporate” in “the business or affairs of a body corporate”, there are two possible interpretations: (i) the Public Body obtains information or documents regarding the business or affairs of the Credit Union, or (ii) the Public Body obtains information or documents regarding the business or affairs of the Public Body.

[72.] It is easy to see that the second interpretation is nonsense, because the Public Body does not obtain information or documents about its own business or affairs; it already has that information or those documents. Consequently, I conclude that the only possible interpretation in this case is that the Public Body obtains information or documents regarding the business or affairs of the Credit Union.

(b) Meaning of “business or affairs”

[73.] Section 1(1)(a) of the *Credit Union Act* defines “affairs” to mean:

matters of internal concern to a corporation, including the relationships among the corporation and its members, directors, officers, employees, committees and subsidiaries, or any of them, and matters relating to related party transactions, but does not include any business, other than as aforementioned, carried on by the corporation with any of those other persons

[74.] Section 1(1)(n) of the *Credit Union Act* further defines “corporation” to mean “an incorporated body of persons, wherever or however incorporated”.

“Credit union” is defined in section 1(1)(p) to mean “an existing credit union or a body of persons incorporated under Division 2 of Part 3 or continued as an incorporated credit union or incorporated under Division 1 of Part 15”. Therefore, a credit union is a “corporation” as well as a “body corporate” under the *Credit Union Act* (see also section 42(2) of the *Credit Union Act*, which gives a credit union the power to “carry on its business” or “conduct its affairs”, subject to the *Credit Union Act*).

[75.] Furthermore, each of the Credit Union Deposit Guarantee Corporation (that is, the Public Body) and the Credit Union Central Alberta Limited is a “corporation” as well as a “body corporate” under the *Credit Union Act* (see section 7(1) and section 158, respectively).

[76.] “Business” is not defined in the *Credit Union Act*. The Concise Oxford Dictionary defines “business” generally to mean “a thing or series of things needing to be dealt with”. Since the Legislature has used two different words, namely, “business” and “affairs”, I presume that the Legislature intended those two words to have different meanings. Since “affairs” is intended to encompass the internal matters of a credit union, such as the relationships internal to the running of a credit union, I believe that “business” is intended to encompass the external matters of a credit union, such as the relationships resulting from providing financial services (loans and deposits) for members of a credit union (see section 26(1)) and providing certain services for customers of a credit union (see section 37(2) and section 121).

[77.] This interpretation of “business” is reinforced by the last part of the definition of “affairs”, which says that “affairs” does not include any “business” carried on by the corporation with any of the “persons” identified. The definition of “affairs” highlights the two separate categories of internal and external relationships of a “corporation”, but also makes it clear that *any* [my emphasis] internal matters are also included.

[78.] I believe a credit union’s “business” also includes matters ancillary to that “business”, such as acquiring existing loans (see section 138), and selling existing loans and judgments. The Credit Union has provided me with evidence of its business in regard to the sale of loans and judgments.

(c) Did the Public Body obtain information or documents regarding the business or affairs of the Credit Union?

[79.] The Public Body says, generally, that the Records withheld relate to negotiations that went on prior to the sale of the judgment it held and the judgment held by the Credit Union, and also with respect to the sale of both judgments. The Public Body says that those Records relating to the negotiation and sale of the judgment held by the Credit Union are information or

documents obtained by the Public Body regarding the business or affairs of the Credit Union.

[80.] Having reviewed all the documents in Records Review 005-96, I have the following observations to make about the circumstances in which the information or documents have been obtained.

[81.] First, the Public Body negotiated with the Applicant for the purpose of settling the two judgments against the Applicant and two of the Applicant's companies. The Public Body held one of the judgments and the Credit Union held the other. In this regard, the Public Body obtained information and documents both on its own account and as a representative of or agent for the Credit Union. Although the Public Body conducted some of the negotiations directly with the Applicant, the Public Body's own lawyer and the Credit Union's lawyer were also involved. Ultimately, the Credit Union and the Public Body engaged the services of another lawyer who represented both of them. The Public Body obtained information and documents from these lawyers.

[82.] Second, both the Public Body and the Credit Union were involved in and monitored ongoing litigation that impacted on the judgments held by the Public Body and the Credit Union. The Credit Union's lawyers gave information and documents to the Public Body in this regard. Most of the time, the lawyers prepared the documents themselves, but occasionally they obtained information or documents from other sources. In either case, they sent the information or documents to the Public Body. In some cases, the Public Body obtained information on its own.

[83.] Third, the Public Body negotiated with X. Corp. for the purpose of selling the two judgments. In this regard, the Public Body obtained information and documents both on its own account and as agent for the Credit Union. The Public Body conducted some of the negotiations itself, but the lawyer who represented both the Credit Union and the Public Body was also involved. The Public Body obtained information and documents from this lawyer. The Public Body also obtained some information and documents regarding other persons.

[84.] I find that information or documents obtained in these three circumstances are information or documents regarding the business or affairs of the Credit Union, obtained by the Public Body as a result of administering the *Credit Union Act*. That information or those documents include the following:

Records Review 005-96 (the Applicant's application)
Document Numbers 10, 12, 14-21, 21-A, 21-B, 22, 23,
25, 25-A, 26, 26-A, 26-D, 27, 27-A, 28-30, 31, 33, 34,
36-40, 41, 41-A, 43, 44-47, 51-55, 55-A, 55-B, 56, 56-A,

56-B, 56-D, 56-E, 57, 58, 58-A, 59, 59-A, 60, 60-A, 61, 61-A, 63, 63-A, 63-B, 63-C, 63-D, 63-E, 65, 65-B, 68-70, 70-A, 71, 71-B, 72, 72-A, 73, 73-A, 73-B, 73-C, 75, 76, 78, 79, 79-A, 79-B, 79-C, 79-D, 79-E, 79-F, 80, 81, 82, 82-A, 82-B, 82-D, 83, 83-A, 83-B, 84, 85, 85-C, 86, 87, 88-90, 90-A, 91-94, 97, 97-A, 97-B, 98-B, 99-110, 110-A, 111-115, 115-E, 116, 116-A, 116-B, 116-C, 117, 117-A, 117-B, 119, 119-A, 119-B, 119-C, 119-D, 120, 120-B, 121-124, 124-A, 124-B, 125, 126, 126-A, 127, 128, 128-A, 129, 129-A, 130, 130-A, C-4

[85.] I find that the following is not information or documents regarding the business or affairs of the Credit Union, obtained by the Public Body as a result of administering the *Credit Union Act*:

Records Review 005-96 (the Applicant's application)
Document Numbers 5, 13, 48, 64, 64-A, 65-A, 72-B

(2) Information or documents regarding “a person dealing with a body corporate”

[86.] Information or documents regarding “a person dealing with a body corporate” must be that information or those documents regarding a “person” who is “dealing with” a “body corporate”. The Public Body may also refuse to disclose such information or provide such documents under section 16(1) of the *Credit Union Act*.

[87.] The issue here is whether the Applicants (or any one of them), X. Corp., or the Applicants and X. Corp., are dealing with a body corporate.

[88.] The Public Body said that the following documents are included in this category:

Records Review 005-96 (the Applicant's application)
Document Numbers 24, 24-A, 24-B

[89.] I have included the following:

Records Review 005-96 (the Applicant's application)
Document Numbers 10, 11, 14-18, 23, 34, 37, 41, 48, 56, 63-A, 63-B, 65, 65-A, 65-B, 68, 69, 71, 72-C, 72-D, 76, 82, 94, 96, 100-109, 112-114, 116, 116-A, 116-B, 116-C, 117-A, 117-B, 119, 119-A, 119-B, 119-C, 119-D, 120, 120-B, 121-124, 124-A, 124-B, 126-A, 127, 128, 128-A, 129-A, 130, 130-A

[90.] Because section 5(1) of the *Freedom of Information and Protection of Privacy Act* is a mandatory (“must”) section, I believe that I have the jurisdiction to also consider the foregoing documents under section 16(1) of the *Credit Union Act*.

(a) Meaning of “person”

[91.] “Person” is defined in section 1(1)(oo) of the *Credit Union Act* to mean

an individual, a corporation, a government, a partnership or other firm or unincorporated association of persons, or a trustee or personal representative of a person

[92.] This is an all-encompassing definition.

(b) Business or affairs of a person

[93.] I reproduce the first part of section 16(1) of the *Credit Union Act* here for ease of reference:

s. 16(1) Subject to this section, where the Minister or the Corporation obtains information or documents...regarding the business or affairs of a body corporate or a person dealing with a body corporate as a result of administering or enforcing this Act..

[94.] I believe that section 16(1) of the *Credit Union Act* refers to *any* [my emphasis] information or documents obtained regarding a person dealing with a body corporate, not merely information or documents regarding *the business or affairs of* [my emphasis] a person dealing with a body corporate. I have come to this conclusion, for three reasons.

[95.] First, the word “affairs” is defined in the *Credit Union Act* in the context of a “corporation”, which I have said includes a “body corporate” (a credit union, the Credit Union Deposit Guarantee Corporation [that is, the Public Body] or the Credit Union Central Alberta Limited).

[96.] As defined, “affairs” applies only to a “corporation”, but not to the other “persons” included in the definition of “persons”. I do not believe that the Legislature intended, in the context of section 16(1), to allow for the likelihood that the Public Body will obtain information or documents regarding the “affairs” of a “corporation”, while at the same time not allowing for the likelihood that the Public Body will obtain information or documents regarding the “affairs” of a “person” such as a partnership or unincorporated association,

for example. Furthermore, it is not possible for “affairs”, as defined, to apply to an individual who is a “person”.

[97.] Second, on a computer search, I have canvassed the entire *Credit Union Act* for instances in which either one or both of the words “business” or “affairs” have been used, and have found that those terms are used almost exclusively to refer to a “body corporate” (a credit union, the Credit Union Deposit Guarantee Corporation [that is, the Public Body] and the Credit Union Central Alberta Limited). Neither the word “business” nor “affairs” appears in the two other instances in the *Credit Union Act* in which the words “person dealing with” or “persons dealing with” are used. The word “business” appears in only one of 213 other instances in which “person” is used.

[98.] Third, under the *Credit Union Act*, the words “business and affairs” or “business or affairs” appear only in the context of a “body corporate”, namely, a credit union, the Credit Union Deposit Guarantee Corporation (that is, the Public Body) or the Credit Union Central Alberta Limited (see, for example, sections 24(2)(iv), 65(1)(f), 67(1), 94, 156(4), 166(3) and 213(1)).

[99.] To avoid the internal inconsistency that would be created by applying the definition of “affairs” to a “corporation” but not to any other “person” in section 16(1) of the *Credit Union Act*, I intend to apply the statutory interpretation principle of “presumed coherence”: see Ruth R. Sullivan, *Driedger on the Construction of Statutes*, 3rd edition (Toronto, Ontario: Butterworths Canada Ltd., 1994), at p. 176. Therefore, I find that “business or affairs” does not refer to “a person dealing with a body corporate”.

(c) Meaning of “body corporate”

[100.] As I have said, “body corporate” in this inquiry may be either the Credit Union or the Public Body. In “business or affairs of a body corporate”, I determined that “body corporate” could only mean the Credit Union because the Public Body does not obtain information or documents regarding the business or affairs of itself.

[101.] However, if I were to substitute “the Credit Union” or “the Public Body” for “body corporate” in “a person dealing with a body corporate”, there are two possible interpretations: (i) the Public Body obtains information or documents regarding a person dealing with the Credit Union, or (ii) the Public Body obtains information or documents regarding a person dealing with the Public Body. It appears that either interpretation is possible. This is consistent with the definition of “body corporate”, which means “a credit union, the Corporation or Central or all or *any of them, as the case may be* [my emphasis]”.

[102.] Consequently, I must now consider how a person could be dealing with either a credit union or the Public Body under the *Credit Union Act*.

(d) Meaning of “dealing with”

[103.] There a number of possible meanings of “dealing with”, depending upon whether I were to consider a dictionary definition, the case law, the purpose of a credit union or the Public Body, or the scheme and purpose of the *Credit Union Act*. I will discuss each in turn.

[104.] The words “dealing with” are not defined in the *Credit Union Act*. The Concise Oxford Dictionary says that “deal” or “have dealings with” means “do business with; associate with”. This is a broad definition.

[105.] I was not able to locate any Alberta or Canadian case law that has considered the phrase “dealing with”, but I did find case law that has interpreted “having dealings with”. In *R. v. Hinchey*, [1996] 3 S.C.R. 1128, the Supreme Court of Canada has said that a proper interpretation of “dealings” (in the context of “having dealings with” the government under section 121(1)(c) of the Criminal Code, R.S.C. 1985, c. C-46) is the narrow one, whereby only persons in the process of having commercial dealings with the government at the time of the offence are caught under the legislation. The court went on to say that “having dealings with” means specific and ongoing business dealings or business relations.

[106.] Similarly, in *Dassen Gold Resources Ltd. v. Royal Bank* (1994), 23 Alta. L.R. (3d) 261 (Q.B.), additional reasons at (1994), 25 Alta. L.R. (3d) 149 (Q.B.), the Alberta Court of Queen’s Bench concluded that having business relations met the requirements of “having dealings with”, for the purposes of section 20(1)(j) of the Business Corporations Act, S.A. 1981, c. B-15.

[107.] The Credit Union cites a further case, *Re Pachal’s Beverages Ltd.* (1971), 15 C.B.R. 153 (Sask. Q.B.). In that case, the court held that “having dealings with”, in the context of companies legislation, meant having “pre-existing business relations” with or “doing business with”.

[108.] As to the purpose of a credit union, it is “...to provide on a co-operative basis financial services wholly or primarily for its members, and its principal purposes are to receive deposits from, and to make loans to, its members” (section 26(1) of the *Credit Union Act*). The membership of a credit union must consist wholly or substantially of individuals (section 61(4)). Only members may deposit money in the credit union (with some limited exceptions for trustees, legal representatives, past members and members of other credit unions) (section 112). Members must also hold common shares in the credit

union (section 61(1)). Certain services may also be provided for customers of a credit union (section 37(2) and section 121).

[109.] How might a person be “dealing with” the Credit Union under the *Credit Union Act*?

[110.] If I were to consider only the case law and the purpose of a credit union, I would likely interpret “dealing with” a credit union under section 16(1) of the *Credit Union Act* to mean having specific and ongoing business dealings or business relations as a member or customer of a credit union. This is a narrow interpretation of “dealing with” as it concerns a “person”. This interpretation does not appear to take into consideration that a non-member might have a one-time business dealing with a credit union, such as someone who purchases a judgment held by that credit union.

[111.] I also note that this interpretation of “dealing with” appears to differ from the interpretation of “business” only in regard to a one-time business dealing. Once again, I am going to presume that the Legislature did not intend to create an internal inconsistency in the kind of information or documents that the Public Body would be likely to obtain regarding the business or affairs of a credit union, as opposed to that of a person dealing with a credit union. Consequently, I believe that section 16(1) of the *Credit Union Act* is intended to keep confidential not only information or documents obtained regarding a one-time business dealing of a credit union, but also information or documents obtained regarding a one-time business dealing of a person dealing with a credit union.

[112.] I think that a person dealing with a credit union is intended to be treated the same as a person dealing with the Public Body. Consequently, I believe that section 16(1) of the *Credit Union Act* is intended to keep confidential not only information or documents obtained regarding a one-time business dealing of a person dealing with a credit union, but also information or documents regarding a one-time business dealing of a person dealing with the Public Body.

[113.] I believe that “dealing with” should be given this broad interpretation, rather than the narrower interpretation suggested by either the case law or the purposes of a credit union or the Public Body. A broad interpretation is favoured, given the scheme and purpose of the *Credit Union Act*.

[114.] The *Credit Union Act* came into force on November 1, 1989, when credit unions in the province were in financial trouble. The *Credit Union Act* is regarded as financial legislation (Alberta Hansard, July 20, 1989, p. 1408), which is designed to regulate the credit union system, to place problem credit unions under some kind of supervision and possible restructuring, and to guarantee deposits of credit union members. The vehicle used to accomplish

these purposes is the Credit Union Deposit Guarantee Corporation, the Public Body in this inquiry.

[115.] The Public Body has a supervisory role over credit unions under the *Credit Union Act*. The Public Body's job is to "...ensure that the regulatory process, the operations of the credit union system across Alberta...can serve the members' interests, can protect the deposits of the individuals, and still be viable in an operation sense." (Alberta Hansard, July 20, 1989, p. 1410) The Public Body also provides the guarantee to depositors through a guarantee from the province of Alberta.

[116.] Credit unions report to the Public Body. As regulated entities, credit unions are subject to numerous reporting requirements under the *Credit Union Act*, particularly with respect to financial disclosure.

[117.] Because the very nature of reporting to the Public Body requires disclosure of information or documents, and because of the Public Body's ability to compel disclosure of information and documents, section 16(1) of the *Credit Union Act* was intended to provide the necessary confidentiality for information or documents coming into the Public Body's hands. Section 16(1) is intended to keep confidential the information or documents regarding the internal and external relationships of credit unions so as to provide a "level playing field" in relation to the confidentiality enjoyed by other financial institutions, such as banks. Section 16(1) is also intended to keep confidential any information or documents regarding a "person" who has a business relationship with a credit union or the Public Body, similar to a bank that keeps confidential its customers' information or documents.

(e) What information or documents were obtained regarding "a person dealing with a body corporate"?

[118.] In their supplementary submissions, the Public Body and the Credit Union say that for the purposes of "a person dealing with a body corporate" in section 16(1) of the *Credit Union Act*, "person" refers to X. Corp. and "body corporate" refers to the Public Body or the Credit Union. The Public Body and the Credit Union are saying that section 16(1) prevents the disclosure of information or documents regarding X. Corp.

[119.] In their supplementary submission, the Applicants say that "person" refers to the Applicant, the Applicant's companies or the Applicant's spouse's company, and "body corporate" refers to the Public Body or the Credit Union. The Applicants are saying that X. Corp. is not the only person dealing with a body corporate. The Applicants contend that they are also persons dealing with a body corporate for the purposes of section 16(1) of the *Credit Union Act*, since the Public Body obtained information or documents regarding the

Applicants as customers dealing with the Credit Union or as persons dealing with the Public Body. The Applicants reason that since section 16(1) would therefore not prevent them from obtaining information or documents, section 5(1) of the *Freedom of Information and Protection of Privacy Act* does not apply to prohibit disclosure.

[120.] I intend to first consider all the possibilities, namely, the Public Body could have obtained information or documents regarding:

- (i) X. Corp. dealing with the Credit Union
- (ii) X. Corp. dealing with the Public Body
- (iii) The Applicants (or any one of them) dealing with the Credit Union
- (iv) The Applicants (or any one of them) dealing with the Public Body
- (v) Any other person dealing with a body corporate

[121.] My findings under this part reflect the fact that I have traced information obtained by the Public Body, and followed that information from one document to the next. If the same information appeared in different documents, I regarded that information as within the category to be kept confidential under section 16(1) of the *Credit Union Act*. In doing this, I have followed Order 97-008 (previously discussed) as to maintaining the confidentiality of information from one document to the next.

(i) Information or documents obtained regarding X. Corp. dealing with the Credit Union

[122.] I find that the Public Body obtained information (contained in the following documents) or obtained the following documents regarding X. Corp. dealing with the Credit Union:

Records Review 005-96 (the Applicant's application)
Document Numbers 100-109, 112-114, 116, 116-A, 116-B, 116-C, 117-A, 117-B, 119, 119-A, 119-B, 119-C, 119-D, 120, 120-B, 121-124, 124-A, 124-B, 128-A, 129-A, 130-A

[123.] This is information or documents regarding X. Corp. dealing with the Credit Union, through the Public Body as agent of the Credit Union, for the purchase of the judgment held by the Credit Union.

(ii) Information or documents obtained regarding X. Corp. dealing with the Public Body

[124.] I find that the Public Body obtained information (contained in the following documents) or obtained the following documents regarding X. Corp. dealing with the Public Body:

Records Review 005-96 (the Applicant's application)
Document Numbers 100-109, 112-114, 116, 116-A,
116-B, 116-C, 117-A, 117-B, 119, 119-A, 119-B, 119-C,
119-D, 120, 120-B, 121-124, 124-A, 124-B, 128-A,
129-A, 130-A

[125.] This is information or documents regarding X. Corp. dealing with the Public Body for the purchase of the judgment held by the Public Body.

(iii) Information or documents obtained regarding the Applicants (or any one of them) dealing with the Credit Union

[126.] I find that the Public Body obtained information (contained in the following documents) or obtained the following documents regarding the Applicants (or any one of them) dealing with the Credit Union:

Records Review 005-96 (the Applicant's application)
Document Numbers 10, 14-18, 23, 34, 37, 41, 48, 56,
68, 69, 71, 76, 82, 94, 103, 126-A

[127.] This is information or documents regarding the Applicant dealing with the Credit Union, through the Public Body as agent of the Credit Union, for the settlement of the judgment held by the Credit Union.

(iv) Information or documents obtained regarding the Applicants (or any one of them) dealing with the Public Body

[128.] I find that the Public Body obtained information (contained in the following documents) or obtained the following documents regarding the Applicants (or any one of them) dealing with the Public Body:

Records Review 005-96 (the Applicant's application)
Document Numbers 10, 11, 14-18, 23, 34, 37, 41, 48,
56, 68, 69, 71, 72-C, 72-D, 76, 82, 94, 96, 103, 126-A

[129.] This is information or documents regarding the Applicant dealing with the Public Body for the settlement of the judgment held by the Public Body.

(v) Information or documents regarding any other person dealing with a body corporate

[130.] I find that the Public Body obtained information (contained in the following documents) or obtained the following documents regarding other persons dealing with a credit union, the Credit Union, or the Public Body:

Records Review 005-96 (the Applicant's application)
Document Numbers 24, 24-A, 24-B, 63-A, 63-B, 65,
65-A, 65-B, 82, 127, 128, 130

[131.] Having found that the Applicants are persons dealing with a body corporate for the purposes of section 16(1) of the Credit Union Act, does section 5(1) of *the Freedom of Information and Protection of Privacy Act* nevertheless prohibit disclosure of information under the Act?

[132.] Section 5(1) of the *Freedom of Information and Protection of Privacy Act* says that a public body must refuse to disclose information under the Act if disclosure is prohibited or restricted by another enactment. Section 16(1) of the *Credit Union Act* restricts the disclosure of information or documents. Therefore, the criteria under section 5(1) of the Act have been met, and section 5(1) applies. Consequently, the Public Body must refuse to disclose the information under section 5(1) of the *Freedom of Information and Protection of Privacy Act*.

[133.] There are no qualifications in section 5(1) that would allow a public body to disclose information under *the Freedom of Information and Protection of Privacy Act* even if an applicant meets the qualifications for disclosure under the other enactment (in this case, the *Credit Union Act*). In my view, the *Credit Union Act* restricts disclosure, section 5(1) of the *Freedom of Information and Protection of Privacy Act* applies, and that is the end of the matter. Information or documents may be disclosed only as provided by the *Credit Union Act*. A person or body corporate would have to obtain that information or those documents under the *Credit Union Act*.

d. To whom may the Public Body disclose information or provide documents under section 16(1) of the *Credit Union Act*?

[134.] The concluding part of section 16(1) of the *Credit Union Act* provides:

s. 16(1)...the Minister or the Corporation shall not disclose that information or provide those documents or a copy of them or disclose any information contained in, or allow access to, those documents, to any person other than that body corporate or person.

[135.] We are not concerned with the Minister in this case. Only the Corporation (the Public Body) is relevant.

[136.] The concluding part of section 16(1) says that the Public Body may disclose information or provide documents to “that body corporate or person”.

The word “that” refers to the body corporate or person “about” whom the Public Body obtained the information or documents.

[137.] In using the word “about”, I have not changed the meaning of section 16(1) of the Credit Union Act. Section 16(1) uses the word “regarding”. The Concise Oxford Dictionary defines “regarding” to mean “about”. I prefer to use “about” in this discussion.

[138.] The Public Body says that because it obtained information or documents about the business or affairs of the Credit Union and about X. Corp. dealing with the Credit Union and the Public Body, it may disclose that information or provide those documents only to the Credit Union or to X. Corp. under section 16(1) of the *Credit Union Act*. The Applicants say that the information is about the Applicants, and so should be disclosed to them under section 16(1).

[139.] Given any information or document obtained, on what basis does the Public Body decide whether it may lawfully disclose the information or provide the document to a body corporate or person under section 16(1)? In particular, what if a document obtained is about a body corporate and contains information about a person dealing with a body corporate?

[140.] Because the parties have raised the issue regarding “who” the information or documents are “about”, I intend to state my views on that issue and to answer the questions I have posed. However, I want to make it clear that **the Public Body is not bound by my views** as to “who” the information or documents are “about”, for the following reasons.

[141.] If, as I have found in this case, section 16(1) of the *Credit Union Act* applies to information or documents, then under section 5(1) of the *Freedom of Information and Protection of Privacy Act*, the Public Body must refuse to disclose that information or those documents under the Act. Consequently, I have no jurisdiction over that information or those documents. Only the Public Body, as the “Corporation” under section 16(1), has jurisdiction to make decisions about disclosure of the information or documents. Therefore, the Public Body makes its own determination as to whom it may disclose information or provide documents under section 16(1) of the *Credit Union Act*.

[142.] To answer the questions I have posed, I turn to the apparent redundancy in section 16(1). The redundancy is this: information or documents regarding the “business” of a credit union would necessarily include information or documents regarding a person dealing with a credit union.

[143.] In *Driedger on the Construction of Statutes*, the statutory interpretation principle of “presumption against tautology” is discussed at page 160. That presumption says that, as much as possible, an interpretation should be

avoided “...that would render any portion of a statute meaningless or pointless or redundant”. The presumption is used for many purposes, one of which is make inferences about the purpose of statutory provisions.

[144.] I intend to apply the presumption to make an inference about the purpose of the seemingly redundant provision concerning information or documents about a person dealing with a credit union. I believe that the separate references regarding the business of a credit union and regarding a person dealing with a credit union are both necessary for the purpose of making it clear that the Public Body can determine “who” the information or document is “about”. By determining “who” the information or the document is “about”, the Public Body can determine to whom it may lawfully disclose that information or document under section 16(1).

[145.] To be information or a document “about” the business or affairs of a credit union or “about” a person dealing with a credit union, I would think that the information or document should be substantially about the credit union’s business or affairs or substantially about the person who is dealing with a credit union. In my view, a mere mention of a person’s name, without more, would not make the information or document one “about” that person. This same principle would apply to information or documents about a person dealing with the Public Body.

[146.] It is possible that a document may be “about” both the business or affairs of a credit union and “about” a person dealing with that credit union. For example, if a credit union’s lawyer sends a document to a person dealing with that credit union, and the information in the document is substantially “about” that person, the document is both “about” a credit union’s business and “about” the person dealing with that credit union. Under section 16(1) of the *Credit Union Act*, the Public Body may be able to provide the document to both that person and that credit union. I would expect the same result for a document sent by a person dealing with a credit union, to that credit union. However, if a document originating from a credit union’s lawyer contains some minimal information about a person dealing with that credit union, the Public Body may or may not be able to disclose the information to the person, but in any event would likely not be able to disclose the document because the document is “about” that credit union’s business or affairs. I would think that information or documents about a person dealing with the Public Body would be dealt with similarly.

[147.] In the present case, the information or documents may be “about”:

- (i) X. Corp. dealing with the Credit Union
- (ii) X. Corp. dealing with the Public Body
- (iii) The Applicants (or any one of them) dealing with the Credit Union
- (iv) The Applicants (or any one of them) dealing with the Public Body
- (v) Any other person dealing with a body corporate

[148.] As I have said, the information or documents may also be “about” the business or affairs of the Credit Union (previously discussed).

(1) Information or documents “about” X. Corp. dealing with the Credit Union

[149.] I believe that the information (contained in the following documents) or the following documents are “about” X. Corp. dealing with the Credit Union:

Records Review 005-96 (the Applicant’s application)
Document Numbers 100-102, 104-109, 112, 113, 116-B,
116-C, 117-B, 119-B, 119-D, 120-B, 121, 122, 124-A,
128-A, 129-A, 130-A

[150.] The Public Body acts as agent for the Credit Union in the negotiations for the sale of the judgment held by the Credit Union. The information or documents obtained by the Public Body are “about” X. Corp. dealing with the Credit Union (through the Public Body as agent) for the purchase of the judgment held by the Credit Union. The information or the documents are also “about” the business or affairs of the Credit Union (previously discussed). Under section 16(1) of the *Credit Union Act*, the Public Body may disclose that information or those documents to only X. Corp. or the Credit Union.

(2) Information or documents “about” X. Corp. dealing with the Public Body

[151.] I believe that the information (contained in the following documents) or the following documents are “about” X. Corp. dealing with the Public Body:

Records Review 005-96 (the Applicant’s application)
Document Numbers 100-102, 104-109, 112, 113, 116-B,
116-C, 117-B, 119-B, 119-D, 120-B, 121, 122, 124-A,
128-A, 129-A, 130-A

[152.] The Public Body represents itself in the negotiations for the sale of the judgment held by the Public Body. The information or documents obtained by the Public Body are “about” X. Corp. dealing with the Public Body for the purchase of the judgment held by the Public Body. Under section 16(1) of the *Credit Union Act*, the Public Body would normally be able to disclose that

information or those documents to only X. Corp., but because the information or the documents are also “about” the business or affairs of the Credit Union, the Public Body may also disclose that information or those documents to the Credit Union.

(3) Information or documents “about” the Applicants (or any one of them) dealing with the Credit Union

[153.] I believe that the information (contained in the following documents) or the following documents are “about” the Applicants (or any one of them) dealing with the Credit Union:

Records Review 005-96 (the Applicant’s application)
Document Numbers 10, 15-18, 34, 41, 69, 71, 76, 82

[154.] The Public Body acts as agent for the Credit Union in the negotiations for the settlement of the judgment held by the Credit Union. The information or documents obtained by the Public Body are “about” the Applicant dealing with the Credit Union (through the Public Body as agent) for the settlement of the judgment held by the Credit Union. The information or the documents are also “about” the business or affairs of the Credit Union (previously discussed). Under section 16(1) of the *Credit Union Act*, the Public Body may disclose that information or those documents to only the Applicant or the Credit Union.

(4) Information or documents “about” the Applicants (or any one of them) dealing with the Public Body

[155.] I believe that the information (contained in the following documents) or the following documents are “about” the Applicants (or any one of them) dealing with the Public Body:

Records Review 005-96 (the Applicant’s application)
Document Numbers 10, 11, 15-18, 34, 69, 71, 72-D, 76,
82

[156.] The Public Body represents itself in the negotiations for the settlement of the judgment held by the Public Body. The information or documents obtained by the Public Body are “about” the Applicant dealing with the Public Body for the settlement of the judgment held by the Public Body. Under section 16(1) of the *Credit Union Act*, the Public Body would normally be able to disclose that information or those documents to only the Applicant, but because the information or the documents are also “about” the business or affairs of the Credit Union (with the exception of Document Number 11 and Document Number 72-D), the Public Body may also disclose that information or those

documents (except Document Number 11 and Document Number 72-D) to the Credit Union.

[157.] I note that as to Document Number 11 and Document Number 72-D, the Public Body has already disclosed to the Applicant some of the information contained in those two documents.

(5) Information or documents “about” any other person dealing with a body corporate

[158.] I believe that the information (contained in the following documents) or the following documents are “about” other persons dealing with a credit union or the Public Body:

Records Review 005-96 (the Applicant’s application)
Document Numbers 24, 24-B

[159.] Under section 16(1) of the *Credit Union Act*, the Public Body may disclose that information or those documents only to the relevant persons or credit union.

e. Does section 16(1) of the *Credit Union Act* apply to records that were in existence before section 16(1) came into force?

[160.] At the conclusion of the inquiry, I asked the parties to provide a further submission regarding some unanswered issues, one of which is the preceding question “e”. I raised this issue because section 16(1) of the *Credit Union Act* came into force on November 1, 1989. In Records Review 005-96, sixty-three documents are dated before November 1, 1989.

[161.] In its supplementary submission, the Public Body said that the question to ask is this: Does section 16(1) of the *Credit Union Act* apply to prohibit disclosure, after November 1, 1989, of information or documents obtained by the Minister or the Corporation before November 1, 1989? I accept the Public Body’s rephrasing of the question.

[162.] The answer to this question is important. If section 16(1) of the *Credit Union Act* does not apply now to prohibit disclosure of information or documents obtained before section 16(1) came into force, the Public Body is not required to refuse to disclose the information under section 5(1) of the *Freedom of Information and Protection of Privacy Act*. In other words, the Public Body may disclose the information to anyone, subject to any other applicable exceptions under the *Freedom of Information and Protection of Privacy Act*.

[163.] The Public Body submits that section 16(1) of the *Credit Union Act* applies to prohibit disclosure, after November 1, 1989, of information or documents whenever obtained. This would appear to be an argument for a retroactive application of section 16(1). In Order 97-004, which was issued before this Order, I said that statutes are presumed not to apply retroactively to facts that are already past when the legislation comes into force: see Ruth R. Sullivan, *Driedger on the Construction of Statutes*, 3rd edition (Toronto, Ontario: Butterworths Canada Ltd., 1994), at p. 513.

[164.] Consequently, the simple answer to the preceding question would appear to be that the Public Body did not obtain the sixty-three documents, or the information contained in them, as a result of administering the *Credit Union Act*, but possibly as a result of administering the predecessor legislation. Each “obtaining” of information or documents prior to November 1, 1989 would be a fact that was already past when section 16(1) came into force, so that the restriction on disclosure would not apply to any “obtaining” that occurred before section 16(1) came into force.

[165.] The Public Body acknowledges that statutes are presumed not to have retroactive effect, but relies on two alternative arguments:

(1) Applying section 16(1) of the *Credit Union Act* to prohibit disclosure, after November 1, 1989, of information or documents obtained prior to November 1, 1989, is not a matter of retroactive effect but of applying the “immediate effect” principle; and

(2) The presumption against retroactive effect does not apply to (or, alternatively, is rebutted with respect to) section 16(1) because the essence of that provision is a benefit conferred on credit unions and their customers.

[166.] The “immediate effect” principle is described in *Driedger on the Construction of Statutes*, at p. 510:

Legislation is applied immediately and generally when it is applied to facts in progress, that is, facts that began in the past but are still on-going when the legislation came into force. The immediate and general application of legislation to on-going facts is a prospective and not a retroactive application of law.

[167.] This “immediate effect” principle is further explained at p. 517:

Legislation that applies to on-going facts is said to have “immediate effect”. Its application is both immediate and general: “immediate” in the sense that the new rule operates from the moment of commencement, displacing whatever rule was formerly applicable to the relevant facts, and “general” in the sense that the new rule applies to all relevant facts, on-going as well as new.

[168.] The Public Body says that applying section 16(1) to information or documents in the hands of the Public Body on November 1, 1989 is merely giving the statute “immediate effect”.

[169.] To decide whether the “immediate effect” principle applies, I first need to decide whether there are any “on-going facts”.

[170.] In the present case, the Public Body obtained information or documents regarding the following: negotiation and settlement of the judgment held by the Public Body and the judgment held by the Credit Union; ongoing litigation potentially affecting the two judgments, and monitoring of that litigation; and negotiation and sale of the two judgments.

[171.] The information or documents regarding the negotiation and sale of the judgments occurred after the *Credit Union Act* came into force. Section 16(1) of the *Credit Union Act* applies to that information or those documents. However, the Public Body obtained the other information or documents at various times before section 16(1) of the *Credit Union Act* came into force, and at various times after section 16(1) came into force.

[172.] I find the actions of obtaining information or documents regarding negotiation and settlement of both judgments are “on-going facts”, the last of which occurred after section 16(1) came into force. I make the same finding about the information or documents regarding the ongoing litigation and monitoring of that litigation. Therefore, section 16(1) of the *Credit Union Act* applies to keep confidential, after November 1, 1989, information or documents obtained by the Public Body before November 1, 1989.

[173.] I do not find it necessary to consider the Public Body’s second argument.

f. Conclusion under section 16(1) of the *Credit Union Act*

[174.] In summary, for the purposes of section 16(1) of the *Credit Union Act*, the Public Body obtained information (contained in the following documents) or obtained the following documents regarding the business or affairs of the Credit Union or regarding a person dealing with a credit union, the Credit Union, or the Public Body:

Records Review 005-96 (the Applicant's application)

Document Numbers 10, 11, 12, 14-21, 21-A, 21-B, 22-24, 24-A, 24-B, 25, 25-A, 26, 26-A, 26-D, 27, 27-A, 28-30, 31, 33, 34, 36-40, 41, 41-A, 43, 44-48, 51-55, 55-A, 55-B, 56, 56-A, 56-B, 56-D, 56-E, 57, 58, 58-A, 59, 59-A, 60, 60-A, 61, 61-A, 63, 63-A, 63-B, 63-C, 63-D, 63-E, 65, 65-A, 65-B, 68-70, 70-A, 71, 71-B, 72, 72-A, 72-C, 72-D, 73, 73-A, 73-B, 73-C, 75, 76, 78, 79, 79-A, 79-B, 79-C, 79-D, 79-E, 79-F, 80, 81, 82, 82-A, 82-B, 82-D, 83, 83-A, 83-B, 84, 85, 85-C, 86, 87, 88-90, 90-A, 91-94, 96, 97, 97-A, 97-B, 98-B, 99-110, 110-A, 111-115, 115-E, 116, 116-A, 116-B, 116-C, 117, 117-A, 117-B, 119, 119-A, 119-B, 119-C, 119-D, 120, 120-B, 121-124, 124-A, 124-B, 125, 126, 126-A, 127, 128, 128-A, 129, 129-A, 130, 130-A, C-4

[175.] Consequently, section 16(1) of the *Credit Union Act* restricts disclosure of that information or those documents. Under section 16(1), the Public Body may disclose that information or provide those documents only to the person or body corporate about whom the Public Body obtained the documents. The procedure for that disclosure is under the *Credit Union Act*, not under the *Freedom of Information and Protection of Privacy Act*. The Public Body makes the decision as to disclosure, not the Commissioner.

[176.] Under section 16(1) of the *Credit Union Act*, the Public Body did not obtain information (contained in the following documents) or obtain the following documents regarding the business or affairs of the Credit Union or regarding a person dealing with a credit union, the Credit Union or the Public Body:

Records Review 005-96 (the Applicant's application)

Document Numbers 5, 13, 64, 64-A, 72-B

[177.] Consequently, section 16(1) of the *Credit Union Act* does not restrict disclosure of that information or those documents.

[178.] There is one last issue to consider. For the purposes of this inquiry, section 16(1) of the *Credit Union Act* concerns the Public Body's obtaining information or documents about the business or affairs of a body corporate (the Credit Union in this case) or about a person dealing with a body corporate (a credit union, the Credit Union, or the Public Body in this case). However, the Public Body said its own information was also contained in the documents, and that it did not separate the Credit Union's information from its own because the two were intertwined. I also note that the Public Body did not separate its

own information from that of a person dealing with a credit union or the Credit Union.

[179.] Section 16(1) of the *Credit Union Act* does not keep confidential the Public Body's own information or documents because, in this case, the Public Body does not "obtain" its own information or documents as a result of administering or enforcing the *Credit Union Act*. Consequently, section 5(1) of the *Freedom of Information and Protection of Privacy Act* would not apply to prohibit disclosure of that information.

[180.] However, section 16(1) of the *Credit Union Act* says that the Public Body may not disclose "*any information* [my emphasis] contained in...those documents, to any person other than that body corporate or person". I interpret this to mean that the Public Body cannot sever that person's or body corporate's information and provide the Public Body's information to someone else. Since section 16(1) does not appear to allow for this kind of severing, the entire document must be kept confidential under section 16(1). Consequently, section 5(1) of the *Freedom of Information and Protection of Privacy Act* applies to prohibit disclosure of that document.

g. Conclusion under section 5(1) of the *Freedom of Information and Protection of Privacy Act*

[181.] Under section 5(1) of the Act, the Public Body must refuse to disclose information to an applicant if disclosure is prohibited or restricted by another enactment. Section 16(1) of the *Credit Union Act* restricts disclosure. Therefore, the Public Body correctly applied section 5(1) of the Act when it refused to disclose to the Applicant the information (contained in the following documents) or the following documents:

Records Review 005-96 (the Applicant's application)

Document Numbers 10, 12, 14-21, 21-A, 21-B, 22-24, 24-A, 24-B, 25, 25-A, 26, 26-A, 26-D, 27, 27-A, 28-30, 31, 33, 34, 36-40, 41-A, 43, 44-48, 51-55, 55-A, 55-B, 56, 56-A, 56-B, 56-D, 56-E, 57, 58, 58-A, 59, 59-A, 60, 60-A, 61, 61-A, 63, 63-A, 63-B, 63-C, 63-D, 63-E, 65, 65-A, 65-B, 68-70, 70-A, 71, 71-B, 72, 72-A, 73, 73-A, 73-B, 73-C, 75, 76, 78, 79, 79-A, 79-B, 79-C, 79-D, 79-E, 79-F, 80, 81, 82, 82-A, 82-B, 82-D, 83, 83-A, 83-B, 84, 85, 85-C, 86, 87, 88-90, 90-A, 91-94, 97, 97-A, 97-B, 98-B, 99-110, 110-A, 111-115, 115-E, 116, 116-A, 116-B, 116-C, 117, 117-A, 117-B, 119, 119-A, 119-B, 119-C, 119-D, 120, 120-B, 121-124, 124-A, 124-B, 125, 126, 126-A, 127, 128, 129, 129-A, 130, 130-A, C-4

[182.] Section 5(1) of the Act also applies to the following:

Records Review 005-96 (the Applicant's application)
Document Numbers 11, 41, 72-C, 72-D, 96, 128-A

[183.] The Public Body did not correctly apply section 5(1) of the Act when it refused to disclose information (contained in the following documents) or the following documents:

Records Review 005-96 (the Applicant's application)
Document Numbers 5, 13, 64, 64-A, 72-B

3. Did the Public Body correctly apply section 15(1) of the Act (disclosure harmful to the business interests of a third party)?

[184.] The Public Body applied section 15(1) of the Act to the following:

Records Review 005-96 (the Applicant's application)
Document Numbers 103, 104, 106, 108, 112, 113, 116,
116-C, 119, 119-A, 119-B, 120, 120-A, 120-B 122-124,
124-A, 124-B, 127, 128, 129, 130

[185.] I have included Document Number 128-A, which is a copy of Document Number 108.

[186.] I have already found that the Public Body correctly applied section 4(1)(n) of the Act to Document Number 120-A, and section 5(1) of the Act to the remainder of the foregoing documents in Records Review 005-96. Section 5(1) of the Act also applies to Document Number 128-A. Consequently, I do not find it necessary to consider those documents under section 15(1) of the Act.

4. Did the Public Body correctly apply section 16 of the Act (personal information)?

[187.] The Public Body applied section 16(1) and section 16(2)(g)(ii) of the Act to the following:

Records Review 004-96 (AS Ltd.'s application)
Document Number 7-A

Records Review 005-96 (the Applicant's application)
Document Numbers 65-B, 77, 124-B

[188.] I have already found that the Public Body correctly applied section 5(1) of the Act to Document Number 65-B and Document Number 124-B in Records

Review 005-96. Consequently, I do not find it necessary to consider those two documents under section 16(1) and section 16(2)(g)(ii) of the Act.

[189.] The only documents remaining to be considered under section 16(1) and section 16(2)(g)(ii) are Document Number 7-A in Records Review 004-96 and Document Number 77 in Records Review 005-96. These two are the same document.

[190.] Section 16(1) and section 16(2)(g) of the Act read:

s. 16(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.

s. 16(2) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(g) the personal information consists of the third party's name when

(i) it appears with other personal information about the third party, or

(ii) the disclosure of the name itself would reveal personal information about the third party.

[191.] On both Document Number 7-A and Document Number 77, the Public Body severed handwritten notes under section 16(1) and section 16(2)(g)(ii) of the Act. The relevant notes are those severed on the left hand side of the two documents and the middle note severed on the right hand side of the two documents.

[192.] To correctly apply section 16(1) of the Act, there must be "personal information". "Personal information" is defined in section 1(1)(n) of the Act to mean recorded information about an identifiable individual, including any of those kinds of personal information enumerated in section 1(1)(n)(i) to (ix). I find that the information severed on both documents is personal information consisting of names of individuals, handwriting that could identify an individual, and opinions relating to identifiable individuals.

[193.] Under section 16(2)(g)(ii) of the Act, the Public Body said that disclosure of the third parties names would reveal personal information about the third

parties. As it is not clear to me what other personal information would be disclosed, I believe that section 16(2)(g)(i) of the Act is the better presumption to apply. I find that section 16(2)(g)(i) of the Act applies to the personal information severed in Document Number 7-A in Records Review 004-96 and Document Number 77 in Records Review 005-96.

[194.] Under section 67(2) of the Act, the burden of proof is on an applicant to prove that disclosure of a third party's personal information would not be an unreasonable invasion of a third party's personal privacy. Neither the corporate Applicant AS Ltd. nor the Applicant has met the burden of proof in this regard. Accordingly, The personal information of all the third parties is not to be disclosed to the corporate Applicant AS Ltd. The personal information of third parties relative to the Applicant is also not to be disclosed to the Applicant.

[195.] There is some personal information of the Applicant that is intertwined with the personal information of the third parties. Normally, under section 6(1) of the Act, an applicant is entitled to the applicant's own personal information. However, section 6(2) of the Act says that a right of access does not extend to information that is excepted under the Act, but if that information can reasonably be severed, an applicant has a right of access to the remainder of the record. The third parties' personal information is excepted under the Act, and I find that the third parties' personal information cannot reasonably be severed from the Applicant's personal information. This is particularly so because of a third party's handwriting. Therefore, I find that under section 6(2) of the Act, the Applicant's right of access does not extend to the Applicant's personal information in Document Numbers 7-A of Records Review 004-96 and Document Number 77 of Records Review 005-96.

[196.] I find that the Public Body correctly applied section 16(1) of the Act, but not section 16(2)(g)(ii) of the Act to the personal information severed in Document Number 7-A of Records Review 004-96 and Document Number 77 of Records Review 005-96. However, I have applied section 16(2)(g)(i) to the personal information severed in those two documents.

5. Did the Public Body correctly apply section 23(1) of the Act (advice, etc.)?

a. Section 23(1)(a) (advice, etc.)

[197.] The Public Body applied section 23(1)(a) of the Act to the following:

Records Review 005-96 (the Applicant's application)
Document Numbers 11, 103, 127, 128

[198.] I have already found that the Public Body correctly applied section 5(1) of the Act to Document Numbers 11, 103, 127 and 128 of Records Review 005-96. Consequently, I do not find it necessary to consider those documents under section 23(1)(a) of the Act.

b. Section 23(1)(b)(i) (consultations or deliberations)

[199.] The Public Body applied section 23(1)(b)(i) of the Act to the following:

Records Review 005-96 (the Applicant's application)
Document Number 16

[200.] I have already found that the Public Body correctly applied section 5(1) of the Act to Document Number 16 of Records Review 005-96. Consequently, I do not find it necessary to consider that document under section 23(1)(b)(i) of the Act.

c. Section 23(1)(c) (positions, plans, etc.)

[201.] The Public Body applied section 23(1)(c) of the Act to the following:

Records Review 004-96 (AS Ltd.'s application)
Document Number 7-A

Records Review 005-96 (the Applicant's application)
Document Numbers 11, 16, 18, 23, 37, 102-104, 108,
110-A, 116-A, 116-C, 126-A, 127, 128

[202.] In Records Review 005-96, I have included Document Number 128-A, which is a copy of Document Number 108. I have also included Document Number 77 in Records Review 005-96, which is the same document as Document Number 7-A in Records Review 004-96.

[203.] I have already found that the Public Body correctly applied section 5(1) of the Act to Document Numbers 11, 16, 18, 23, 37, 102-104, 108, 110-A, 116-A, 116-C, 126-A, 127 and 128 of Records Review 005-96. I have found that section 5(1) also applies to Document 128-A. Consequently, I do not find it necessary to consider those documents under section 23(1)(c) of the Act.

[204.] The only documents remaining to be considered under section 23(1)(c) of the Act are the following:

Records Review 004-96 (AS Ltd.'s application)
Document Number 7-A

[205.] Section 23(1)(c) of the Act reads:

s. 23(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal

(c) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the Government of Alberta or a public body, or considerations that relate to those negotiations.

[206.] In Document Number 7-A and Document Number 77 (which are the same document), the Public Body severed information under section 23(1)(c) in two places (top and bottom) on the right hand side of the documents. I have reviewed the information severed and agree that section 23(1)(c) applies to this information. The information consists of considerations that relate to negotiations by or on behalf of the Public Body. Therefore, the Public Body correctly applied section 23(1)(c) to this information severed in Document Number 7-A of Records Review 004-96 and Document Number 77 of Records Review 005-96.

d. Section 23(1)(f) (minutes of meetings)

[207.] The Public Body applied section 23(1)(f) of the Act to the following:

Records Review 005-96 (the Applicant's application)
Document Numbers 127, 128, 129

[208.] I have already found that the Public Body correctly applied section 5(1) of the Act to Document Numbers 127, 128 and 129 of Records Review 005-96. Consequently, I do not find it necessary to consider those documents under section 23(1)(f) of the Act.

e. Exercise of discretion under section 23(1)

[209.] Section 23(1)(c) is a discretionary (“may”) section. Even if the Public Body correctly applies the section, it may nevertheless decide to disclose the information. To properly exercise its discretion in this regard, the Public Body must consider the purposes of the Act, one of which includes allowing access to information. In this case, the Public Body provided the Applicant with approximately 838 pages out of a total of approximately 1201 pages responsive

to the Applicant's own request. The Public Body also provided AS Ltd. with 17 pages of a total of 23 pages responsive to AS Ltd.'s application. Given that the Public Body disclosed, in their entirety, approximately 74 per cent of the pages responsive to all the Applicants' requests, I find that the Public Body exercised its discretion properly under section 23(1)(c).

6. Did the Public Body correctly apply section 26 of the Act (privilege)?

a. Section 26(1)(a) (privilege)

[210.] The Public Body applied section 26(1)(a) of the Act to the following:

Records Review 003-96 (A3 Ltd.'s application)
Document Number 1

Records Review 004-96 (AS Ltd.'s application)
Document Numbers 6, 6-A, 7, 10, 11

Records Review 005-96 (the Applicant's application)
Document Numbers 4, 5, 9, 12, 13, 14, 19-21, 21-A, 23, 24-A, 26, 26-A, 26-D, 37, 40, 41, 48, 49, 51, 54, 55-A, 56, 56-A, 57, 58, 58-A, 59, 60-A, 63-A, 64, 64-A, 65, 68, 70, 70-A, 71, 72, 72-C, 72-D, 73, 75, 79, 79-D, 79-F, 81, 82, 82-A, 84, 85, 86, 87, 88, 90, 91, 94, 96, 97, 99, 110, 114, 115, 116-A, 116-C, 117-A, 119-C, 120, 123, 124, 124-B, C-4

[211.] I have already found that the Public Body correctly applied section 5(1) of the Act to the following:

Records Review 005-96 (the Applicant's application)
Document Numbers 12, 14, 19-21, 21-A, 23, 24-A, 26, 26-A, 26-D, 37, 40, 41, 48, 51, 54, 55-A, 56, 56-A, 57, 58, 58-A, 59, 60-A, 63-A, 65, 68, 70, 70-A, 71, 72, 72-C, 72-D, 73, 75, 79, 79-D, 79-F, 81, 82, 82-A, 84, 85, 86, 87, 88, 90, 91, 94, 96, 97, 99, 110, 114, 115, 116-A, 116-C, 117-A, 119-C, 120, 123, 124, 124-B, C-4

[212.] Consequently, I do not find it necessary to consider those documents under section 26(1)(a) of the Act. The only documents remaining to be considered under section 26(1)(a) of the Act are the following:

Records Review 003-96 (A3 Ltd.'s application)
Document Number 1

Records Review 004-96 (AS Ltd.'s application)
Document Numbers 6, 6-A, 7, 10, 11

Records Review 005-96 (the Applicant's application)
Document Numbers 4, 5, 9, 13, 49, 64, 64-A

[213.] Section 26(1)(a) of the Act reads:

s. 26(1) The head of a public body may refuse to disclose to an applicant

(a) information that is subject to any type of legal privilege, including solicitor-client privilege or parliamentary privilege.

[214.] The Public Body said that both solicitor-client privilege and litigation privilege apply to the documents.

(1) Solicitor-client privilege

[215.] In Order 96-017, I stated that to correctly apply section 26(1)(a) (solicitor-client privilege), the Public Body must meet the common law criteria for that privilege, as set out in *Solosky v. The Queen*, [1980] 1 S.C.R. 821. In that case, the Supreme Court of Canada stated that solicitor-client privilege must be claimed document by document, and each document must meet the following criteria: (i) it is a communication between solicitor and client; (ii) which entails the seeking or giving of legal advice; and (iii) which is intended to be confidential by the parties.

[216.] I have reviewed all the documents to which the Public Body applied solicitor-client privilege.

[217.] The documents for which solicitor-client privilege is claimed in Records Review 003-96 and Records Review 004-96 are letters either from the lawyer representing both the Public Body and the Credit Union, to the Public Body on its own behalf or as agent for the Credit Union, or from the Public Body to that same lawyer. The presence of the Public Body as the Credit Union's agent does not destroy solicitor-client privilege, as long as the Credit Union is communicating for the purpose of obtaining legal advice: see Ronald D. Manes and Michael P. Silver, *Solicitor-Client Privilege in Canadian Law* (Toronto, Ontario: Butterworths Canada Ltd., 1993), at p. 60. I find that Document Number 1 in Records Review 003-96 and Document Numbers 6, 6-A, 7, 10 and 11 in Records Review 004-96 all meet the criteria for solicitor-client privilege.

[218.] In Records Review 005-96, Document Number 4 is a working paper sent by the Credit Union's lawyer to the Public Body as agent for the Credit Union. In Order 96-017, I accepted that a lawyer's working papers directly related to the giving or seeking of legal advice meet the criteria for solicitor-client privilege. I find with Document Number 4 is a lawyer's working paper and meets the criteria for solicitor-client privilege.

[219.] Document Number 9 is a letter from the Credit Union's lawyer to the Public Body as agent for the Credit Union, and meets the criteria for solicitor-client privilege.

[220.] Document Numbers 13, 49 and 64 are letters from the Public Body's own lawyer to the Public Body; these documents meet the criteria for solicitor-client privilege. Document Number 64-A is a copy of Document Number 49, with handwritten notes, and also meets the criteria for solicitor-client privilege.

[221.] Document Number 5 is written by the Public Body to the Credit Union's lawyer. In that document, the Public Body gives some information regarding pending litigation, and it requests some information. Accordingly, Document Number 5 does not meet the criteria of being a communication that entails the giving or seeking of legal advice.

[222.] Therefore, the Public Body correctly applied section 26(1)(a) (solicitor-client privilege) to the following:

Records Review 003-96 (A3 Ltd.'s application)
Document Number 1

Records Review 004-96 (AS Ltd.'s application)
Document Numbers 6, 6-A, 7, 10, 11

Records Review 005-96 (the Applicant's application)
Document Numbers 4, 9, 13, 49, 64, 64-A

[223.] The Public Body did not correctly apply section 26(1)(a) (solicitor-client privilege) to the following:

Records Review 005-96 (the Applicant's application)
Document Number 5

(2) Litigation privilege

[224.] The only document remaining to be considered under "litigation privilege" is the following:

[225.] In Order 96-017, I said that litigation privilege applies to papers and materials created or obtained by the client for the lawyer's use in existing or contemplated litigation, or created by a third party or obtained from a third party on behalf of the client for the lawyer's use in existing or contemplated litigation: *Waugh v. British Railway Board*, [1979] 2 All E.R. 1169 (H.L.).

[226.] I then said that to correctly apply litigation privilege, it must be shown that the "dominant purpose" for which a document was prepared was to submit it to a legal advisor for advice and use in litigation, whether existing or contemplated: *Nova, An Alberta Corporation v. Guelph Engineering Company* (1984), 30 Alta. L.R. (2d) 183 (C.A.); *Waugh v. British Railway Board*, [1979] 2 All E.R. 1169 (H.L.). I then set out the three requirements for the "dominant purpose" test:

- (i) the document must have been produced with existing or contemplated litigation in mind,
- (ii) the document must have been produced for the dominant purpose of existing or contemplated litigation, and
- (iii) if litigation is contemplated, the prospect of litigation must be reasonable.

[227.] Document Number 5 is a document created by the Public Body as the Credit Union's agent. I accept that the presence of the Public Body as the Credit Union's agent does not destroy litigation privilege, as long as the other requirements for litigation privilege are met: see Manes and Silver, *Solicitor-Client Privilege in Canadian Law*, at p. 89. I also accept that the Public Body intended the document to be confidential: see Manes and Silver, *Solicitor-Client Privilege in Canadian Law*, at p. 96.

[228.] I find that Document Number 5 meets the requirements for the "dominant purpose" test. Consequently, the Public Body correctly applied section 26(1)(a) (litigation privilege) to the following:

b. Section 26(1)(b) (legal services)

[229.] The Public Body applied section 26(1)(b) of the Act to the following:

Records Review 003-96 (A3 Ltd. 's application)
Document Number 1

Records Review 004-96 (AS Ltd. 's application)
Document Numbers 6, 6-A, 7, 10, 11

Records Review 005-96 (the Applicant's application)
Document Numbers 4, 5, 9, 12, 13-15, 19-21, 21-A, 22, 23, 24-A, 25, 25-A, 26, 26-A, 26-D, 27, 27-A, 28-30, 31, 33, 34, 36, 37-41, 41-A, 43, 44-48, 49, 51-55, 55-A, 55-B, 56, 56-A, 56-B, 57, 58, 58-A, 59, 59-A, 60, 60-A, 61, 61-A, 63-A, 63-C, 63-D, 63-E, 64, 64-A, 65, 68, 70, 70-A, 71, 72, 72-A, 72-B, 72-C, 73, 73-A, 73-B, 73-C, 75, 76, 78 79, 79-A, 79-B, 79-C, 79-D, 79-E, 79-F, 80, 81, 82, 82-A, 83, 83-A, 83-B, 84, 85, 85-C, 86, 87, 88-90, 90-A, 91-94, 96, 97, 97-A, 99, 110, 110-A, 111, 114, 115, 116-A, 116-B, 116-C, 117-A, 119-C, 120, 121-124, 124-B, 125, 126-A, 130-A, C-4

[230.] I have already found that the Public Body correctly applied section 5(1) of the Act to the following:

Records Review 005-96 (the Applicant's application)
Document Numbers 12, 14-15, 19-21, 21-A, 22, 23, 24-A, 25, 25-A, 26, 26-A, 26-D, 27, 27-A, 28-30, 31, 33, 34, 36, 37-40, 41, 41-A, 43, 44-48, 51-55, 55-A, 55-B, 56, 56-A, 56-B, 57, 58, 58-A, 59, 59-A, 60, 60-A, 61, 61-A, 63-A, 63-C, 63-D, 63-E, 65, 68, 70, 70-A, 71, 72, 72-A, 72-C, 73, 73-A, 73-B, 73-C, 75, 76, 78 79, 79-A, 79-B, 79-C, 79-D, 79-E, 79-F, 80, 81, 82, 82-A, 83, 83-A, 83-B, 84, 85, 85-C, 86, 87, 88-90, 90-A, 91-94, 96, 97, 97-A, 99, 110, 110-A, 111, 114, 115, 116-A, 116-B, 116-C, 117-A, 119-C, 120, 121-124, 124-B, 125, 126-A, 130-A, C-4

[231.] Furthermore, I have already found that the Public Body correctly applied section 26(1)(a) of the Act to the following:

Records Review 003-96 (A3 Ltd. 's application)
Document Number 1

Records Review 004-96 (AS Ltd. 's application)
Document Numbers 6, 6-A, 7, 10, 11

Records Review 005-96 (the Applicant's application)
Document Numbers 4, 5, 9, 13, 49, 64, 64-A

[232.] Consequently, I do not find it necessary to consider those documents under section 26(1)(b) of the Act. The only document remaining to be considered under section 26(1)(b) of the Act is the following:

Records Review 005-96 (the Applicant's application)
Document Numbers 72-B

[233.] Section 26(1)(b) of the Act reads:

s. 26(1) The head of a public body may refuse to disclose to an applicant

(b) information prepared by or for an agent or lawyer of the Minister of Justice and Attorney General or a public body in relation to a matter involving the provision of legal services.

[234.] Document Number 72-B is information prepared for the lawyer representing both the Credit Union and Public Body in relation to a matter involving the provision of legal services. Consequently, that document meets the requirements of section 26(1)(b).

[235.] Therefore, the Public Body correctly applied section 26(1)(b) of the Act to the following:

Records Review 005-96 (the Applicant's application)
Document Numbers 72-B

c. Section 26(1)(c) (advice or other services)

[236.] The Public Body applied section 26(1)(c) of the Act to the following:

Records Review 005-96 (the Applicant's application)
Document Numbers 15, 21-A, 21-B, 22, 25, 25-A, 27, 28-30, 31, 33, 36, 38, 39, 41-A, 43, 44-47, 52, 53, 55-B, 56-B, 59-A, 60, 61, 61-A, 63-C, 63-D, 63-E, 72-A, 72-B, 73-A, 73-B, 73-C, 76, 78, 79-A, 79-B, 79-C, 79-E, 80, 82-B, 82-D, 83, 83-A, 83-B, 85-C, 89, 92, 93, 97-A, 98-B, 110-A, 111, 116-B, 117-B, 119-D, 121, 122, 125, 130-A

[237.] I have already found that the Public Body correctly applied section 5(1) of the Act to all the foregoing documents in Records Review 005-96, except Document Number 72-B. I have found that the Public Body correctly applied section 26(1)(b) of the Act to Document Number 72-B. Consequently, I do not find it necessary to consider the foregoing documents under section 26(1)(c) of the Act.

d. Section 26(2) (legal privilege of another person)

[238.] The Public Body applied section 26(2) of the Act to the following:

Records Review 005-96 (the Applicant's application)
Document Numbers 13, 51, 123, 124, 124-B

[239.] I have already found that the Public Body correctly applied section 5(1) of the Act to the following:

Records Review 005-96 (the Applicant's application)
Document Numbers 51, 123, 124, 124-B

[240.] I have also found that the Public Body correctly applied section 26(1)(a) of the Act to the following:

Records Review 005-96 (the Applicant's application)
Document Number 13

[241.] Consequently, I do not find it necessary to consider any of those documents under section 26(2) of the Act.

e. Exercise of discretion under section 26(1)

[242.] Section 26(1) is another discretionary (“may”) section. Even if the Public Body correctly applies the section, it may nevertheless decide to disclose the information.

[243.] I have said that to properly exercise its discretion in this regard, the Public Body must consider the purposes of the Act, one of which includes allowing access to information. I have already indicated that in this regard the Public Body has properly exercised its discretion by disclosing, in their entirety, approximately 74 per cent of the total number of pages responsive to the Applicants’ requests.

[244.] The Public Body said that, in this case, it had to refuse to disclose some documents because of the possibility of future litigation regarding the Applicants. Although I accept the Public Body’s statement in this regard, I do

not consider this to be the deciding factor in determining that the Public Body has properly exercised its discretion under section 26(1) of the Act. The deciding factor is the Public Body's providing access to the majority of the responsive pages of documents.

7. Conclusion under Issue C

[245.] In summary, I have found that the Public Body applied the Act in such a way that all the documents have been correctly severed, excepted or excluded under the Act in the manner I have indicated. In the result, the Applicants are not entitled to access to any of that information or to any of those documents.

Issue D: Is Application 005-96 in whole or in part “a request for the Applicant’s own personal information” within the meaning of section 87(2) of the Act, so that disclosure where made is to be without fees for services except for the cost of producing copies?

[246.] As much as I can, without identifying the Applicant, I reproduce the Applicant's request, which reads as follows:

...[R]ecords...found in the files in the name of [the Applicant] or found in other files which refer to actions made by officials of the Credit Union Deposit Guarantee Corporation and their agents with specific reference to files maintained by [named individuals] (all of the public body) which impact on the interests of [the Applicant].

[247.] The Public Body says that this is not an application for personal information, so it may charge service fees. The Public Body's position is that the Applicant asked for more than the Applicant's personal information because of the way the application is worded. The Public Body submits that section 87(2) of the Act applies only if "...the application, fairly interpreted, pertains wholly or in all material respects to the applicant's personal information". The Public Body contends that the records are not "about" the Applicant merely because they involve negotiations for the sale of a judgment in which the Applicant happens to be the judgment debtor. In its supplementary submission, the Public Body contends that the Applicant's request expressly focuses on a particular transaction, namely, the Public Body's and the Credit Union's sale of judgments to X. Corp. The Public Body concludes that the Applicant's request is therefore not a request for the Applicant's personal information.

[248.] Both section 87(1) and section 87(2) of the Act are relevant. Those sections read:

s. 87(1) The head of a public body may require an applicant to pay to the public body fees for services as provided for in the regulations.

s. 87(2) Subsection (1) does not apply to a request for the applicant's own personal information, except for the cost of producing the copy.

[249.] "Personal information is defined in section 1(1)(n) of the Act, which reads:

s. 1(1)(n) "personal information" means recorded information about an identifiable individual, including

(i) the individual's name, home or business address or home or business telephone number,

(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,

(iii) the individual's age, sex, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

(v) the individual's fingerprints, blood type or inheritable characteristics,

(vi) information about the individual's health and health care history, including information about a physical or mental disability,

(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,

(viii) anyone else's opinions about the individual, and

(ix) the individual's personal views or opinions, except if they are about someone else.

[250.] Section 87(1) and section 87(2) of the Act are silent on the issue of burden of proof. Section 67 of the Act is also not helpful on this issue. Therefore, since the Public Body is disputing that this is an application for personal information, the burden of proof should be on the Public Body. Furthermore, only the Public Body knows what is in the Records.

[251.] The Public Body acknowledges that its ability to charge fees may be limited by Ontario Orders M-514 and M-670. Both those Orders have held that the proper approach for determining whether fees may be charged for personal information is a record-by-record analysis. If a record contains an individual's personal information, those Orders say that the legislation should be interpreted to mean that no fees can be charged for access to that record.

[252.] The Public Body has done a record-by-record analysis and an alternate calculation of fees, in case I have a different interpretation of what constitutes a request for personal information. The Public Body presented this analysis at the inquiry.

[253.] In Ontario, there appears to be more than one approach used to determine whether service fees may be charged for access to personal information. Ontario Orders M-514 and M-670 seem to say that there is a two-step process for determining whether service fees may be charged. That process involves first characterizing the request as to whether any part of the request is a request for personal information, and slotting the information in the "yes" or "no" category. If the information is in the "no" category, fees may be charged even if the document contains an applicant's personal information. If the information is in the "yes" category, then there is a further step to be taken. The document must be examined to determine whether it "contains" any of the applicant's personal information, even though the document is in the category of a request for personal information. If there is no personal information contained in a document, then a service fee may be charged for that document. If there is personal information contained in the document, then no service fee may be charged for that document. The determination as to whether a service fee may be charged is made on a document-by-document basis.

[254.] On the other hand, Ontario Order P-1186 goes through the process of characterizing the request, but then looks at each document to see whether that document can be characterized as being "about" the applicant's personal information. Even if a document "contains" the applicant's personal information, it is nevertheless subject to service fees unless it is "about" the applicant's personal information. In Order P-1186, a document "about" the applicant's personal information was subsequently characterized as a request for the applicant's personal information, whereas a document that "contained"

the applicant's personal information was not characterized as a request for the applicant's personal information.

[255.] So how should the process work in Alberta? Should I, as Commissioner, first characterize the request, then look to see whether each document "contains" personal information. Alternatively, should I characterize the request, then decide whether each document is "about" the applicant's personal information, then somehow relate that decision back to the characterization of the request?

[256.] To decide this issue, I have canvassed all the relevant sections of the Act and the regulations under the Act. They are as follows:

s. 1(1)(n) "*personal information*" **means recorded information about an identifiable individual** [my emphasis], including [(i) to (ix)].

s. 1(1)(q) "*record*" means a **record of information in any form** [my emphasis] and includes books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records.

s. 2 The purposes of this Act are

(c) to allow individuals, subject to limited and specific exceptions as set out in this Act, a right of **access to personal information about themselves** [my emphasis] that is held by a public body.

s. 6(1) An applicant has a right of access to any record in the custody or under the control of a public body, including a **record containing personal information about the applicant** [my emphasis].

s. 6(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that **information can reasonably be severed** [my emphasis] from a record, an applicant has a **right of access to the remainder of the record** [my emphasis].

s. 6(3) The **right of access** [my emphasis] to a record is subject to the payment of any fee required by the regulations.

s. 87(1) The head of a public body **may** [my emphasis] require an applicant to pay to the public body fees for services as provided for in the regulations.

s. 87(2) Subsection (1) does not apply to **a request for the applicant's own personal information** [my emphasis], except for the cost of producing the copy.

s. 11(1) [Regulations] This section [fees for personal information] applies to **a request for access to a record that is a record of the personal information** [my emphasis] of the applicant.

[257.] Having reviewed the foregoing sections of the Act and regulations, I believe that the focus of the Act as to personal information is the *prima facie* right of access to any record that “contains” the applicant’s personal information, rather than a record that is “about” the applicant’s personal information. Neither section 2(c) nor section 6(1) of the Act speak of a right of access to a “record” that is “about” the applicant’s personal information; the right of access is to the personal information without further qualification, other than certain limitations on the right itself.

[258.] The right of access to a record that “contains” the applicant’s personal information is reinforced by section 6(2), which provides for severing and access to the remainder of the record, where other exceptions apply. If a record had to be “about” the applicant’s personal information before an applicant had a right of access to that record under the Act, section 6(2) would serve no purpose because it would not apply. Yet section 6(2) would apply to requests for other information under the Act. I do not think the Legislature intended that a different process should apply to an applicant’s request for his or her personal information, as opposed to a request for other information.

[259.] When a public body receives any request for information, the process is generally as follows. The public body searches its files and comes up with the responsive records, applies exceptions, severs and gives the applicant the remainder of the record. In this process, the public body does not exclude a record containing an applicant’s personal information merely because that record is not “about” the applicant. Instead, the public body tries to determine whether it can disclose that personal information, along with the other information. Sometimes it cannot because other exceptions under the Act apply.

[260.] The Act is intended to operate coherently throughout. In other words, in deciding whether to charge service fees for access to personal information, the process the public body applies to that request should not be different from the process used on the initial request for personal information. So the public body should not determine service fees any differently than it would determine a request for access to personal information. As long as a request or any part of it can be characterized as a request for access to personal information, any record that “contains” personal information should not be subject to service fees. The public body should not be trying to determine whether each record is “about” the applicant’s personal information.

[261.] A service fee includes, among other things, the time and cost required to search, locate and retrieve the record; to prepare the record for disclosure; and to copy the record: see section 12(1) of the regulations. As such, the service fee is calculated in reference to the entire record, not just those documents disclosed.

[262.] In my view, if a request can be characterized as a request for access to personal information, a public body may not charge a service fee for any document that contains an applicant’s personal information. However, a public body may charge service fees in relation to the documents that do not contain the applicant’s personal information, even if the documents are characterized as a request for access to personal information.

[263.] On the other hand, if documents are characterized as not being within the category of a request for personal information, the Public Body may charge services fees in relation to all those documents, even if they contain the applicant’s personal information.

[264.] To decide whether the Public Body may charge fees under section 87(2) of the Act, there must be “a request for the applicant’s own personal information”. To decide whether there has been a request for the applicant’s own personal information, I propose the following approach (based in part on Ontario Orders M-514, M-670 and P-1186):

- (i) Consider the wording of the request.
- (ii) Characterize the request as to the categories of records the applicant is requesting.
- (iii) Decide whether the records fall within those categories.

[265.] If any part of the request can be characterized as a request for the applicant’s own personal information, I then will decide whether each record

(not page) found to be within that category “contains” the applicant’s personal information, not whether each record in the category is “about” the applicant’s personal information. As long as any part of the request falls within the category of a request for an applicant’s own personal information, and a record within this category contains the applicant’s personal information, a public body may not charge a service fee for that record.

[266.] It follows that I do not agree with the Public Body’s contention that section 87(2) of the Act applies only if “...the application, fairly interpreted, pertains wholly or in all material respects to the applicant’s personal information”.

[267.] Having considered the wording of the Applicant’s request, I characterize that request as one in which the Applicant is seeking access to two categories of records:

(i) records in files in the Applicant’s name

(ii) records in files referring to actions (made by the Public Body’s officials generally, and agents and named individuals of the Public Body) impacting on the Applicant’s interests

[268.] In my opinion, a request for records in files in the Applicant’s name is a request for the Applicant’s own personal information. Logically, a file in a person’s name would likely, but not necessarily or always, contain that person’s personal information, which is why the person would ask for access to such a file in the first place.

[269.] However, a request for records in files referring to actions impacting on the Applicant’s interests is not a request for the Applicant’s personal information. I agree with the Public Body’s contention that this part of the Applicant’s request expressly focuses on a particular transaction, namely, the negotiation for the sale of the judgments in which the Applicant happens to be the judgment debtor.

[270.] Now I must decide whether the documents in Records Review 005-96 fall within those two categories.

[271.] To make this determination, I have carefully reviewed all the documents in question. I have tracked a number relevant considerations, namely, file names indicated on the Public Body’s internal memoranda, file names on documents originating from individuals whom the Applicant named in the Applicant’s request, and lawyers’ file numbers. I have also traced the chronology of events.

[272.] The memoranda originating within the Public Body do not have file numbers, but the majority of the memoranda clearly state that the file is in the name of the relevant credit union. In some cases, the file name carries a further internal description as to the particular issue related to that credit union (for example, the name of a court action). In situations in which the file name wasn't clear, I was able to track the files as one of the "other files" mentioned in the Applicant's request (for example, minutes of meetings). In some cases, the "other files" were also files of the individuals named by the Applicant in the Applicant's request. Both the "other files" and the named individual's files are within the second category requested by the Applicant. Because they are not "...[R]ecords...found in the files in the name of [the Applicant]...", they do not fall within the category of a request for the Applicant's personal information.

[273.] Document Number 88 initially appeared to be an exception in that the file appeared to be in the Applicant's name in a general way. However, that file was a file of one of the individuals named by the Applicant in the Applicant's request, and also does not fall within the category of a request for the Applicant's personal information.

[274.] The documents originating from credit union lawyers and the Public Body's lawyers all had file numbers. The documents generally referenced the name of the credit union and the relevant action involving the credit union, as one would expect from a lawyer's document. It appeared that the Public Body designated these documents as its "workout" files. I find that those documents were also not in files in the name of the Applicant, and do not fall within the category of a request for the Applicant's personal information.

[275.] For a number of reasons, I do not have any difficulty accepting that the Public Body's files would not be in the Applicant's name, unlike the situation in which a person deals with a financial institution such as a credit union. First, most of what the Public Body does relates to supervising and regulating credit unions. It stands to reason that the files would be named according to the relevant credit union, with a further internal description as to the particular issue. Second, in the course of the various negotiations, most of the documents have come from third party lawyers, credit union lawyers or lawyers representing credit unions and the Public Body. Those files would reference the particular client. I note that in this case, those file numbers have remained consistent throughout the documents, and have generally referenced the particular credit union or court action, or both. Third, even the documents concerning the sale of the judgments were not in files under the name of X. Corp., but were referenced according to the relevant credit union. Consequently, I do not think it unusual that files were not in the Applicant's name.

[276.] The Applicant was charged a total of \$553.84 on Records Review 005-96. The Public Body has provided me with two alternative calculations regarding fees, depending on my finding under section 87(2). According to the Public Body, a refund of \$85.34 would be owing to the Applicant if the records contained the Applicant's name and some other information about the Applicant. A refund of \$330.09 would be owing to the Applicant if the records contained merely the Applicant's name and nothing more.

[277.] Because of the manner in which I have interpreted section 87(2), I do not find it necessary to consider those refund calculations. I have found that none of the documents fall within the first category stated by the Applicant in the Applicant's request for review. All the documents fall within the second category, which is not a request for the Applicant's personal information. Consequently, the Public Body correctly charged service fees for access to the documents in Records Review 005-96.

ORDER:

[278.] Under section 68 of the Act, I make the following Order disposing of the issues.

[279.] **1.** The Credit Union, as well as X. Corp., is a third party to this inquiry.

[280.] **2.** The Public Body conducted an adequate search for responsive records.

[281.] **3.** The Public Body correctly applied section 4(1)(n) of the Act (record of a credit union in the custody or control of the Public Body) to the following:

Records Review 005-96 (the Applicant's application)
Document Numbers 118 and 120-A

[282.] Since the Public Body correctly applied section 4(1)(n) of the Act to those documents, I have no jurisdiction over them.

[283.] **4.** The Public Body correctly applied section 5(1) of the Act (disclosure prohibited or restricted by another enactment) to the following:

Records Review 005-96 (the Applicant's application)
Document Numbers 10, 12, 14-21, 21-A, 21-B, 22-24, 24-A, 24-B, 25, 25-A, 26, 26-A, 26-D, 27, 27-A, 28-30, 31, 33, 34, 36-40, 41-A, 43, 44-48, 51-55, 55-A, 55-B, 56, 56-A, 56-B, 56-D, 56-E, 57, 58, 58-A, 59, 59-A, 60, 60-A, 61, 61-A, 63, 63-A, 63-B, 63-C, 63-D, 63-E,

65, 65-A, 65-B, 68-70, 70-A, 71, 71-B, 72, 72-A, 73, 73-A, 73-B, 73-C, 75, 76, 78, 79, 79-A, 79-B, 79-C, 79-D, 79-E, 79-F, 80, 81, 82, 82-A, 82-B, 82-D, 83, 83-A, 83-B, 84, 85, 85-C, 86, 87, 88-90, 90-A, 91-94, 97, 97-A, 97-B, 98-B, 99-110, 110-A, 111-115, 115-E, 116, 116-A, 116-B, 116-C, 117, 117-A, 117-B, 119, 119-A, 119-B, 119-C, 119-D, 120, 120-B, 121-124, 124-A, 124-B, 125, 126, 126-A, 127, 128, 129, 129-A, 130, 130-A, C-4

[284.] I have found that section 5(1) of the Act also applies to the following:

Records Review 005-96 (the Applicant's application)
Document Numbers 11, 41, 72-C, 72-D, 96, 128-A

[285.] The Public Body did not correctly apply section 5(1) of the Act to the following:

Records Review 005-96 (the Applicant's application)
Document Numbers 5, 13, 64, 64-A, 72-B

[286.] **5.** The Public Body correctly applied section 16(1) of the Act (personal information), but not section 16(2)(g)(ii) of the Act, to the personal information severed in Document Number 7-A of Records Review 004-96 and Document Number 77 of Records Review 005-96. However, I have applied section 16(2)(g)(i) to the personal information severed in those two documents.

[287.] **6.** The Public Body correctly applied section 23(1)(c) of the Act (positions, plans, etc.) to the information severed in Document Number 7-A of Records Review 004-96 and Document Number 77 of Records Review 005-96.

[288.] **7.** The Public Body correctly applied section 26(1)(a) (solicitor-client privilege) of the Act to the following:

Records Review 003-96 (A3 Ltd.'s application)
Document Number 1

Records Review 004-96 (AS Ltd.'s application)
Document Numbers 6, 6-A, 7, 10, 11

Records Review 005-96 (the Applicant's application)
Document Numbers 4, 9, 13, 49, 64, 64-A

[289.] The Public Body did not correctly apply section 26(1)(a) (solicitor-client privilege) of the Act to the following:

Records Review 005-96 (the Applicant's application)
Document Number 5

[290.] **8.** The Public Body correctly applied section 26(1)(a) (litigation privilege) of the Act to the following:

Records Review 005-96 (the Applicant's application)
Document Number 5

[291.] **9.** The Public Body correctly applied section 26(1)(b) of the Act (legal services) to the following:

Records Review 005-96 (the Applicant's application)
Document Numbers 72-B

[292.] **10.** The Public Body exercised its discretion properly under both section 23(1) and section 26(1). The Public Body disclosed, in their entirety, 1051 pages out of a total of 1421 pages (approximately 74 per cent) of the Records responsive to the Applicants' requests.

[293.] **11.** In summary, I uphold the head's decision to refuse access to all the documents, contained in the Records, excepted or excluded by the Public Body under the Act. I also uphold the head's decision to refuse access to all the information, contained in the Records, severed by the Public Body under the Act. In the result, the Applicants are not entitled to access to any of that information or to any of those documents.

[294.] **12.** I find that all the documents in Records Review 005-96 are not within the category of being a request for the Applicant's own personal information under section 87(2) of the Act. Consequently, the Public Body correctly charged service fees for access to the documents in Records Review 005-96, and I uphold the Public Body's decision in that regard.

Robert C. Clark
Information and Privacy Commissioner