



IPC file #: F04-21455
Land and Water BC Inc. file #: LW104.009
Environmental Law Clinic file #: 2004-02-02

To The Commissioner of Information & Privacy for British Columbia:

Re: Written Inquiry into the April 13, 2004 decision by Trip Kennedy, Manager of Information, Privacy and Records of the Corporate Services Division Supporting the Ministries of Sustainable Resource Management, Water, Land and Air Protection and associated entities (“the Manager”), to deny a fee waiver to Shawnigan Lake Watershed Watch for the production of certain information requested under the *Freedom of Information and Protection of Privacy Act*.

I make the following submissions on behalf of the applicant Shawnigan Lake Watershed Watch Association (SLWWA) for the Written Inquiry of February 22, 2005.

Issue – In the inquiry the Commissioner or his delegate will consider the public body’s decision to deny the applicant’s request for a fee waiver made under s. 75(5)(a) and(b) of the *Act*.

1) As noted in the Portfolio Officer's Fact Report, in a letter dated February 23, 2004 the Shawnigan Lake Watershed Watch (SLWWA) group requested an opportunity to view and copies of records related to Crown land properties in the Shawnigan area (defined by current municipal boundaries as "Area B") emanating from or received by the office of Mark Hallam, regional Vancouver Island Manager, Lands and Water BC, Marketing and Development, Victoria office, for the period starting April 1, 2002 to the present time. The records sought related to Crown lands that were proposed to be sold for large private developments in the Shawnigan lake area.

2) In subsequent correspondence, the public body quoted a fee of \$810 for such records, and denied a request for a fee waiver based on public interest and affordability grounds. SLWWA seeks a review of the public body's decision to deny the request for a fee waiver pursuant to sections 75(5)(a) and (b) of the Act.

3) In its February 23 letter, SLWWA requested a public interest fee waiver, stating:

I also hereby ask that the fee for fulfilling my request under the Act be waived. As set forth in section 75(5)(b) of the Act, the records I have requested relate to 'a matter of public interest, including the environment...'. The subject of the records is a matter of increasing

concern to citizens of the Shawnigan area who fear the sale of forestry lands for potential subdivision may affect the well-being of their community watershed...

In subsequent communication, and in its May 26, 2004 complaint, the SLWWA has put forth the reasons why it should be granted a fee waiver both in the public interest (on environmental and other public interest grounds) and because of an inability to pay.

The Public Interest Fee Waiver Issue

- 4) SLWWA's application for records met the threshold required for records to qualify for a public interest fee waiver, according to the principles enunciated by the Information and Privacy Commissioner in Order 01-35. Applying these principles, the fee waiver should have been granted.

- 5) At p. 5 of Order 332-1999, the Information and Privacy Commissioner described the two-part test for determining if a public interest fee waiver is warranted under s. 75(5)(b) of the Act:
 - “1. The head of the Ministry must examine the requested records and decide whether they relate to a matter of public interest (a matter of public interest may be an environmental or public health or safety matter, but matters of public interest are not restricted to those kinds of matters). The following factors should be considered in making this decision:
 - (a) has the subject of the records been a matter of recent public debate?;

- (b) does the subject of the records relate directly to the environment, public health, or safety?;
- (c) could dissemination or use of the information in the records reasonably be expected to yield a public benefit by:
 - i. disclosing an environmental concern or a public health or safety concern?;
 - ii. contributing to the development or public understanding of, or debate on, an important environmental or public health or safety issue?; or
 - iii. contributing to public understanding of, or debate on, an important policy, law, program or service?;
- (d) do the records disclose how the Ministry is allocating financial or other resources?

2. If the head of a Ministry, as a result of the analysis outlined in paragraph 1, decides the records relate to a matter of public interest, the head must still decide whether the applicant should be excused from paying all or part of the estimated fee. In making this decision, the head should focus on who the applicant is and on the purpose for which the applicant made the request. The following factors should be considered in doing this:

- (a) is the applicant's primary purpose for making the request to use or disseminate the information in a way that can reasonably be expected to benefit the public or is the primary purpose to serve a private interest?
- (b) is the applicant able to disseminate the information to the public?"

6) In considering the request for a public interest fee waiver, the public body should have considered the factors laid out in Order 332-1999. It clearly failed to. And if failed to do so in case involving the quintessential public interest issue. Nothing is more important to the public than safeguarding the water that it drinks.

1) Qualification of an applicant's interest as 'public':

- 7) Perhaps the most egregious error made by the Manager was his characterization that the population of Shawnigan Lake is not a "significant subset of the public" of British Columbia, and therefore cannot qualify for public interest fee waivers.
- 8) In response to SLWWA's request for records relating to lands proposed for development that may impact the Shawnigan Lake community's water supply, the Manager stated in his April 13, 2004 letter:

The public associated with the 'public interest' reason for waiving otherwise payable fees under the Act is the public of British Columbia generally or, at the least, a significant subset of that public. While I have no doubt that the issue involved is of considerable interest to the members of the Shawnigan Lake community, that is a rather small community and not one which could, I think be accurately characterized as the public of British Columbia generally or a significant subset of that public. I am drawn to the conclusion that the scope of this issue is too particular to qualify for a fee waiver on the "public interest" ground.

- 9) With respect, I submit that the interests of the Shawnigan Lake community are significant enough to qualify as "public interest". It would be shocking, otherwise. Under the Manager's interpretation, people in Vancouver concerned about their water could qualify for "public interest" status, simply because they constitute a "significant subset of that public". But people concerned about their drinking water in "a rather small community" would not qualify.

10) Clearly, the Shawnigan Lake community's interest in its drinking water supply is an interest that is a "public interest".

11) The Information and Privacy Commissioner ("Commissioner") explored the question of what comprised the public interest in OIPCBC Order 01-35: Ministry of Forests. In Order 01-35, the applicant requested all records relating to a forest company's proposals for construction of logging roads and cutting of timber in a watershed. The watershed supplied the domestic water for approximately 40 households. The Commissioner found that the roughly 40 households in the watershed area qualified as "the public interest":

"[33] The main thrust of the Ministry's position is to suggest that a line must be drawn somewhere – the Ministry does not say how or where – between larger and smaller communities. This suggests that the involvement of larger communities of some undefined size in water quality concerns would qualify, but that a grouping of only 40 households is not large enough..."

[34] Nothing before me suggests that the records relate to a matter of merely private interest. *I have no hesitation in concluding that the roughly 40 households located in the watershed qualify as the "public" (emphasis added).*"

12) In light of this decision, it is surprising the Manager declined to recognize the residents of Shawnigan Lake as a "public" sufficient to trigger "public interest". Shawnigan Lake is a community of approximately 8,500 residents, most of whom receive their drinking water from the Shawnigan Lake reservoir. A community of 8,500 residents easily surpasses the 40 households that the Commissioner qualified as "the public" in Order 01-35.

a) has the subject of the records been a matter of recent public debate?

13) There has been sufficient community concern over the fate of Crown property in the Shawnigan Lake reservoir area to garner newspaper / media coverage (see attached) and television coverage of the proposed development of Crown property in Shawnigan Lake. This coverage has come despite the lack of information from LWBC on which to base a news story. Until mid-May 2004, and apart from an LWBC-organized introductory meeting confined to general, exploratory themes, other discussions of the proposed development of Crown property in the Shawnigan Lake reservoir area had all taken place behind closed doors, and no record of the progress of the development plans had been made public. Once further information is made available via this information request, there will likely be sufficient interest to garner more extensive media coverage of the issue.

14) As a further indication of the level of public debate on these issues, in June 2004, Mary Desmond was interviewed on CBC Radio by David Greirson and in September 2004, the SLWWA co-hosted a public meeting in which approximately 500 people attended. (See Notice of Important Public Meeting in Media materials appended.) Furthermore, there has been some website coverage publicized on the SLWWA's concerns.

15) Clearly the subject of the records requested was “a matter of public debate”, given the media coverage, and the activities and concerns of the Shawnigan Lake community, particularly the SLWWA, about the development proposals.

b) does the subject of the records relate directly to the environment, public health or safety?

16) I submit further that the records SLWWA seeks “relate directly to the environment”. In Order 01-35, the Commissioner explored the question of whether an application relates directly to the environment. In concluding that the record sought by the applicant related to “the environment”, and therefore satisfied the first stage of the two-part test, the Commissioner reasoned as follows:

[30]...The Legislature intended “the environment” to mean, I conclude, something that relates to the quality, health, protection, degradation or preservation of the environment. It follows that a record will relate to the environment if it relates, at the very least, to the quality, health, protection, degradation or preservation of the environment.

[31] Accordingly, regardless of whether the Ministry is aware of any degradation in water quality (or other environmental effects) from Slokan’s operations, *I am satisfied that the requested records relate to “the environment”. They clearly relate to Slokan’s proposed and actual operations in the watershed and to the Ministry’s planning and regulatory activities in relation to Slokan’s plans and operations* (emphasis added).

17) I respectfully submit that by this measure, the records sought by SLWWA relate to “the environment”. The records SLWWA seek relate to developments that have great potential to further compromise the integrity of the Shawnigan Lake

reservoir. According to four reports recently commissioned and issued by LWBC,¹ LWBC has considered the sale of eight units of Crown property within the Shawnigan Lake reservoir area, and is in advanced stages of planning for the development of at least two of these properties. On one of those units, a Crown property straddling South Shawnigan Creek, a 2300 unit housing estate with an ice rink, banks, 18 hole golf course, indeed an entire town - the West Malahat Village, was proposed by LWBC for development. South Shawnigan Creek is the main feeder creek flowing into Shawnigan Lake (the reservoir for the Shawnigan Lake community), and the land considered for development is a sensitive recharge area of an officially designated Community Watershed. On another unit proposed by LWBC for development - Mt. Baldy - the number of proposed housing units ranges from 60 to 200, dependent on the viability of wastewater/sewage treatment.

18) The majority of residents of Shawnigan depend directly upon Shawnigan Lake and its related watercourses for their drinking water. In recent years, the integrity of the Shawnigan Lake watershed has been eroded by recently-constructed housing estates. As a result, the lake is showing signs of eutrophication which, explained in simple terms, can indicate an accelerated aging of a water body. In a 1998 report prepared for the CVRD, scientists from the Stanley Consulting Group Ltd. indicated this eutrophication has likely been caused by excessive nutrient

¹ *Economic Impact Assessment of the Golf Resort Concept Proposed for the West Malahat Area* by Grant Thornton; *Crown Lands - South Area, Electoral Area 'B', CVRD Development Options* by Bullock Baur; *Preliminary Environmental Assessment Shawnigan Lake Crown Land Study* by EBA Engineering Consultants Ltd; *Initial Evaluation for Onsite Sewage Systems and Water Wells for Nine Crown Land Parcels at Shawnigan Lake* by Payne Engineering Geology

loading which, in turn, has been precipitated by the number of human dwellings in close proximity to the lake and other connected watercourses:

“Continued nutrient loading to the surface waters (of Shawnigan Lake) will accelerate the process of eutrophication in surface waters. The population growth in the Cowichan Valley and in particular the South Sector (Shawnigan, Mill Bay) is causing increased pressure on the treatment and disposal of liquid wastes.”

19) In his letter of April 13, 2004, the Manager asserted that he saw the question of water quality as “marginally relevant in the context of what will probably prove to be a rather small portion of all the records you have requested.” I submit that water quality is likely to be a central concern of the records we have requested. As indicated earlier, the proposed West Malahat Village was to be located alongside the main feeder creek flowing into the reservoir for the Shawnigan Lake community, on a sensitive recharge area of that watershed. The size of the proposed Mt. Baldy development appears to be dependent on the viability of wastewater/sewage treatment. Moreover, the area about which we are requesting records contains six other sites proposed by LWBC for development in the Shawnigan Lake watershed area. Given the scale and proximity of these eight developments to the reservoir, their effect on the Shawnigan Lake reservoir could be profound and long-lasting.

20) Consequently, I respectfully submit that, like the application in Order 01-35, the records I seek relate to the “quality, health, protection, degradation or preservation of the environment”, to LWBC’s proposed developments and to LWBC’s planning and regulatory activities in relation to such developments.

c) could dissemination or use of the information in the records reasonably be expected to yield public benefit (by):

- 21) The dissemination of information about the watershed and possible impacts on it is one of the primary purposes of SLWWA. This was indicated clearly in SLWWA's letter of February 23, 2004, quoted above, where it was stated, "... (SLWWA has) very limited financial resources, most of which are directed toward gathering and disseminating information for local resident." This activity is very important for the Shawnigan Lake community especially since it is seen as contributing to public understanding or debate about an important policy, such as the LWBC's policies on Crown land development projects.
- 22) Disseminating full information about government decisions on developments that could have such significant impacts and change the very nature of the community would yield a public benefit.

i. disclosing an environmental or a public health or safety concern;

- 23) It has been stressed that the residents of Shawnigan Lake are concerned about the quality of their drinking water. In SLWWA's letter, dated April 5, 2004, it was stated that, "The protection of water at source is another significant factor, and for most citizens in Shawnigan Lake, the majority of whom depend directly upon the lake and its related watercourses for their drinking water, this is the very crux of the matter." Clearly, this is not only an environmental concern but also a very

significant health concern for the Shawnigan Lake citizens, particularly since drinking water is vital to an individual's health. Furthermore, it is entirely possible that if the source of water issue is not properly addressed, then it is likely that a safety concern may arise for the citizens of Shawnigan Lake. That safety concern is the personal well being of all Shawnigan Lake citizens, who if subjected to unhealthy drinking water, could lead to mass illnesses, as occurred in Walkerton, Ontario.

24) I submit that the SLWWA is attempting to disclose an environmental, public health and safety concern and that their effort to disseminate such information does meet the standard used by the Commissioner in Order 01-35, where he said that "this is not only an environmental concern, but also a public health and safety concern."

ii. contributing to the development or public understanding of , or debate on, an important environmental or public health or safety issue;

25) Part of SLWWA's mandate is to develop and increase public understanding of matters related to watershed protection. To this end, SLWWA has issued mass mail-outs of our newsletters and gained the attention of local reporters on issues related to the Shawnigan reservoir. The records SLWWA seeks are in relation to the development of public lands in areas that could impact the Shawnigan reservoir. SLWWA would make every effort to make public any such information

contained in the record and would also make this information available to decision-makers, as we pursue the public interest of protecting the reservoir.

26) Furthermore, I submit that the dissemination of information about how the proposed development could impact drinking water safety will likely contribute to a better public policy decision. In addition, the public will be more likely to accept the final decision, if it is fairly made after the public has been fully informed and had a chance to be involved in the decision making.

27) Therefore, I submit that the citizens of Shawnigan Lake are entitled to be informed of the full factual background of the decisions regarding land development. SLWWA's request for records was intended to contribute to the development of public understanding of an important environmental or public health or safety concern.

iii. contributing to public understanding of, or debate on, an important policy, law, program or service;

28) The information in these records would clarify LWBC intentions regarding Crown forestry lands in the Shawnigan Lake Area. For over three years, SLWWA has been engaged in a campaign to establish Crown forestry lands in our area as an officially recognized Community Forest. (See appended media materials.) This campaign was undertaken to grant the Shawnigan Lake community a measure of control over what occurs on Crown lands in the Shawnigan watershed, and to, among other things, protect the watershed's

environmental values. There is no doubt that the proposed development plan would compromise the ability to establish the alternative of an environmentally and socially beneficial community forest. Information about what Government is doing with these lands will contribute to the debate on that important policy issue.

29) The SLWWA has worked very hard, with limited funds, to gather and disseminate information about issues that may affect the Shawnigan Lake watershed area. It is the intent of SLWWA's efforts to create a better public understanding of the important public policy choices that exist for land management in the Shawnigan Lake area (including the public policy choice between establishing a community forest and selling land for development). When it receives the records, SLWWA intends to give full information to Shawnigan Lake citizens about the content of the records. It is critical for the SLWWA to provide such information to the community, since their environment, public health and possibly their personal safety may be compromised. In addition, dissemination of the information in the records would facilitate informed public discussion about the important public policy questions surrounding land use in the Shawnigan Lake area.

d) do the records disclose how the Ministry is allocating financial or other resources?.

30) The records including, the so-called "administrative records", deal with the sale of public lands – one of the most important decisions government can make. Dissemination of information about the sale and transformation of public forest

lands into private, urbanized lands is in the public interest -- so that the public can understand what government is doing when it sells off its lands.

31) For the above reasons, I submit that the SLWWA request for a fee waiver meets the first part of the two part test, noted at p. 5 of Order 332-1999.

The second stage of the two -part test – Should the fee be waived?

32) The second stage of the two-part test indicates that the head of a Ministry should focus on who the applicant is and on the purpose for which the applicant made the request. Two factors should be considered in this consideration.

33) The first factor is whether the applicant's primary purpose for making the request is to use or disseminate the information in a way that can reasonably be expected to benefit the public or whether the primary purpose is to serve a private interest. SLWWA has 170-180 members spread throughout Area B in Shawnigan Lake. The SLWWA have demonstrated their interest in making information public, by circulating information to Shawnigan residents through a computer-based listserv, newsletters, and press articles. This is not a "not-in-my-backyard" campaign launched by South Shawnigan Creek residents concerned about their property values. The primary purpose for our request is to create public awareness around any potential issues, such as land development, that may affect the lives of all Shawnigan Lake citizens who drink water from the Lake. As noted in paragraph 8 above, any concerns about potential negative impacts on the

drinking water supply are of paramount public interest and creating awareness about these concerns is crucial, in light of any development project proposals.

34) The second factor is whether the applicant is able to disseminate the information to the public. Although SLWWA's financial means are very limited, we do manage to disseminate information in a number of ways including, as indicated above, a computer-based listserv, newsletters, and press articles. We are presently designing a website for greater public access, and are planning a town hall meeting with our elected representatives to better inform the public on this issue. In addition, SLWWA has built alliances with other organizations, such as Friends of Egmont, who contribute to the dissemination of SLWWA's concerns by publishing them on their website.

35) I submit that the SLWWA's request for fee waiver should be granted because it does meet the second part of the two part test. This submission is further strengthened by considering the five additional criteria relevant to a head's exercise of discretion under the second part of the two part test laid out in Order 01-35 at paragraph 46, by the Commissioner.

Relevant additional criteria under the second stage of the two -part test

36) In Order 01-35 at paragraph 46, the Commissioner stated:

“Although the list of factors will never be exhaustive, I consider that the following criteria may, in addition to those described or referred to above, be relevant to a head's exercise of discretion:

1. As expressly contemplated by s. 58(3)(c) of the Act, whether "a time limit is not met" by the public body in responding to the request;
2. The manner in which the public body attempted to respond to the request (including in light of the public body's duties under s. 6 of the Act);
3. Did the applicant, viewed reasonably, cooperate or work constructively with the public body, where the public body so requested during the processing of the access request, including by narrowing or clarifying the access request where it was reasonable to do so?
4. Has the applicant unreasonably rejected a proposal by the public body that would reduce the costs of responding to the access request? It will almost certainly be reasonable for an applicant to reject such a proposal if it would materially affect the completeness or quality of the public body's response;
5. Would waiver of the fee shift an unreasonable cost burden for responding from the applicant to the public body?"

37) Regarding the first criterion, LWBC did meet the time limit requirement in responding to SLWWA's request.

38) Regarding the second criterion, section 6 of the Act specifies that the head of a public body must make every reasonable effort to assist applicants. With respect, SLWWA does not believe that the Manager made every reasonable effort to assist with this application. The release of information has been delayed for a year. In addition, SLWWA feels that the Manager should have had a working knowledge of how the "public interest" test was applied in Order 01-35. Much of the delay in this case arises from the fact that the Manager ignored the clear precedent of Order 01-35. In light of Order 01-35, it is inexcusable that he denied a fee waiver on the ground that Shawnigan Lake is not a sufficiently broad enough segment of the public to comprise the public interest. In 01-35, forty water users was deemed to be a sufficient portion of the public to trigger the

public interest – yet the Manager here characterized the thousands of water users at Shawnigan as not being a “significant subset of that public”.

39) We also question, again with respect, the logic with which the Manager stated in his letter dated April 5, 2004: “(G)iven the Regional District’s direct responsibility for (the water quality) issue, it is not clear to me how Land and Water BC, Inc.’s records would further elucidate the issue.” The answer is straightforward: the proposed sale and development of the Crown properties managed by LWBC would likely have a direct adverse impact on the Shawnigan Lake watershed. We made this point clear on page 2 of our letter to the Manager dated April 5:

“Ministry of Forests officials have warned us of a huge gated community development [700 units with 18 hole golf course] envisaged by LWBC to be located on Crown blocks straddling the South Shawnigan Creek. That this body of water is the main feeder creek flowing into the lake, our reservoir, and that the land considered for development is a sensitive recharge area of an officially designated Community Watershed, seems to have escaped the attention of LWBC is a source of considerable distress to us.”

40) In addition, the LWBC’s initial response to our request was that the fee for the records was going to cost SLWWA \$810.00. After mediation, the government reduced the fee by almost 75% to \$220.00. This gives a clear indication that the fee was unreasonable to begin with. The intent of the s. 75 (5) (b) fee waiver for public interest groups was to ensure that such groups are not subjected to unwarranted or unreasonable fee requests. If such huge initial fee requests are commonplace, as many believe, such fees may deter public interest group

participation -- especially for those small community groups that lack adequate resources to challenge unreasonable fee demands. In SLWWA's case, the fee was only reduced after the organization did a great deal of work on the appeal. What about all those groups that get discouraged and walk away from working on a public interest issue when they are confronted with demands for such high fees? I submit The Commissioner's decision on this matter should not sanction such unreasonable initial fees.

41) Finally, the Manager did not appear to have adequately considered whether our application should qualify for a fee waiver under s. 75(5)(a) in his April 13, 2004 letter. The Manager asserted that he was "unable to see a connection" between the fee waiver and the release of the records. The SLWWA organization has very limited means, and the Manager was told as much on SLWWA's April 5 letter to him: "(The \$810) sum is so far beyond the means of our organization, payment would bankrupt us." (See p. 4 of the letter.) Overall, I submit that the Manager could have given more reasonable consideration to SLWWA's request for fee waiver on the grounds of affordability in April, 2004, and that such consideration would likely have been the more appropriate response under the second criterion of this test.

42) Regarding the third and fourth criteria, the Manager proposed narrowing our application to seek fewer records. However, doing so would materially affect the completeness or quality of LWBC's response. There are eight Crown properties

under LWBC's management in Area B which LWBC has recently considered for sale and development. These eight properties all fall within the Shawnigan Lake watershed area, and eventually drain into the reservoir. It would therefore appear as though all the material relating to Crown land properties in Area B under LWBC's management would be relevant to our request. The Community Forest proposal also overlaps with all eight units proposed by LWBC for development. SLWWA submits that if it were to narrow its proposal any further, it would materially affect the completeness or quality of the record that it has asked LWBC to provide.

43) Regarding the fifth criterion, it is submitted that a fee waiver would not shift an unreasonable cost burden to LWBC. It is more likely that an \$810 fee waiver is a small price to pay for enabling a well-established, resourceful group of committed citizens to consider and make public the long-term implications of the proposed development of areas in their community watershed.

44) In sum, I submit that the SLWWA's application meets the two-part test for a fee waiver on public interest grounds.

An additional development in the 'public interest' issue:

45) As noted in the Portfolio Officer's Fact Report, after mediation had begun and SLWWAA had spent an inordinate amount of time trying to obtain the records

and a fee waiver, the public body changed its tack and stated that the records requested were “almost exclusively administrative records and do not relate to an environmental issue.” (See the November 8, 2004 letter from Trip Kennedy, signed by Gerry Edwards.) That letter listed the type of “administrative records” that were within the files as including:

Draft Environmental Assessment Report – Shawnigan; Appraisals; Maps; Correspondence; Emails; Requests for Proposals and Proposals; Parcel Descriptions/General; Water Supply Report; Meeting Agendas; Schedules/Work Plans and Media Reports.

46) Clearly some if not all of these records could be relevant to an environmental issue. For example, the assessment report, correspondence, emails, water supply reports, meeting agendas could obviously bear on environmental and water quality issues. Other documents could bear on important public policy issues related to how government is dealing with its assets and resources when it sells off public lands.

47) Mary Desmond, President of SLWWA subsequently met with Mark Hallam and asked him specifically about what exactly an ‘administrative record’ was and if he could show her an example of one. Ms. Desmond states that Mr. Hallam evaded the question and when she asked if he could provide her with an example of an actual administrative record, as opposed to an environmental record, he refused.

48) Because of the public body’s unwillingness to share such information, SLWWA has not been able to confirm the precise nature of the documents in question. In

these circumstances, it is unreasonable for the LWBC to simply assert that this list of documents is exclusively administrative, without some reasonable explanation of what it means. All records have an “administrative record” aspect to them – but they may also have an aspect that is relevant to environmental and public policy issues as well. To arbitrarily label documents as “administrative” and not related to an environmental issue may ignore the full context of the records themselves. Many of those records may have an environmental or public policy aspect, but the SLWWA has not been given sufficient information to determine that.

49) There is another reason why it is important for the public to know precisely what records Land and Water BC has – and does not have -- on file. The extent to which environmentally-related records do not appear on the agency’s file gives the public an indication of the measure of due diligence the agency is applying to the question of selling and developing sensitive Crown forest lands. In a transaction like this, if there is a dearth of environmentally-related records, that fact may be as significant as what is on the file.

s. 75(5)(a) - Fee waiver on grounds of affordability

50) I submit further, that our application should be granted a fee waiver under section 75(5)(a) of the Act. This section provides that the head of a public body may excuse the applicant from paying all or part of the fees for services if in the head’s opinion the applicant cannot afford the payment.

51) SLWWA could not afford the \$810.00 fee initially quoted or the reduced fee of \$220.00 quoted after SLWWA appealed. This concern was not adequately addressed by the Manager in his letter dated April 13, 2004, where the suggestion was that the SLWWA should just “pay the deposit, under protest”. The SLWWA has a very modest budget, most of which is provided by donations from community members. SLWWA typically spends the bulk of the budget each year on dissemination of information, administration and some maintenance. We are not an organization that has a research budget; therefore, spending \$810.00 (or \$220.00) on this record is not a viable option for us, even under protest.

52) The SLWWA financial statements for March 31, 2003 to March 31, 2004 indicate that the SLWWA had \$487.07 in revenue and \$1,198.36 in expenses, leaving them with a deficit of \$711.29 for the 2003-2004 fiscal year. (These are the financial statements filed with the Provincial government to maintain our non-profit status). SLWWA’s current balance on the most recent bank statement dated October 31, 2004 is \$208.22. See the attached statements.

53) The original fee demanded was almost four times the amount in SLWWA’s bank account. Even with the reduction offered after mediation, the fee demanded exceeds the total in our organization’s bank account.

Conclusion

54) In conclusion, I submit that the Shawnigan Lake Watershed Watch Association application for a fee waiver should be granted, under both s. 75(5)(b) and under s. 75(5)(a) of the Act.

Respectfully Submitted,

Karla Point

February 14, 2005