

MINUTES

COMMITTEE: Ethics Committee

DATE: April 10, 1997

5. CHAPTER 5, RULE 15: WHETHER LAWYER HAS DUTY TO RETURN DOCUMENT TO OPPOSING PARTY

Lawyer 1 acts for an employer. Trade Union 1 is currently the bargaining agent for the employees of the employer. Lawyer 2 represents Trade Union 2, which is attempting to supplant Trade Union 1 as the bargaining agent for the employees. Trade Union 2 is currently seeking remedies against the employer for unfair labour practices it alleges the employer has used against its supporters.

Trade Union 2 obtained a copy of a letter marked "Confidential" from the employer and provided that letter to Lawyer 2. In the letter the employer sought advice from Lawyer 1, its legal counsel, concerning the employer's legal rights and responsibilities given Trade Union 2's activities.

Lawyer 1 has asked the Committee whether Chapter 5, Rule 15 requires Lawyer 2 to turn over the copy of the letter he has in his possession to Lawyer 1 or Lawyer 1's client.

The Committee was of the opinion that in these circumstances Lawyer 2 must follow the requirements of Rule 15, including the requirement to return the copy of the letter. The Committee did not consider it material whether the letter came into the possession of Lawyer 2 before or after proceedings to adjudicate between the interests of the employer and Trade Union 2 were formally commenced.

The Committee noted that Rule 15 deals with a lawyer's ethical obligations only. It does not purport to tell lawyers how they may use any information derived from a document covered by the Rule. One of the courses open to Lawyer 2 is to argue that the privilege attaching to the document has been lost as a result of its disclosure and that it should, therefore, be made available to Lawyer 2's client for use in the proceedings. This is a legal issue, not an ethical one, and the Committee expressed no view on this question.