

MINUTES

COMMITTEE: Ethics Committee

DATE: March 28, 2001

6. CHAPTER 4, RULE 1.1 AND SECTION 5 OF THE *FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT*

A lawyer asked whether she is required to make freedom of information requests to a public body through a lawyer for the public body in circumstances where the request is made in relation to a matter where the other lawyer is acting for the public body. The Committee noted that Chapter 4, Rule 1.1 of the *Professional Conduct Handbook* prevents lawyers communicating directly with a client who is represented by another lawyer. On the other hand section 5 of the *Freedom of Information And Protection Of Privacy Act* (“the *FIPP Act*”) contemplates that to obtain access to a record, an applicant must make a written request to the public body that the applicant believes has custody or control of the record. Section 79 of the *FIPP Act* states that if a provision of the *FIPP Act* is inconsistent or in conflict with a provision of another Act, the provision of the *FIPP Act* prevails.

It was the Committee’s view that Rule 1.1 must be read as subject to Section 5 of the *FIPP Act*. For that reason, it is proper for lawyers to make freedom of information requests directly to a public body in a matter where the public body is represented by a lawyer, and not through the lawyer representing the public body.

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