

MINUTES

COMMITTEE: Ethics Committee

DATE: October 3, 2002

10. CHAPTER 5: EFFECT OF DIRECTIVE TO DISCLOSE WITNESSES ON LAWYER'S DUTY OF CONFIDENTIALITY

A new practice directive from the office of the Chief Justice of the Supreme Court of British Columbia requires parties to litigation to exchange a list of witnesses with time estimates prior to a scheduled Pre-Trial Conference. A lawyer says that this practice directive creates a difficulty for counsel who receive instructions from their clients not to disclose the names of witnesses until the trial and asked for the opinion of the Committee on counsel's obligations in light of the directive.

It was the Committee's opinion that counsel who receive instructions not to disclose the required information can apply to a judge to be exempted from the requirement. The practice directive specifically contemplates such an application. If the exemption is refused, however, they must decline to accept client instructions not to provide the list and, if necessary, withdraw from the retainer.

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