

MINUTES

COMMITTEE: Ethics Committee

DATE: December 5, 2002

PRESENT: Ron Toews, Q.C. – Chair
Laura Donaldson
Robert W. Gourlay, Q.C.
Margaret Ostrowski, Q.C.
Glen Ridgway, Q.C.
John Smith
Anne M. Stewart, Q.C.
William M. Trotter, Q.C.
James Vilvang, Q.C.
Peter Voith (for items 1 to 6)
David Zacks

ABSENT: William J. Sullivan, Q.C. - Vice-Chair
Robert Diebolt, Q.C.

STAFF: Jack Olsen
Jeff Hoskins

5. CHAPTER 6, RULE 7.9: WHETHER LAWYER HAS EXERCISED DUE DILIGENCE IN SUPERVISION OF NON-LAWYER STAFF

Lawyer A asked for an opinion from the Ethics Committee pursuant to Rule 7.8 concerning whether Lawyer B has met the standards of due diligence required by Chapter 6, Rule 7.9.

The issue arises as a result of the decision of Ms. W, a former non-lawyer assistant in Lawyer A's office, to take employment in the same capacity at the office of Lawyer B. Lawyer B is on the opposite side of five files from Lawyer A and Ms. W worked on those files when she was employed in Lawyer A's office. Lawyer A takes the position that Lawyer B should cease acting as lawyer for the relevant clients on the basis that Ms. W's new employment with him places him in a conflict.

Ms. W left Lawyer A's employment on April 19, 2002 and commenced employment with Lawyer B on May 6, 2002. In a letter dated April 23, 2002 Lawyer A raised the issue of the conflicts with Lawyer B and took the position that Lawyer B should withdraw from the relevant files. Lawyer B has advised his staff of the difficulty created by Ms. W's employment with his firm given her past employment with Lawyer A's firm in a memo to his staff dated May 31, 2002. The memo identifies the relevant files where lawyers A and B act for clients adverse in interest and describes the following steps taken in Lawyer B's office to ensure that the confidential information of clients from Lawyer A's firm is not compromised:

1. All relevant file materials were removed from Ms. W's work area;
2. Ms. W is not to provide staff support on any of the relevant files;
3. Ms. W is to have no involvement whatsoever in any aspect of the relevant matters;
4. Ms. W has been reminded of the sensitivity of any information she obtained when she was employed in Lawyer A's firm and her obligations to keep that information confidential and not to divulge it to any member of Lawyer B's firm.
5. Ms. N, the other assistant at Lawyer B's office, was reminded similarly and specifically directed not to discuss any aspect of the relevant matters with Ms. W.

Based on the information provided by Lawyer B concerning the steps he had taken to protect the confidential information acquired by Ms. W at Lawyer A's firm, the Committee was satisfied that Lawyer B had exercised the due diligence required by Rule 7.9.

JO/
12-02