

## MINUTES

**COMMITTEE:** Ethics Committee

**DATE:** September 4, 2008

### **3. CHAPTER 11, WHETHER LAWYER HAS OBLIGATION TO RETURN A DOCUMENT THAT IS NOT GENUINE**

Lawyer X acts for the husband in a matrimonial issue and Lawyer Y acts for the wife. The lawyers settled all matters in the action and, by agreement, Lawyer X was to speak to the consent order and seek a divorce. Lawyer Y sent Lawyer X the marriage certificate that had been provided to Lawyer Y by Lawyer Y's client.

The marriage certificate is from a foreign jurisdiction and the certificate was provided to Lawyer X with the appropriate translation, translator's certificate and translator's photocopy attached. Lawyer Y told Lawyer X that Lawyer Y's client wanted the certificate back. Lawyer X agreed to file the certificate in court, and Lawyer Y agreed to requisition it from the court later.

When Lawyer X received the marriage certificate, she was of the view that the certificate, the translation and the translator's photocopy had been altered. In addition, the date of marriage on the certificate was incorrect. The certificate contained a clause about a payment upon divorce and it is these amounts that Lawyer X noted appeared to have been altered.

Lawyer X's client is apprehensive that the altered certificate may be used against him in some manner in his country of origin and has instructed Lawyer X not to return the documents to Lawyer Y. Lawyer Y has asked for the return of the documents.

Lawyer X asked the Ethics Committee what her obligations are with respect to the documents given these circumstances.

The Committee was of the view that the proper course for Lawyer X to follow is to retain the documents pending a determination by a court as to who is entitled to them. Either Lawyer X or Lawyer Y could make an application for such a determination, but the Committee was not of the view that either of them must do so. In the absence of a court order or an agreement between the parties that ensures the documents are not used for a fraudulent purpose, it was the Committee's view that it would be improper for Lawyer X to either give the documents to her client or return them to Lawyer Y.