

COMMITTEE: Ethics Committee

DATE: April 2, 2009

4. CHAPTER 6, RULE 4: FURTHER QUESTIONS CONCERNING COUNSEL'S OBLIGATIONS TO THE INSURED AND INSURER IN THIRD PARTY LIABILITY ISSUES

- a) What are a lawyer's obligations to the insured where ICBC is permitted, pursuant to Regulation 74.1 enacted pursuant to the Insurance (Vehicle) Act to instruct counsel over the objection of the insured?**

The Committee noted that under Regulation 74.1 ICBC is entitled to

- (a) appoint and instruct counsel to defend the action,
- (b) admit liability, in whole or in part, on behalf of the insured,
- (c) participate in any non-judicial process which has as its goal the resolution of a claim, and
- (d) compromise or settle the action.

The Committee also reviewed the 2008 Ethics Committee opinion, the relevant portion of which states:

Where the policy of insurance authorizes the insurer to control the defence and to settle within policy limits in its sole discretion, the lawyer must inform the clients of those limitations on the representation.

It was the Committee's view that a lawyer must advise both the insured and the insurer at the outset of the engagement that the insurer is entitled to give instructions and to otherwise direct the litigation in the ways permitted by Regulation 74.1. This obligation is in addition to a lawyer's obligation under the provisions of Chapter 6 of the *Professional Conduct Handbook* to advise the insured and the insurer of the duties a lawyer has in acting in a joint retainer. Where the lawyer knows that the insured opposes the admission of liability or the terms of a proposed settlement, the lawyer must give the insured reasonable notice of ICBC's intention to admit liability or settle the claim.