

MINUTES

COMMITTEE: Ethics Committee

DATE: July 2010

3. CHAPTER 3: WHETHER PROPER FOR A LAWYER TO DRAFT A WILL FOR A CLIENT WITHOUT MEETING WITH THE CLIENT

The Committee was asked by the Professional Conduct Department to consider the propriety of a lawyer preparing a will for a client without physically meeting with the client prior to its execution. No disciplinary consequences for past conduct will arise out of the Committee's opinion on this issue.

The Committee observed that it is becoming increasingly common for lawyers to communicate with their clients exclusively through the internet on a wide variety of matters. Moreover, in 2008 the LSBC, in *The Report on the Unbundling of Legal Services*, accepted in principle the importance of permitting lawyers to provide limited scope services in many areas.

The Committee noted from the authorities that a lawyer has a high degree of responsibility for ensuring the validity of a will that he or she has drafted: See *Solicitor's Liability for Failure to Substantiate Testamentary Capacity* (1984), 62 Can. Bar Rev. 457 M.M. Litman and G.B. Robertson; *Murphy v. Lamphier*, [1914] 31 O.L.R. 287; *Re Worrell* (1969), 8 D.L.R. (3d) 36; *Hickson v. Wilhelm* (2000) 31 E.T.R. (2d) 193 and *Klassen et al v. Ewert et al* 2002 BCSC 1540. A major obligation is that of substantiating the testator's capacity and being satisfied no undue influence has occurred in relation to the preparation and execution of the will.

In spite of the fact that a lawyer who drafts a will for a client has significant responsibility for ensuring the validity of the will, it was the Committee's view that the question of whether a lawyer has a duty in all circumstances to meet personally with the client is an issue that relates to the standard of care a lawyer must follow in the drafting and execution of wills, not to the lawyer's ethical obligations. While a practice of meeting personally with a client in these circumstances is highly desirable and may be required at law, the Committee declined to say that a failure to do so in every circumstance necessarily amounts to professional misconduct.