

MINUTES

COMMITTEE: Ethics Committee

DATE: May 2011

4. CHAPTER 9, RULE 8: HIDDEN FEES – DISCLOSURE OF BANK COMMISSION BY LAWYER IN IMMIGRATION MATTERS

The Discipline Committee requested the opinion of the Ethics Committee on the following facts where the Ethics Committee's opinion will have no disciplinary consequences for past conduct:

As part of his immigration practice, Lawyer A. acts for clients who hope to immigrate to Canada via the "Investor Category." If accepted, an applicant is required to provide an interest free loan in the amount of \$400,000 to the Canadian government for a 5-year term. The applicant can provide the money from personal funds or borrow the money from a bank. In addition to the interest on the loan, the banks also charge a significant administration fee (e.g. \$120,000).

Lawyer A. advised his clients that he would receive a commission from the bank for forwarding the \$400,000 to the government, however, he did not always disclose the actual amount of the commission (ranging from \$20,000 to \$60,000).

The Ethics Committee was of the opinion that Rule 8 requires the lawyer to give a bona fide estimate of the amount of the commission to the client before the precise amount is known, and to advise the client about the precise amount when the lawyer knows the amount. The Committee was of the view that no amendment is required to Rule 8 to deal with this issue, although there would be merit in publishing the Committee's view of this matter in the *Benchers' Bulletin*