

MINUTES

COMMITTEE: Ethics Committee

DATE: March 1, 2012

CHAPTER 8: LAWYERS' DUTY TO APPROVE ORDERS

For some time the Law Society has advised lawyers that they have a duty to approve an order that was pronounced by the court when they were counsel where the order accurately reflects the decision of the court. The LSBC has said that is true even after the lawyer's discharge as counsel and even in the face of client instructions not to approve the order.

A lawyer has objected that this advice to lawyers is unsound and has asked the Ethics Committee to consider the matter. The lawyer argues that the entry of an order forecloses certain client rights, especially the client's right to a rehearing. The lawyer states:

....The lawyer, in my respectful view, should not sign the draft because that could lead without further ado to entry of the order, foreclosing the opportunity to seek rehearing and reconsideration. Appellate review would still be available, but in every case it is a question of nice judgment whether the better approach is to seek appeal or rehearing. Sometimes, counsel decide to do both.

I also suggest that it is unsound to ground a discharged lawyer's duty to approve draft orders in a "higher duty owed to the court" as set out in the extract above. There is no dichotomy. The court, the lawyer and the former client must all be concerned about evidence being overlooked and the risk of miscarriage of justice. This risk is compounded by propounding a duty on a discharged lawyer which might impair a former client's remedies. And that becomes especially acute if the former client is unrepresented or if the parting of the ways was not amicable.

For my part, I suggest a discharged lawyer should only sign a court order when asked to do so by the former client's new counsel.

The Committee was of the view that in the absence of a valid objection, there is ample authority to support the proposition that lawyers have a positive duty to sign court orders that have been granted or agreed to, notwithstanding subsequent instructions of the client

to the contrary: *Chrysler Credit Canada Ltd. v. 734925 Ontario Ltd.*, [1991] O.J. No. 3619, 5 O.R. (3d) 65 (Ont. Gen. Div.); *Martin v. Busenius* [1999] ABQB 100; *LSBC v. Dunnaway* [2000] L.S.D.D. No. 29; *Neddow v. Weidemann*, 2008 ABQB 378, [2008] A.J. No. 730, 56 C.P.C. (6th) 193 (Alta. Q.B.); *Felund v. Truss* 2009 ABQB 421; *Folkes v. Greensleeves Publishing Ltd.*, [2002] O.J. No. 1231, 159 O.A.C. 99 (Ont. C.A.).