

COMMITTEE: Ethics Committee

DATE: December 2013

(edited opinion)

**BC CODE RULE 3.4-1: WHETHER LAWYER MAY ACT JOINTLY WHERE
CLAIM MADE UNDER *HEALTH CARE COSTS RECOVERY ACT***

The Committee was asked whether counsel may act jointly for a client with a personal injury claim and also act in a claim by the Ministry of Justice in a claim under the *Health Care Costs Recovery Act* arising out of the same facts.

The Committee was of the view that, with consent of the client and where there is no conflict in doing so, it was not inappropriate for counsel for a claimant for damages for personal injury to also act for the Ministry of Justice in its claim under the *Health Care Costs Recovery Act*. Where the lawyer agrees to act on both claims, rules 3.4-5 to 3.4-9 (the joint retainer rules) are applicable.

The Committee observed that in an opinion given in April 2009 relating to counsel's obligations to the insured and insurer in third party liability issues, the Committee expressed the view that a lawyer who acts jointly for an insured and insurer may decline to provide information to an insured with the insured's consent. An extract from that opinion states:

The Committee noted that in many circumstances, particularly where there are no policy limits or coverage issues, the insured may be relatively indifferent about the outcome of any litigation, and for that reason or for other reasons, may not care to follow the progress of the litigation by receiving all the information the lawyer provides to the insurer. It was the Committee's view that a lawyer may properly decline to provide information to an insured with the insured's consent.

Similarly, where a lawyer is acting jointly for a claimant and the Ministry under the *Health Care Recovery Act*, it was the Committee's view that the lawyer may decline to provide one of the joint clients with information about the case of the other with the consent of that other client, where such information is not required to be provided pursuant to the *Act*.

The Committee noted that a claim advanced under the *Health Care Costs Recovery Act* on a contingent fee basis must conform to the requirements of the *Legal Profession Act*, the *Law Society Rules* and the *BC Code* with respect to contingent fee claims.

(Ethics Committee opinion edited for privacy reasons)