

Professional Standards Committee
January 17, 1994

MINUTES

COMMITTEE: Professional Standards Committee

DATE: January 17, 1994

PRESENT: Cecil O.D. Branson, Q.C. - Chair
Peter D. Warner
Anne Stewart, Q.C.

ABSENT: Norine MacDonald

STAFF PRESENT: John Perry
Don Thompson

4. PROFESSIONAL CONDUCT HANDBOOK, CHAPTER 5, RULE 1,
DUTY OF CONFIDENTIALITY - REQUEST FOR OPINION FROM
THE COMPLAINANTS' REVIEW COMMITTEE

The Committee considered a request from the Complainants' Review Committee for its opinion regarding an ethical question. The issue had arisen in a pending appeal before the Complainants' Review Committee. The issue was whether a lawyer is under a duty of confidentiality with respect to information disclosed by a prospective client during the initial consultation, even if the lawyer declines to accept the retainer.

The Committee considered the Handbook, Chapter 5, Rules 1, 3 and 7, together with judicial decisions and other authorities relating to the ambit of privilege and confidentiality. The Committee also discussed the related question of whether the lawyer, assuming he or she is already acting for another client with adverse interests, must cease representing that client.

It was agreed that the Committee should not opine on matters of past conduct. However if the issue had come to the Committee as a hypothetical question unrelated to past conduct, the Committee's view would have been that the lawyer is subject to a duty of confidentiality to the prospective client, notwithstanding that a retainer was never concluded.