

## MINUTES

**COMMITTEE:** Ethics Committee

**DATE:** July 18, 1995

**8. CHAPTER 10, RULE 2; PROPRIETY OF ESCAPE CLAUSES IN CONTINGENCY FEE AGREEMENTS**

The Committee considered a memorandum from Jack Olsen concerning this issue which arose as a result of a referral from the Discipline Committee.

The Committee was asked to give its opinion on the propriety of a clause in a contingency fee agreement that provides that at any time the client refuses to accept an offer of settlement which the solicitors have advised or recommended the client to accept, the solicitors may, at their option, cease to act for the client and will be entitled to a fee calculated as if the amount offered in the settlement had been collected.

The Committee reviewed the circumstances under which a contingency fee is payable set out in Section 78 of the *Legal Profession Act* [see Part 8 of the Legal Profession Act as of 12/98], and was of the view that a contingency fee does not become payable unless the contingency contemplated by the agreement occurs. Therefore, if a matter is not resolved by way of judgment or settlement the lawyer will not be entitled to a fee calculated as if the amount offered in the settlement had been collected, although the lawyer may be entitled to collect the fee on some other basis. Furthermore, the Committee was of the view that it would not be proper for a lawyer to use the threat of withdrawal from a case to induce a client to accept a settlement. The Committee was of the opinion that Rule 2 (c) [Rule 2, footnote 1(c) as of 03/05] which is an example of a situation where a lawyer has the option to sever the solicitor/client relationship should be constrained by a requirement that the severance of the relationship not be unfair to the client.