

## MINUTES

**COMMITTEE:** Ethics Committee

**DATE:** December 13, 1995

### **5. CHAPTER 5, SHARED OFFICE SPACE WITH NON-LAWYER**

The Committee considered a request from a lawyer for an opinion on whether it would be appropriate for the lawyer's firm to share space with employees of a life insurance broker. It was contemplated that the two desks in the common area of the law office would be occupied by two secretarial employees of the broker and the broker would have the use of the law firm's board room from time to time. Neither the broker or the employees would have a key to office and the broker and the broker's employees would only be permitted to have access to the office during the firm's normal office hours. The insurance company would have its own telephone line and fax machine. It would have no signage, but would be using the law firm's address on its letterhead.

The Committee was of the opinion that the arrangement contemplated would not be proper unless there was no access of the life insurance company employees to law firm client records and there was no possibility of overhearing conversations relating to the law firm's clients. The Committee was of the view there are good reasons why the test for sharing of space with non-lawyers should be more onerous than the sharing of space with other lawyers. Those associated with a non lawyer enterprise cannot be expected to appreciate the importance of lawyer-client confidentiality and the Law Society is not in a position to discipline non-lawyers for breaking client confidences.

### **6. CHAPTER 5, SHARED OFFICE SPACE WITH NON-LAWYER MEDIATOR**

The Committee considered a request from a lawyer who wished the Committee's opinion on whether it is proper for a lawyers to share space with a non-lawyer mediator and whether it would be proper for the firm to share letterhead with the mediator.

The Committee noted that the arrangement contemplated that the lawyers and the non-lawyer mediator would be involved in a space sharing arrangement, that the credentials of each person in the arrangement would be clearly set out on all materials going out to the public and that the arrangement would be designated "A Non Partnership Association for the Practice of Law and Mediation."

The Committee was of the view that Chapter 14, Rule 10 of the *Professional Conduct Handbook* prevents a law firm from listing on its letterhead any positions other than those enumerated in the rule. It would not be proper, therefore, for lawyers to list a mediator on their letterhead.

In addition, the Committee was of the opinion that the perspective of client confidentiality the arrangement contemplated would not be proper unless there was no access of the non-lawyer mediator to the lawyers' client records and there was no possibility of overhearing conversations relating to the lawyers' clients. The Committee

noted that there are good reasons why the test for sharing of space with non-lawyers should be more onerous than the sharing of space with other lawyers. Those associated with a non lawyer enterprise cannot be expected to appreciate the importance of lawyer-client confidentiality and the Law Society is not in a position to discipline non-lawyers for breaking client confidences.

The Committee also noted the serious potential the proposed space sharing arrangement created for client conflicts and was of the view that potential conflicts between the lawyers' clients and clients of the non-lawyer mediator cannot be dealt with adequately within the proposed arrangement.