

## MINUTES

**COMMITTEE:** Ethics Committee

**DATE:** June 10, 1999

### **6. CHAPTER 6: INSURANCE CORPORATION OF B.C. REQUEST FOR PROPOSALS**

The Insurance Corporation of British Columbia has circulated a Request for Proposals (the "RFP") inviting lawyers in British Columbia to bid on legal work for the Corporation. The work on which bids are sought is primarily the defence of claims arising out of motor vehicle accidents and the prosecution of fraudulent claims.

The RFP states that ICBC will require that lawyers retained to act as part of a legal team for ICBC decline to act against it in bringing actions which include allegations of bad faith or claims for punitive, aggravated or exemplary damages. ICBC also requires that counsel who have agreed to act for ICBC in the prosecution of actions alleging fraud decline to defend any such actions. The precise provisions in the RFP state:

"f) It is not acceptable for a member of a legal team to commence actions (or to counsel or assist others in bringing actions) against ICBC which include allegations of bad faith or claims for punitive, aggravated or exemplary damages. Such allegations and claims are not consistent with a strategic alliance relationship;

g) Further, it is not acceptable for the Selected Firms to assume the conduct of the defence of actions brought by ICBC against alleged fraudulent claimants, if the firm has agreed to act in the prosecution of such actions. These actions involve issues of significance to ICBC's fight against fraud involved in the development of sensitive and highly confidential information;"

The Committee was asked whether it is proper for lawyers to act for clients adverse in interest to ICBC after agreeing to the restrictions required by ICBC and, if it is proper for them to act, what advice they must give to such clients regarding the restrictions placed on them.

It was the Committee's view that a lawyer who accepts the conditions required by ICBC may properly act against ICBC for clients whose cases do not fall within the restrictions the lawyer has accepted. However, a lawyer acting in these circumstances must advise the client of the lawyer's relationship with ICBC, the restrictions the lawyer is under in acting for parties adverse in interest to ICBC and the implications of those restrictions.

The Committee noted that the profession had already been notified that in responding to the RFP lawyers may not identify other clients without those clients' consent. The profession has also been notified of the Committee's view that lawyers may give a client access to that client's own files in electronic form, but must be vigilant to ensure that the client is not given access to the confidential information of other clients, or other information the client is not entitled to have.

Other concerns expressed about the RFP do not raise ethical questions, although they may raise policy issues that other Committees or the Benchers may want to address.

JO:ags

99-06