

MINUTES

COMMITTEE: Ethics Committee

DATE: July 10, 2003

5. CHAPTER 5, RULE 7: WHETHER LAWYER MAY ACT AGAINST A FORMER CLIENT ON BASIS MATTERS SUBSTANTIALLY UNRELATED

A law firm has acted for a period of time for the P Society, a society incorporated under the Society Act. P Society is the lessee of certain aboriginal lands. P Society sublets areas of the lands to long term tenants by way of sub-lease. The lands have townhouses constructed on them and there is a flourishing trade in the purchase and sale of the long term sub-leases.

In 1996 the firm acted on behalf of C in her purchase of an assignment of the sub-lease from Mr. and Mrs. K.

Some issues have now arisen between the members of P Society and C relating to C's behaviour about the leased lands and C's interactions with the various other sub-tenants, and P Society has consulted the firm with respect to the remedies that the Society may have against C. The firm is satisfied that it does not have any confidential information from C that would be relevant in the assistance that P Society seeks from it. However, a lawyer from the firm has asked whether, in these circumstances, the current matter on which the firm has been consulted by P Society can be said to be substantially unrelated to the matter on which the firm acted for C in 1996. Although the lawyer sought the consent of C to his firm acting against C, through counsel, C has declined to provide that consent. The lawyer advised that his firm does not negotiate upon or otherwise address the terms of the head lease in relation to the parties, since the purchaser has agreed to an assignment of the lease from the vendor, and it is not open to the parties to vary the terms of the lease.

C was notified about the lawyer's request of the Ethics Committee and, through her counsel, took the position that the matter on which the firm now seeks to act against her is not substantially unrelated to the former matter.

The Ethics Committee was of the view that whether or not C obtained advice from the firm about her obligations under the assignment of the sublease, she was entitled to receive that advice from the firm had she sought it. Those obligations would include a duty to conform to standards that the lawyer now seeks to establish she breached in order to remove her as a tenant. Moreover, the firm's obligations to C when it acted for her on the assignment included a duty to ensure that she received a secure interest in the land, while the present goal of the P Society may include depriving her of it. For these reasons, it was the Committee's opinion that the matters cannot be said to be substantially unrelated and it would not be proper for the lawyer or his firm to act against C in the matter.

JO/
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