

MINUTES

COMMITTEE: Ethics Committee

DATE: April 11, 1996

10. PROFESSIONAL CONDUCT IMPLICATIONS OF TITLE INSURANCE

The Committee was asked to identify the minimum obligations of a lawyer in circumstances when the lawyer is acting as witness to the borrower's signature.

In reaching its conclusion, the Committee considered sections 42 and 43 of the *Land Title Act*, Appendix 1, Rule 2 of the *Professional Conduct Handbook*, Chapter 4, Rule 1 of the *Professional Conduct Handbook* and Appendix 3, Rule 8 of the *Professional Conduct Handbook*.

The Committee was of the view that Appendix 3, Rule 8 is not relevant in determining what a lawyer's obligations are in this context because the other party to the mortgage transaction appears not to be represented by the lawyer witnessing the borrower's signature. The lawyer witnessing the borrower's signature is hired and paid to act as witness by the title insurer.

The minimum obligations of a lawyer acting as witness in these specific circumstances are, therefore, determined by section 43 of the *Land Title Act*, Appendix 1, Rule 2 of the *Professional Conduct Handbook* and Chapter 4, Rule 1 of the *Professional Conduct Handbook*. In the Committee's view, those minimum obligations are:

- (a) To identify himself or herself as a lawyer,
- (b) To verify the identity of the borrower in accordance with s. 43 of the *Land Title Act*, and
- (c) To advise the borrower that the lawyer is not protecting the borrower's interests.