

January 2007

7. CHAPTER 11, WHETHER LAWYER BOUND BY CONFIDENTIALITY AGREEMENT GIVEN BY LAWYER'S CLIENT

Lawyer H. is counsel for the Coroner in an inquest into the death of J.

Section 36 of the *Coroners Act* permits the Coroner to grant standing to persons whose interests may be affected by evidence likely to be adduced at an inquest. In an inquest into the death of J., J.'s sister, Ms. K., was granted standing. Ms. K. was initially represented by Lawyer E., but subsequently acted for herself. During the time Ms. K. was acting for herself, the Coroner made certain documents belonging to third parties available to Ms. K. on certain terms that were accepted by her. Those terms, contained in a letter from Lawyer H. dated May 15, 2006, were the following:

1. the material is provided solely for the purpose of preparing for the inquest. It must not be used for any other purpose;
2. the material is not public material and may contain private and confidential information. any request for access to this disclosure for any other purpose than as stated in paragraph 1 above should be referred to the appropriate agency;
3. the material is not to be circulated to any other person or organization except as noted above;
4. where it is necessary to provide a portion or a copy of the material to another person or organization for the purpose of assisting in the preparation for the inquest, you or your counsel must convey the conditions set out in the paragraphs 1 through 3 above to that person or organization before release of the materials;
5. the conditions of confidentiality set out above apply to any further or additional disclosure material provided in relation to the preparation of this inquest;
6. Any discussion that you enter into with the media in relation to the inquest that involves disclosure material is your decision and responsibility, but any such discussion must not refer to or include discussion about material not dealt with in evidence;
7. all disclosure material provided for this inquest, together with any and all copies thereof, must be returned to the office of presiding Coroner within 7 working days of the date the jury renders its verdict.

Lawyer E. subsequently resumed his representation of Ms. K. in the inquest hearing and now holds the documents provided to her by the Coroner, but declined to undertake to accept those documents on the terms requested by the Coroner or to acknowledge that he was bound by the terms of the agreement on which Ms. K. accepted the materials. Lawyer E. advised Lawyer H. as follows:

With respect to document disclosure generally, I will comply with any professional obligations imposed by law, but I will not sign any solicitor's undertakings.

Counsel representing other parties in the inquest gave undertakings similar to provisions 1 to 7, above.

The Coroner adjourned the proceedings pending resolution of the terms, if any, on which Lawyer E. holds the documents he received from Ms. K. Lawyer H. asked the following question of the Ethics Committee:

On behalf of the Coroner's Service I would ask that the Ethics Committee of the Law Society of British Columbia consider and provide an opinion as to whether in the circumstances of this case Mr. E. is or should be bound by the specific conditions of confidentiality which were set out in my letter of May 15, 2006 and agreed by Lawyer E.'s client, Ms. K., in advance of her being provided with the Inquest documents by the presiding Coroner.

It was the Committee's opinion that an agent cannot be in a more favourable position to use documents in these circumstances than the agent's principal who has agreed to receive the documents on certain conditions. It follows that it would be improper for Lawyer E. to use the documents provided to him by Ms. K. in any way contrary to her agreement with the Coroner. Should those conditions not be acceptable to his client, Lawyer E. is free to take legal action on her behalf to attempt to secure access to the relevant documents on more favourable conditions.