

MINUTES

COMMITTEE: Ethics Committee

DATE: September 26, 1995

8. CHAPTER 5, RULE 7; POTENTIAL CONFLICT OF INTEREST WHEN LAWYER ACTING ON YOUNG OFFENDERS ACT AND FAMILY AND CHILD SERVICES ACT PROCEEDINGS

The Committee considered a letter from a lawyer which raised the question of whether it is proper for a lawyer to act on a Young Offender's Act ("YOA") matter for a child who is a ward of the Superintendent of Family and Child Service and at the same time represent the Superintendent in apprehension proceedings under the Family and Child Services Act ("FCSA") regarding the same child.

The Committee concluded the following:

A lawyer may not act for the child on a YOA matter and on FCSA proceedings simultaneously since the lawyer would be in a conflict of interest. The lawyer's duty to disclose information to one client would conflict with the duty to keep such information confidential for the benefit and protection of the other.

Provided the FCSA matter is completed the lawyer may act for the child with respect to a Young Offenders Act charge (or other criminal charge) if the lawyer has the consent of the Superintendent of Family and Child Service to do so in accordance with Chapter 6, Rule 7(a) of the Professional Conduct Handbook.

If it is the Superintendent who has asked the lawyer to act for the child on the YOA matter after the lawyer has acted on a FCSA matter it would be reasonable to infer the consent of the Superintendent for the lawyer to act for the child.

Even if the representation of the child was complete on the YOA matter, unless the child gave informed consent to the new representation in accordance with Chapter 6, Rule 7(a), the lawyer would be unable to represent the Superintendent in FCSA proceedings. The duty to advise the Superintendent of relevant information concerning the child would conflict with the lawyer's duty to keep confidential any information received from the child during the course of the YOA representation. Representation of the Superintendent in these circumstances would not meet the standard required in *Martin v. Gray* such that the public, represented by the reasonably informed person, would be satisfied that no use of confidential information would occur.