

## MINUTES

**COMMITTEE:** Ethics Committee

**DATE:** February 5, 1998

### **11. CHAPTER 4, RULE 2: SCOPE OF TERM “REGULATORY AUTHORITY”**

Two lawyers raised the question of the meaning of the term “regulatory authority” in Chapter 4, Rule 2 of the *Professional Conduct Handbook*. One lawyer notes that in employment matters it is common practice for counsel to set out the potential claims of a client under the *Human Rights Code* and the *Employment Standards Act*. The lawyer asked whether the Human Rights Commission and the Employment Standards Branch are regulatory authorities within the meaning of Rule 2.

The Committee noted that it is always proper for a lawyer to set out for an opposing party the legislation or rules that govern or may govern that party’s conduct, and to take the position that, based on that legislation or rules, it is improper for that party to act in a certain way. What is not permitted is for a lawyer to threaten to lay a charge or make a complaint to a regulatory authority in order to secure a civil advantage for the lawyer’s client. Moreover, in the Committee’s view, it is proper for a lawyer to indicate to an opposing party that the lawyer will seek a remedy on behalf of a client from a body that is mandated to give such a remedy. It is improper, however, to make a threat to invoke the jurisdiction of a body that is empowered only to impose a penalty.

The Committee was of the view that there may be merit in drafting a sample letter to act as a guide to counsel in this area. Jack Olsen will prepare a sample letter for consideration of the Committee at a future meeting.

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