

COMMITTEE: Ethics Committee

DATE: October 12, 2006

**10. CHAPTER 5, RULE 15: LAWYER'S OBLIGATION WITH RESPECT TO
PRIVILEGED DOCUMENTS FOUND BY HIS CLIENT**

A lawyer acts for a client who has purchased a strata lot in a foreclosure proceeding. A portion of the building in which the client purchased the lot is in dispute between the client and the strata corporation, with the client claiming a storage area constitutes part of his strata lot.

After raising the issue on the client's behalf with the strata corporation, the lawyer was provided by the client with a binder that includes documents dating from August 1999 to September 2001 relating to the disputed portion of the strata lot. The documents include four letters from the strata corporation's lawyer to the strata corporation. Two of these four letters involve the setting out of substantial research and discuss the chances of the strata corporation succeeding against the complaining owners of the strata lot in the dispute in which the lawyer acts. The lawyer advised that the binder of documents was found in the living area of the strata lot in question on the shelf of one of the closets, not in the area constructed for the utilities & storage.

The lawyer asked the Committee whether he has any duties in relation to the binder of materials the client has provided to him.

There is no explanation for how the materials came to be left in the place where the lawyer's client found them and the Committee assumed they were left there through inadvertence. The Committee concluded that the nature of the documents and the fact that some of them are likely privileged provide reasonable grounds to believe the documents belong to the strata corporation and were not intended for the lawyer or the lawyer's client to see.

In these circumstances it was the Committee's view that, subject to client instructions, Rule 15 requires the lawyer to return the materials to the strata corporation or the corporation's lawyer. After returning the documents, however, the lawyer is free to apply to court to have the documents produced to him on the ground that the privilege attaching to the documents has been lost as a result of their disclosure and they should, therefore, be available to the lawyer's client for use in any proceedings to resolve the dispute. That is a legal issue, not an ethical one, and the Committee expressed no view on whether such an application might be successful.

Should client instructions prevent the lawyer from carrying out his obligations under Rule 15, the lawyer must withdraw from the representation.