

**December 2006**

**3. CHAPTER 5, RULE 15: WHETHER THE RULE REQUIRES RETURN OF INFORMATION PROVIDED BY CLIENT**

A lawyer acts for a client wife in a matrimonial matter. The client has access to her husband's e mail and items from that e mail that the client has given to the lawyer provide evidence of her husband's income and assets that he has failed to disclose. The client advised the lawyer that her husband gave her the password to his two e mail accounts. Subsequently, he changed the password of one of the accounts but not the one from which the relevant information was obtained. The lawyer asked the Ethics Committee whether he has any obligations to turn over the e mails in question to the other side.

The Committee noted that since the husband provided the wife with the password to the e mail account from which the relevant e mails were taken, the husband has no reasonable expectation of privacy in relation to e mails that were retrieved by the wife from that account. Given that conclusion, it was the Committee's view that the lawyer has no obligation to turn over the e mails in question to the husband or his lawyer and may use them for the purposes of the action. Any information obtained from the account where the husband had changed the password would trigger an obligation under Rule 15.