

- Professional Standards Committee
March 10, 1993

MINUTES

COMMITTEE: Professional Standards

DATE: March 10, 1993

7. DECEASED CLIENT

The Committee received correspondence from a lawyer questioning whether he is under an obligation to disclose his client's death to opposing counsel. Liability was settled in 1992 and the issue of quantum was to be argued in 1993. Recently the plaintiff client died. The lawyer advised that he anticipates the defendant may make an offer of settlement or pay monies into court. He asked whether he is under an obligation to disclose the plaintiff's demise to the defendants counsel, whether he can accept any offer of settlement made by the defendant and whether there are any restrictions on negotiations with counsel. The Committee considered Canon 4(1) and Canon 4(3) as well as Chapter 8, Rule 1 Paragraph (H) of the new Handbook. The Committee considered a decision of Tallis, J. which concerned a somewhat similar fact situation. In *McCallum and McCallum Oil Field Service Ltd. v. Trans North Turbo Air (1971) Ltd. and Hagen*, 7 Alta. L.R. (357), the defendant paid funds into court in settlement of the plaintiff's claim. The plaintiff's solicitor sent notice of acceptance. On the day before acceptance the plaintiff died.

It was held that the plaintiff's solicitor's power to make a compromise or acceptance was ended by the plaintiff's death. Before purporting to accept the payment-out, the solicitors were under a positive duty to inform both the clerk of the court and the defendants of the plaintiff's death.

It was agreed that the lawyer be advised that as an officer of the court he is under a positive duty to inform opposing counsel of the death of his client.