

MINUTES

COMMITTEE: Ethics Committee

DATE: February 8, 1996

9. CHAPTER 6; POTENTIAL CONFLICT OF INTEREST

The Committee considered a letter from a lawyer who was retained by a mother and her children to commence an action against the father in a motor vehicle accident. The father was the driver of the car and lost control of the vehicle in poor driving conditions. Two of the children who were injured were ejected from the vehicle, giving rise to the issue of whether they were wearing seat belts.

The father's statement of defence alleges that the mother was contributorily negligent in failing to ensure that the children's seat belts were fastened. In addition, there is a potential policy limits problem, raising the issue of each passenger only being able to recover a portion of damages from the otherwise judgment-proof father.

The lawyer had the following questions:

1. Is he in a conflict of interest given that the allegation that the mother might have a duty to ensure that the children were wearing their seat belts?

The Committee was of the view that the lawyer would be in a conflict of interest in this situation.

2. Can the lawyer continue to act for either the mother or the children?

The Committee was of the view that the lawyer should cease representing the mother and the children. The lawyer has received, or has the appearance of having received, confidential information from the mother with respect to the matter which he would be obliged to use to the benefit of the children, if he continued to act for them. Similarly, he would be unable to continue to represent the mother without disclosing confidential information received by him from the children.

3. Is it necessary for each of the children to be separately represented?

The Committee was of the view, based on the facts presented, that there is a potential conflict between the interests of each of the children rather than an actual one. Accordingly, a lawyer would be wise to exercise great caution in the representation of the children, but may represent all of them, provided the lawyer complies with the provisions of Chapter 6 of the *Professional Conduct Handbook*.