MINUTES

COMMITTEE: Ethics Committee

DATE: April 11, 1996

11.   CHAPTER 5, RULE 7; POTENTIAL CONFLICT OF INTEREST WHEN LAWYER ACTING ON *YOUNG OFFENDER'S ACT* AND *CHILD, FAMILY AND COMMUNITY SERVICE ACT PROCEEDINGS*

The Committee was asked to reconsider its opinion of September 26, 1995 relating to the question of whether it is proper for a lawyer to act on a Young Offender's Act ("*YOA*") matter for a child who is a ward of the Superintendent of Family and Child Service and at the same time represent the Superintendent in apprehension proceedings under the *Family and Child Services Act* regarding the same child.

The Committee noted that as of January 29, 1996 the *Child, Family and Community Service Act* ("*CFCSA*") replaced the *Family and Child Services Act*.

The Committee considered whether it was reasonable to consider that there is a conflict in all situations where a lawyer has acted for a young person and is subsequently retained to Act in *CFCSA* proceedings in relation to the same young person. An alternative conclusion would be that there is no inherent conflict in these situations in every case and that the issue of possible conflict should turn on the facts and circumstances of the particular case.

The Committee was of the view that its opinion of September 26, 1995 was substantially correct. The Committee is prepared to modify that opinion to recognize that where a lawyer acting for a young person in a *YOA* matter receives no confidential information which is relevant to a subsequent or contemporaneous *CFCSA* matter, it would not be improper for the lawyer to act in the *CFCSA* matter. The Committee was of the view, however, that such a circumstance would arise only rarely. In most circumstances a lawyer representing a young person on a *YOA* matter would receive confidential information relevant to a subsequent or contemporaneous *CFCSA* matter. The lawyer would have a duty to provide this confidential information to the Ministry of Social Services, giving rise to a conflict.