

MINUTES

COMMITTEE: Ethics Committee

DATE: May 8, 1997

8. CHAPTER 8, RULE 13: WHETHER LAWYER MAY COUNSEL WITNESS TO DECLINE TO TALK TO OTHER SIDE UNLESS HE IS PRESENT

A lawyer who is counsel to a number of corporations on environmental matters throughout the province of British Columbia sought the Committee's opinion on whether the advice he gives to employees of his clients is proper.

In situations where the lawyer represents corporations on environmental matters, the alleged wrong-doers are employees of the companies involved and preparation and conduct of the defense involves the corporate employees. Many of the lawyer's clients are concerned about their long term relationship with the regulatory agencies and, as a general policy, elect to voluntarily cooperate with the Crown to the extent that is reasonably possible. In those circumstances, the lawyer normally explains to the employee that he is counsel for the company, and not counsel for the employee. He explains that, under the legislation, the employee can be subject to charges personally. He also explains that for policy reasons the company would like the employee to cooperate with the Crown in being interviewed by the Crown and answering any questions raised. The lawyer also requests that if the employee is inclined to agree to an interview that the employee request that the interview be conducted in the lawyer's presence. The lawyer noted that some employees comply with this request; others do not. On the occasions where he has been present at employee interviews by the Crown, his participation is normally extremely limited and his role is simply to take notes of the proceeding.

The lawyer asked whether there is anything improper about this practice, and, in particular, about his request of witnesses that they request that the interview be conducted by the Crown in the lawyer's presence.

The Committee was of the view that the lawyer's practice with respect to these witness interviews is not improper.

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