



The
Law Society of
Upper Canada
Osgoode Hall, Toronto

plus

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Number 7

21st, 22nd and 29th November 1985

* Prepaid Legal Services

The following is the full text of the agreement made between the Law Society and the U.A.W. Ford/GM Canadian Legal Services Plan which is to be in effect while the guidelines and the Plan are before the courts.

"December 2, 1985

1. This agreement is without prejudice to either of our clients' positions and shall not be viewed by any Court as affecting our clients' respective positions.
2. This agreement shall only be operative pending the final judicial determinations referred to in Paragraph 3.
3. The parties shall co-operate through their counsel to institute proceedings to determine the legality of the Law Society's guidelines and the validity of the Plan by Monday, the 9th day of December, 1985, and shall jointly make all efforts to have the matter heard and determined as expeditiously as possible.
4. The Plan will operate in accordance with the Law Society's guidelines with the sole exception that the fee structure shall be dealt with as in Paragraph 7.
5. The Plan shall be operated to preserve solicitor and client confidentiality.
6. Provided that the Plan is operated in accordance with this agreement (and all other Law Society Rules and Regulations), the Law Society will not initiate discipline proceedings that are based upon an alleged breach of the Law Society's guidelines.

7. The administrators of the Plan undertake to involve forthwith the Law Society (or such representatives of the legal profession as the Law Society may designate), in discussions concerning the nature of the Plan, including the co-operating lawyers' agreement and the fee structure.
8. Any differences as to the operation of this agreement shall be submitted to a panel composed of the Chairman of the Administrative Committee of the Plan and the Chairman of the Finance Committee of the Law Society and a mutually agreeable third party for final and binding resolution.
9. The terms of this agreement will be published to the members of the Law Society and the beneficiaries of the Plan, including the beneficiaries' right to the selection of a lawyer of their choice for any benefits under the Plan in a form acceptable to counsel."

The freedom to choose one's own lawyer is preserved. A beneficiary of the Plan has the following choices: to go to a Plan staff lawyer, or to a lawyer who is a member of a panel under the Plan or to a lawyer who is not a member of a panel under the Plan but who will join a panel and accept the Plan's terms or to a lawyer who is not a panel member and who does not join a panel. No matter which method the beneficiary chooses the same benefits are available from the Plan. Where the lawyer chosen does not join a panel or agree to the terms of the Plan the fee provided by the Plan will be paid whether it meets all or only part of the total fee charged by the lawyer.

Freedom of choice of counsel is the most significant provision of the agreement, but all the terms are important, and in particular that the Society or its designate will be involved forthwith in discussions respecting the fee structure and other aspects of the Plan, and that the Society's Rules and Regulations will be observed in the operation of the Plan so there should be no difficulties respecting conflicts of interest, confidentiality of clients' affairs or the like.

It is too soon to tell how long it will be before a final judicial determination can be made of the issues to be put before the Court, but counsel have agreed to move ahead as quickly as possible.

Special Committee on Prepaid Legal Services

The legal profession itself may be in the best position to arrange to provide prepaid legal services to the public.

Convocation has authorized the appointment of a special committee to look into this possibility and to report with recommendations.

The Canadian Bar Association (Ontario) came independently to the same view and has formed a committee which is taking professional advice on the subject. The C.B.A.O. has invited Law Society representatives to sit with its committee to avoid duplication of effort and so that each organization can make use of information the other develops.

E. & O. Loss Prevention: Video Tapes

The Errors and Omissions Department has prepared seven video tapes for showing to the profession, on the following subjects:

Family Law

Real Estate

Investment Transactions

Franchising

Motor Vehicle Accident

Construction Liens

Preparation of a Will

Each tape presents scenes depicting practice situations which lead to Errors and Omissions claims, followed by a discussion by recognized experts in the area of law. The tapes vary in length from about 15 minutes to about 40 minutes. They are intended as a basis for group discussions of E. & O. problems and methods of avoiding them.

The Practice Advisory Service will be co-ordinating the Law Society's Loss Prevention efforts with the County and District Law Associations and other lawyer groups. Any association or group wishing to use the video tapes should contact Brenda Duncan concerning the use of the tapes and any assistance that may be needed in organizing a programme. Write to the Practice Advisory Service, c/o Osgoode Hall or telephone (416) 947-3369.

Early in 1986, the Advisory Service will be contacting the County and District Law Associations to involve them, and all members, in efforts to create a greater awareness of the increasing risks of liability being placed on professionals and procedures for minimizing the risks.

Special Divine Service

The profession is reminded that the annual Interfaith Divine Service to mark the opening of the Courts will be held at 11:30 a.m. on Tuesday, January 7th, 1986 at St. Andrew's Presbyterian Church (at the corner of King and Simcoe Streets). Dr. David Monson, Rabbi Emeritus of Beth Sholom Synagogue will preach the sermon.

Rule 18 - Borrowing From Clients

The Professional Conduct Committee is asked on occasion to consider whether, on given facts, a lawyer would be in breach of Rule 18. Recent decisions are set out below for the guidance of the profession.

1. A lawyer borrowed money from a client before such a borrowing was prohibited by Rule 18. The client's interests were fully protected. The lawyer moved from the law firm. The client is no longer a client of the law firm of which he is a member. The loan has come up for renewal. Is the renewal a new loan?
2. A lawyer borrowed money from a client before such a borrowing was prohibited by Rule 18. The client's interests were fully protected. The client has now ceased to be a client of that law firm and is using the services of another law firm. The loan has come up for renewal. Can he renew the loan? Is the renewal a new loan?

Answers to 1. & 2.: The lawyer could renew the loan because the person lending the money was no longer a client and was independently represented.

3. A lawyer borrowed money from a client before such a borrowing was prohibited by Rule 18. The client's interests were fully protected. The client continues to be a client of the law firm. For the purposes of renewing the loan the client will receive the independent legal advice and representation of another law firm. Can he renew the loan? Is the renewal a new loan?

4. A lawyer borrowed money from a client, which borrowing was prohibited by Rule 18. The loan has come up for renewal. Can the lawyer renew the loan if the client is independently represented by another law firm?

Answers to 3. & 4.: There could not be a renewal in these cases unless the mortgage instrument that formed the basis of the initial borrowing provided for an automatic right of renewal.

Rule 18 will be strictly enforced.

Kenneth Jarvis,
Secretary.