



The
Law Society of
Upper Canada
Osgoode Hall, Toronto

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* Legal Education - Appearance of Articling Students - Young Offenders Act

The Society was asked to amend the rules governing articling students-at-law to permit them to appear on all matters before the youth court under the Young Offenders Act.

The reasons put forward for the request were twofold: that it has historically been permitted in criminal matters involving juveniles under 16 and that unless articling students were allowed to act there would be risk of serious delay for young persons if their lawyers were not available, particularly for those in detention awaiting judicial interim release hearings.

The Committee was of the opinion that these reasons did not take into account the major change in the law introduced by the Young Offenders Act. The Act proceeds from the principle that young persons charged with criminal offences have the right to the same legal protections as have adults. To allow appearances by articling students in situations where this is not permitted in adult criminal court would be to reinforce a distinction that the new act has attempted to eliminate. Accordingly, the Committee recommended that no change in the rules be made which would expand the role of an articling student-at-law in the youth court. Under the present rule, articling students are permitted to appear before the youth court in relation to all summary conviction matters and on remands in indictable offences just as they can in adult criminal court.

Referral or Forwarding Fees - Rule 10

An Ontario lawyer asked whether he could properly receive a referral or forwarding fee from a lawyer in the United States to whom he had referred a client in a litigious matter. The client and the American lawyer had entered into a contingency fee arrangement and the referral fee the United States lawyer proposed to send to the Ontario lawyer would have been paid out of the contingency fee. It would not have been an additional fee to the client.

Paragraph 6 of Rule 10 deals with the division of fees between lawyers and non-lawyers. It provides that any arrangement whereby lawyers directly or indirectly share, split or divide a fee with conveyancers, notaries public, students, clerks or other persons who bring or refer business to the lawyer's office, is improper and constitutes professional misconduct. The Committee was of the opinion that a referral fee such as that contemplated would be improper and recommended that to clarify the matter, paragraph 6 of the commentary under Rule 10 be amended to provide that a lawyer cannot give to or accept from a lawyer a referral fee with respect to the referral of a client. This could also apply to an Ontario lawyer's dealings with a lawyer in another jurisdiction even where that jurisdiction may permit such referral fees.

Rule Respecting Professional Responsibilities of Articling Students

Convocation adopted a new rule, Rule 24, setting out the duty of the lawyer in his capacity as a principal and the duty of the articling student; it reads:

- "1. The lawyer in his capacity as a principal to an articling student owes an important duty and responsibility to that student. These encompass meaningful training and exposure to and involvement in work which will provide the student with knowledge and experience of the practical aspects of the law, together with an appreciation of the traditions and ethics of the profession.
2. The articling student owes a duty to his principal and the principal's firm to act in good faith in fulfilling and discharging all the commitments and obligations arising from the articling experience."

Disclosure of Party and Party Costs

A number of counsel and more particularly some of those representing plaintiffs in personal injury claims, have taken the position that they are under no duty to inform their clients of the exact amount of party and party costs. They contend that this has been an established practice although there does not appear to be any authority for this contention.

Rule 10 (a) states that a lawyer should not undertake to act for, charge or accept any fee which is not fully disclosed, fair and reasonable. The rule clearly requires disclosure of all party and party costs received on behalf of a client.

The Special Committee on the Exchange of Information

A special committee has reviewed the Society's policy on the exchange of information among the various departments within the Society.

The most sensitive question was whether to continue the policy of passing to the discipline staff information that a member reports to the errors and omissions insurance section and which indicates that misconduct may have occurred.

When the insurance plan was begun, members were told that information they were required under the terms of the coverage to disclose to the plan would not be available to the discipline committee. Within a few years, however, it was regarded as intolerable for one employee of the Society to learn of a serious defalcation and not be able to do anything to stop the theft from continuing. Against this it was argued that members have the right not to criminate themselves even though required to make full disclosure to the insurance personnel in order to maintain coverage.

This argument was held to be unavailing in view of the professional status of members as lawyers and the Society's responsibilities as the governing body of the profession with a primary duty to the public and the membership was so advised.

Convocation confirmed the Society's position and directed that the wording of the errors and omissions insurance policy be changed to make it clear that information furnished to the Society in connection with an errors and omissions claim may be made available to other departments of the Society.

Kenneth Jarvis,
Secretary.