

# **Complaints Authorization Committee**

## ***Practice Standard***

### **Conflicts of Interest - Estate Files**

*Complaints Authorization Committee Meeting January 18, 2005*

*Benchers' Notes Spring 2005*

The Complaints Authorization Committee recommends that members not act concurrently as solicitors for and executors of Estates. The Complaints Authorization Committee has issued two letters of counsel and a letter of caution concerning the quality of services provided with respect to Estate files. Conflict issues frequently arise when a member has the dual roles of Solicitor for the Estate and Executor/Executrix of the Estate. The Court in *Earle v Wilhelm* 2000, 183 D.L.R. (4<sup>th</sup>) 45 held that the Solicitor for the Testator owes a duty to the intended beneficiaries and may be liable where his/her negligence defeats the Testator's intentions. The Executor/Executrix has a fiduciary duty to the beneficiaries.

The following excerpt is taken from *Lawyers & Ethics* by Gavin Mackenzie: Conflicts of interest are also common in the administration of estates. Where a lawyer is retained by the executor of the estate, the executor is of course the lawyer's client, but the lawyer owes a duty of care in tort to beneficiaries also. Executors are often beneficiaries as well. A lawyer must not act for an administrator in his or her capacity as such and in his or her capacity as a beneficiary in respect of claims by others who assert claims in the estate. Conflicts of interest may also result from the lawyers' dual roles if they serve simultaneously as executors and solicitors for estates. (18.3 *Other Conflicts of Interest*)