

UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2020

LAW 468.004
Ethics and Professionalism

Professor Goldbach

EXAMSOFT PASSWORD:
EXAMSOFT RESUME CODE:

TOTAL MARKS: 85

WRITING TIME ALLOWED: 3 HOURS
PREPARATION TIME ALLOWED: 10 MINUTES

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Additional instructions relevant to this exam:

- Assume that all fact scenarios occur in the province of British Columbia.
- Answers should include references to case law, the Code of Professional Conduct for British Columbia and, where relevant, the Legal Profession Act of BC.
- You are only responsible for British Columbia rules and regulations. You are **not** being examined on the Model Code or the rules of any other province.
- Please write your responses in full sentences.

QUESTION 1 (40 POINTS)

You are a lawyer working in the Professional Conduct department at the Law Society of British Columbia, working with and advising the Law Society in the effective investigation of possible discipline violations.

You have a friend, Ted Rutsch, a criminal defense lawyer who makes regular appearances on CTV news. He is extremely knowledgeable and entertaining, so you make it a point to turn in to his feature once a week. On the CTV news website, Rutsch is touted as the lawyer that defendants go to for “corrective action to fix the damage done by less qualified lawyers,” and that by focusing their energy on criminal defense work, he and the lawyers at his firm have developed “an expertise that is difficult for other firms to match.” Rutsch’s twitter profile describes his firm as “#Vancouver’s Best #Criminal #Defense Lawyers.”

Last night, Rutsch commented on the recent case of Paul Dunyo, a young black male who was charged with carrying a concealed weapon and unlawful possession of a firearm. Dunyo believes that he was a victim of racial profiling and that officers pulled him over for “driving while black”. The arresting officer alleged that she saw the accused throw a knife out of the car as she approached the vehicle, and therefore she had reasonable cause to conduct the search. On conducting the search of the vehicle, the police officer also found a gun in the glove compartment of the car.

During his segment on CTV, Rutsch conducted an interview with Dunyo’s defense counsel, Cynthia Hakimdavar. Hakimdavar passionately discussed the charges, as well as trial preparation in a case alleging Charter infringements. “I told Dunyo, ‘It’s your job to convince the

judge. You need to be 100% clear about your belief that you were stopped for no reason other than for the colour of your skin,'" Hakimdavar said. "Dunyo did not give the police any reason to search his vehicle. If people want to know what systemic discrimination in the legal system looks like, here it is!" In the interview, Hakimdavar noted that the Crown had made an offer to reduce the charge, but she took no interest in the offer. She was already furious about the Crown's paltry disclosure, which she thought was thoroughly incomplete. In addition, Dunyo was adamant about advancing arguments that the search of the vehicle and his subsequent detention violated sections 7, 8 and 15 of the *Charter of Rights and Freedoms*. Hakimdavar did not want to complicate matters by discussing a plea offer with her client.

Rutsch asked Hakimdavar about some of the strategies of cause lawyering. Bringing attention to public interest cases can be difficult, but Hakimdavar managed to highlight the injustices of Dunyo's trial by making objections for the first twenty minutes each day of the trial. It is a somewhat technical argument, Hakimdavar admitted, but according to BC legislation, in order to consider constitutional questions at the Provincial Court level, notice must be given to the federal and provincial AGs offices. Dunyo and Hakimdavar were hoping that lawyers from the AGs office would attend the trial. Even if they lost on the constitutional arguments, at least the government would learn about policies of racial profiling in the police department. When no one from either level of government came to the trial, Dunyo and Hakimdavar agreed that Hakimdavar would object to the trial proceedings. Hakimdavar set a timer on her phone and for the first twenty minutes each day, she objected to every statement made by the prosecution. Rutsch admitted that the daily objections was the reason why he had first heard about the trial.

Rutsch wrapped up his report on Dunyo's case by commenting on the testimony of witnesses. The trial judge found that the search and detention were lawful, but that there was reasonable doubt because of the police officer's lack of credibility. The Officer had two disciplinary convictions for falsifying police reports in drug-related cases, information that Hakimdavar was able to discover from her connections at Black Lives Matter Vancouver. In addition, a friend of the accused who was in the car when Dunyo was pulled over, Jim Pauchay, testified that Dunyo never threw anything out of the window. The Crown went pretty hard at

Pauchay, so it did, unfortunately, come out that the Officer found the knife on Dunyo during a pat down search. Rutsch read some of the trial transcript on the show. The Crown made comments on the witness' transient lifestyle, for example, asking, "How do you expect us to believe you, when you are literally all over the map?" The Crown made other comments in attempts to discredit the witness, such as, "Speak up! No one can hear you;" "Do you want to go back to the streets? I mean, that is where you spend most of your time anyway?" And, "Listen, just tell us what happened. Then you can go back to East Van and get your fix. That's really what you want, isn't it?" The revelation that the knife was on the accused's person was in stark contrast to Dunyo's testimony that he was not in possession of any weapons, but it was enough to severely damage the Officer's credibility and create reasonable doubt.

Other lawyers at the Law Society watched Rutsch's report on CTV news, and raised concerns about professional conduct. You have been asked to write a brief initial report and make recommendations as to what issues the Law Society should look into further. What would you recommend the Law Society investigate and why? What would you not investigate and why?

QUESTION 2 (45 POINTS)

Brilliant and charismatic Shannon Dawson's fall from grace is the talk of the town. After graduating from Allard Hall, she represented personal injury victims in Vancouver for several years, networking widely and developing an excellent reputation. In May 2019, Dawson appeared to suffer a grave lapse of judgment. A grainy video fragment appeared on Youtube depicting a woman whom many viewers believed was Dawson. Also in the video, clearly recognizable, was James Kwan, a doctor who was recently diagnosed with bipolar disorder, whom Dawson knew from undergrad. In the video, the woman seemed to be encouraging Kwan to jump off a bridge. Kwan actually did dive off a bridge near a small town in the Okanagan later that year and injured himself. Kwan's family was distraught and launched a civil lawsuit against Dawson.

You work for Jack Linus, a veteran lawyer and managing partner in a mid-size law firm specializing in shareholder class actions and complex commercial cases. Linus is well known in

the legal community for practicing law, in his words, “the old-fashioned way -- no email, no new-fangled expert evidence, and no BS continuing legal education seminars.” Dawson was your articling principal and was a wonderful mentor, so the appearance of this YouTube video is shocking. Dawson was extremely respectful, and even let you work on drafting her will. While you didn’t love personal injury litigation, you might have stayed at her firm, but Dawson confided that her real career goal was in government. With your interest in complex commercial litigation, Dawson got you an interview with Linus’ firm. Everything has been going very well, to the extent that you expect to take on some of Linus’ bigger corporate clients. Linus contacted Kwan’s family while Kwan was in hospital and offered to take the case on contingency. Linus has announced to family and friends that this would be his last case before retiring. He has not told anyone about the drinking problem that you suspect has left him barely able to function many mornings, including some mornings in court.

Dawson hired Charlie Reyes as her defense counsel. Reyes was delighted to get this case. Dawson is wealthy and well connected, so in addition to great publicity, Reyes believed he would be able to do all the work on the file at a high hourly rate instead of involving associates or articling students. One night over drinks, Dawson admitted to Reyes that she actually did encourage Kwan to jump off a bridge, “just to see if that idiot would actually do it.” Reyes’ knee-jerk response was, “Wow. Can I just say, next time you’re doing something illegal, maybe make sure there’s no cameras recording you?!” Dawson offered to reach out to Kwan while he was in the hospital, to get him to swear an affidavit denying that she had ever urged him to jump off a bridge into Okanagan Lake.

A couple of months into the case, Linus started to feel like it was hopeless. It would be quite difficult, he thought, to get a jury to conclude on a balance of probabilities that Dawson caused the plaintiff’s injuries. Convinced that Dawson would want to settle to avoid bad press, Linus, without conferring with the Kwans, mailed a settlement offer to Dawson. The letter warned Dawson that they had an eye witness who saw Dawson and Kwan together, and suggested that the family would agree to settle if Dawson helped pay for Kwan’s physical therapy and apologized for her actions. Reyes thought this was a decent offer but Dawson was completely uninterested, which she expressed in no uncertain terms by yelling at Reyes,

accusing him of colluding with the enemy. After ignoring Linus' letter for several weeks, Reyes replied by email, encouraging Linus to "stick his frickin' settlement where the sun don't shine."

At trial, Reyes presented a theory of the case that the woman on the tape was actually another female acquaintance of Kwan, a woman who resembled Dawson. Reyes also argued that the case should be thrown out because, given the applicable statutory language, the case should have been brought in the Federal Court rather than the BC Supreme Court.

Unfortunately, your client lost at trial.

Several weeks after the trial, Dawson gave a tell-all interview to Maclean's Magazine, giving detailed accounts of her meetings with her lawyer as well as their trial strategy. The word around town was that Dawson plans to run for federal office and was hoping to get the story out early and well before the next election. In the interview, Dawson admitted that she had done exactly what Kwan accused her of doing. Dawson said that the jury nevertheless made the right decision because the case had absolutely no merit. "Lay people never understand causation," Dawson said. "But you can't blame other people just because you did something stupid." In the interview, Dawson also mocked Linus as a "pathetic old fool" who "fell flat on his face in the twilight his career."

After the interview came out, you and Linus receive a lengthy email from James Kwan's father. He is outraged that they lost in light of the information in the Maclean's article. He views your firm's handling of this case as a complete debacle. His son's life has been ruined by this privileged, careless lawyer. "Someone should make her jump off a bridge," he wrote, "and she can see how she likes it!" He ended the email writing that the legal system is broken because of the complete incompetence of and rampant corruption among Canadian lawyers.

What should you do? Do you need to respond to Kwan's email if the trial is over? Are there other actions that you could or are required to take?

End of exam.