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**THIS EXAMINATION CONSISTS OF FOUR (4) PAGES (INCLUDING THIS PAGE)
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THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

FINAL EXAMINATION – DECEMBER 2019

LAW 509
ADMINISTRATIVE LAW

Section 4
Professor Russo

TOTAL MARKS: 100

TIME ALLOWED: Two (2) Hours

NOTES:

1. This is an open book examination. Candidates may have with them any hard-copy written material they wish. Laptops are only permitted for the use of ExamSoft.
2. Use of communication devices such as mobile phones, tablets, smartwatches, etc. are not permitted. Candidates should ensure that their phones are turned off.
3. Read the questions carefully and understand what you are being asked to do before you begin your answer.
4. You may refer to cases in short form (e.g. "*Baker*").

THIS EXAMINATION CONSISTS OF TWO (2) PARTS

PART I – ANSWER FACT PATTERN QUESTIONS

PART II - ANSWER THREE (3) OF FOUR (4) QUESTIONS - SHORT ANSWER
(If more than 3 questions answered, only the first 3 responses will be marked)

PART I - 70 MARKS TOTAL – Fact Pattern

From January 2000 to November 2002, Sam Gupta ("Gupta") worked as the Registrar for the College of Acupuncturists of British Columbia (the "College"). The College is a non-profit organization constituted under the *Health Professions Act*, R.S.B.C. 1996, c.183, (the "*Act*"), to govern the acupuncture profession. It has a nine-member Board of Directors (the "Board").

Section 21(1) of the *Act* provides for the appointment of a Registrar:

S. 21 (1) The Board must appoint a Registrar and may appoint one or more Deputy Registrars for its college, who hold office during good behaviour.

The Registrar is responsible for the overall financial administration of the College as well as the designated head of the College that handles public requests for information held by public bodies under provincial privacy law.

Pursuant to S. 21(1), the College appointed Gupta in January 2000 to act as the Registrar of the College. Gupta signed an Employment Contract with the College. Clauses 4 & 5 of the Employment Contract set out the provisions for terminating the Registrar:

4. The Board may terminate the Registrar's employment without notice and without compensation on the grounds of just cause including gross neglect of duties provided that a majority of the Board members vote in favour of the termination.
5. The Board may, in its discretion, without just cause terminate the Registrar's duties provided that a majority of the Board members vote in favour of the termination. Upon such termination, the Registrar will be served with twelve (12) months notification period or twelve (12) months of pay in lieu of notification.

The employment relationship did not go well. Beginning in late 2000, the Board told Gupta to implement an accounting system but despite repeated assurances, he did not do so. In July 2001, the College's auditor found that none of the financial transactions for the previous year had been properly recorded in an accounting system, despite the fact that an auditor had provided Gupta with an accounting system. Without any accounting entries, the College could not produce and make available its financial statements, as required by its bylaws and had to hire a temporary accountant to work on the issue.

In June 2002, the Board became more concerned with Gupta's actions and inactions in failing to implement an accounting system or provide financial statements to the Board, and in general continuing to fail to cooperate with the Board. The Board retained the services of Price Waterhouse Cooper (PWC) Chartered Accountants to perform a special investigative audit and produce a report of the College's financial affairs.

Over the next few months other new issues arose, including Gupta's improper transcription of Board minutes.

On October 17, 2002 the Board Chair, Mr. Fred Nguyen ("Nguyen"), met privately with Gupta. Gupta complained of the Board's failure to support him generally and what he perceived as the Board's infringement on financial matters, which he insisted fell strictly under his management responsibility. Nguyen responded and pointed out the various ways in which Gupta was not fulfilling his duties nor following the Board's directions. The meeting ended with Gupta promising to correct these matters and to cooperate with the Board.

The College has By-Laws that specify some of the duties and responsibilities of the Board and the Registrar:

- 14 (1) The Registrar must ensure that minutes are taken at each meeting and are retained on file.
- (2) Subject to subsection (3) Board meetings must be open to the public.
- (3) The Board may exclude any person from any part of a meeting if it is satisfied that:
 - (a) financial, personal or other matters may be discussed of such a nature that the interests of any affected person or the public in avoiding public disclosure outweighs the desirability of transparency,
 - (b) a person involved in a criminal proceeding or civil suit or proceeding may be prejudiced,
 - (c) personnel matters or property acquisitions will be discussed.

On November 5, 2002 in a private meeting PWC provided its Audit Investigation Report to the Board. The report showed a number of irregularities totaling in excess of \$25,000, including Gupta's alleged improper charging of overtime pay, as well as his alleged misappropriation of funds, inappropriate personal use of a College credit card and personal possession of property belonging to the College. The Board met privately on the evening of November 6, 2003 to discuss the report at great length and ultimately was unanimous in its decision to terminate the Gupta's employment.

On the morning of November 7, 2002, when he showed up for work the College terminated Gupta from his position as Registrar. He was given a termination letter at the time he was dismissed:

Dear Mr. Gupta:

We write to advise that the Board has decided that your employment with the College is terminated effective immediately, for cause.

After an extensive audit investigation, we have discovered a number of your actions breach your duty of fidelity, honesty and loyalty to the College. I shall not enter into specifics with you but in general, your actions constitute theft and fraud. I am appalled at your conduct. This is the primary reason to end our relationship with you.

Secondarily, in addition to these actions, your continuing refusal to cooperate with the Board in the performance of your duties and failure to perform said duties makes it even more necessary for this employment relationship to end. You are required to return all College equipment, files, and information in your personal possession including any back-up tapes or other College materials and equipment you may have at your home. In addition, you will give us today any credit cards, security cards and keys belonging to the College. It is the Board's direction that you not return to the premises of the College from this point forward without express permission of the College.

It is with great sadness and disappointment that the Board has found it necessary to take this action.

Yours truly,
Fred Nguyen, Q.C.
Board Chair

The next day Gupta comes to your law firm seeking help. Gupta wants to apply to the Court to challenge the termination claiming that the College treated him unfairly when they fired him. Among other things Gupta says he never saw the Report that he says led to his firing. He wants to be reinstated to his position as Registrar.

The partner in your firm knows that the College does not have any appeals process for its decision. He asks you, the articling student, to provide him with a document stating:

- a. Brief relevant **facts** of the case (5 marks)
- b. The main **issues** (5 marks)
- c. The **law** as it pertains to the facts and issues (15 marks)
- d. An **analysis** and application of law to the facts and issue (40 marks)
- e. Your **conclusion** on how the case will be decided (5 marks)

PART II – SHORT ANSWER (30 MARKS TOTAL)

Each Question is worth 10 Marks.

Please select and answer any **THREE** out of the following **FOUR** Questions.

1. The following quote is from *Newfoundland Telephone v. Newfoundland* [1992] 1 SCR 623:

“However, the quoted statement of Mr. Wells was made on November 13, three days after the hearing was ordered. Once the hearing date had been set, the parties were entitled to expect that the conduct of the commissioners would be such that it would not raise a reasonable apprehension of bias. The comment of Mr. Wells did just that.”

- a) What distinction is the Court making in this passage?
- b) What does this passage imply, in this application of the test for bias, about the relative importance of prejudgment and the appearance of impartiality?

2. The following quote is from *Roncarelli v. Duplessis* [1959] S.C.R. 121

“In public regulation of this sort there is no such thing as absolute and untrammelled ‘discretion’, that is that action can be taken on any ground or for any reason that can be suggested to the mind of the administrator; no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute.”

- a) What is the significance of this famous statement in Canadian administrative law?
- b) With respect to the underlined phrase, the phrase seems inconsistent with a later development in the law—what is that development?

3. What was the Supreme Court’s main objective(s) in the *Dunsmuir* decision? In your opinion, in what ways did *Dunsmuir* succeed or not succeed in simplifying the standard of review?

4. Discuss the best reason(s) in your opinion for **not** having one standard of review.

END OF EXAMINATION