

THE UNIVERSITY OF BRITISH COLUMBIA  
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – April 2021

LAW 468.004  
Ethics and Professionalism  
Toby Goldbach

**EXAM PASSWORD: Me9t3R**  
RESUME CODE: B14915

**TOTAL MARKS: 85**

(8:50 AM PDT) **PREPARATION TIME ALLOWED: 10 MINUTES**

(9:00 AM PDT) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 3 HOURS**

**8:50-9:00 AM Preparation Time (Exam writing not permitted)** – This time is given to students to download/print your exam questions once the exam has been made available online on Canvas, to read the Exam Password on this exam coversheet, to enter the Exam Password for the exam in Exemplify, and to progress in Exemplify until you see the **STOP SIGN**, where you will **WAIT until 9:00 AM. DO NOT proceed past the STOP SIGN. DO NOT begin typing your exam answers in Exemplify until 9:00 AM!**

**9:00 AM Exam Writing Time** – At **9:00 AM**, you may **proceed past the STOP SIGN** in Exemplify and **begin typing your exam answers**. Students are required to calculate and monitor their own time for writing exams. All exam answer uploads will be monitored to ensure that typing of answers only occurred during the allotted Exam Writing Time.

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This is an open book examination. Students may refer to any reference materials that are included as required or optional readings for the course, including the Legal Professions Act, the Code of Professional Conduct for British Columbia, materials on Canvas, and the course textbook. Students will need to have a copy of the BC Code of Conduct with them at the exam.

**If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing for your professor, and continue answering the question. Do not email your professor or anyone else about this while the exam is in progress.**

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### **ACADEMIC INTEGRITY**

Any exam answers that raise suspicion of breaking any restrictions outlined on this cover page may be subject to being processed through academic integrity software. Students typing exam answers before or after the allocated exam writing time may receive a grade penalty.

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Your answer file should be named, and the coversheet of your answers should be titled with:  
Your Exam Code, Course Number, Name of Course, and Instructor Name  
i.e., **9999 LAW 100.001 Law of Exam Taking – Galileo**

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**MARKS****35 QUESTION 1.**

Salma is five years out of law school. For her articles and first two years as an associate, Salma worked at Fine, Lee & Associates, a large full service law firm. Having focused on corporate commercial law and financial transactions while at law school, she was excited to work in Fine, Lee's securities department, where she helped Canadian mining companies from creation to initial public offering. After working closely with the fledgling company Ragna Resources through their successful public offering, Salma accepted a position to work as a senior associate in Ragna's small in-house legal team. Ragna Resources is a steel-making coal operation located in the Tunnel valley region of BC. Ragna Resources produces metallurgical coal or coking coal used to make steel, which it exports by sea to the Asia-Pacific region.

Shortly after joining Ragna Resources, the company experienced a crisis of leadership as the CEO was being investigated for insider trading associated with his previous position at a different corporation. During this period of uncertainty, the CEO was unhinged and apparently was mildly abusive to senior management, including to Salma's boss, the Senior Counsel / VP Legal Affairs. A rumour circulated that Senior Counsel kept a bottle of scotch in her office. While Salma has never seen any alcohol on site, she does think that she smelled alcohol on her boss' breath a few times at meetings.

Last fall, at a meeting with the legal team, a company engineer reported that the settling pond used for waste material had not been maintained properly. As a result, water contaminated with selenium and calcite mixed into nearby Cougar and Bowlen Rivers, which are home to Westslope Cutthroat Trout, the only subspecies native to central BC and Alberta (in large amounts, selenium can cause fish deformities and reproductive failures; calcite coats the bottom of streams destroying local habitat). Some quick modeling by the engineer indicated that fish population would be near to collapse by 2023. The legal team discussed the fines that could be levied against Ragna Resources, which they calculated to be less than the net profit from keeping the mine running as is. Salma recalled from when she did some quick reading on environmental law something about a need to report under one of the environmental law acts but since no one else on the legal team mentioned anything about reporting, Salma decided not to raise the issue.

Ragna Resources's mine is situated upstream from a First Nation that has lived and prospered on the land from time immemorial. The First Nation relies on the Westslope Cutthroat Trout for subsistence living, recreation, and as well, the trout forms an integral part of ceremonial feasts. No one on the legal team has met with the First Nation. However, members of the First Nation and the mayor of the nearby town recently came to Ranga's head offices to commence negotiations about the construction of a housing facility near to the mine, which would give employees the option to live closer to work. One of Salma's colleagues suggested that they burn some sage at the start of the meeting. While at law school, Salma's colleague read a Civil Resolution Tribunal case about a dispute between neighbors, one of whom was Indigenous, over the burning of sage.

During the negotiations over the construction of the housing facility, members of the First Nation expressed an interest in the development of a contingency fund. They proposed some portion of rental fees be put in a public trust for future environmental damage. Salma's boss, the Senior Counsel / VP Legal Affairs assured everyone at the negotiations

Question 1, continued:

that the company uses the highest environmental protections and safety precautions, and proposed a much lower level of investment into the contingency fund.

Unfortunately, the problems with the settling pond and contamination of nearby rivers was exposed. Fine, Lee & Associates has been hired by the First Nation to represent their interests in litigation against Ragna Resources for damages to the local habitat. Senior Counsel / VP Legal Affairs is upset and surprised to learn that the firm that was so integral to the start of the company is now considering acting against them. She asks Salma to draft a response letter to Fine, Lee, scolding them for being double-crossing dupes of fashionable politics.

What ethical issues and professional obligations are raised by this scenario? What courses of action would you recommend?

## **MARKS**

### **25 QUESTION 2.**

Articling is fun, but stressful. Thank goodness for Sunday brunches with your old friends from law school! Even though everyone is super busy with articling, your friends still make time to meet once a week. Of course, brunch usually turns into a nerd fest with everyone talking about his or her ridiculously busy work weeks.

For instance, this past weekend, your friend Esteban told a story about an all out brawl with one of their clients. Don't worry, Esteban's said, I won't mention any names. Apparently, the client is the director of a company that operates a media-sharing website which has been accused of allowing videos with sexual content onto their website without both parties' consent. The client was charged with voyeurism offences, including distribution of an offending recording. Esteban's principal wanted the client to plead guilty and make reparations. A story was circulating around the office about the principal's sister and some problems with an ex and revenge porn. Esteban does not know the exact details, but the junior associates were speculating that the principal just wants to finish the case and move on.

The client insists that he did not know that people were using the site this way, but according to Esteban, it is hard to take him seriously with his expensive car and lavish lifestyle. Despite her personal history, Esteban's principal was able to get the client a favourable plea deal, which would basically amount to a fine and some conditions on the company's operations. The client had agreed to take the plea deal and everything was going as planned when about six months ago, the client stopped paying his legal fees. Esteban's principal asked the client to come to the office for a meeting so that she could tell him face to face that the firm could not prepare an adequate defense unless legal fees were paid. At the meeting, which happened this past Friday, the client announced that he no longer wanted to take the plea deal. The meeting quickly devolved and as the client was on his way out, Esteban's principal shouted, "Have fun in prison!" Esteban's principal wants Esteban to prepare a motion asking to withdraw from representation because of client's noncooperation and failure to pay legal fees.

## Question 2, continued:

Another friend, Tamara, who's articling at an entertainment law firm, told the group about a bizarre call they had with their former moot partner, Paul. Paul, currently a 3L, called freaking out about what he learned in Ethics class. In Paul's first year of undergrad, he paid his roommate to write one of his essays. It was an extremely stressful year. Paul's mother was diagnosed with cancer and frankly, he was just trying to get through the year. Paul asked Tamara what he should do. Tamara reported that they told Paul not to worry about it. If the university never found out and there weren't any charges or disciplinary actions then there's no point in reporting what happened. Tamara seemed pleased with their advice, even as they asked the group what we thought of their problem solving skills.

Finally, Yingtao talked about something other than work. Yingtao is articling with the Legal Services Branch of the Attorney General's office focusing on environmental law, civil litigation and human rights. Yingtao loves his work but he also has a very busy life as an environmental activist and always has the best stories to tell. Yesterday, Yingtao and a small group of activists broke into the head offices of the Acadian Timber Inc., a wood supply company that has been accused of deforestation, destruction of local habitat, and intimidation of indigenous populations in Brazil. The company has so far evaded legal ramifications. To bring attention to the company's terrible environmental record, the group of activists infiltrated the head offices dressed as trees. The activists laid on the floor of the offices, symbolizing the death and destruction of the environment. Yingtao was pleased to report that local media covered the spectacle. Eventually the police came and took the activists to the nearby police station. When everyone at the table was visibly shocked, Yingtao added that he never actually gets charged for these kinds of stunts. "It's what gets me through my day job," Yingtao said.

What ethical issues and professional obligations are raised by this scenario? What courses of action would you recommend?

**MARKS****15 QUESTION 3.**

David is a senior member of the BC Bar. Since 1988, he has practiced law primarily as a sole practitioner. David runs a general practice, practicing in the areas of family, criminal, and wills and estates law. Recently, David has been in discussions with the Judicial Council of BC about the possibility of being appointed to the provincial court. David has always been very respectful of the judges in front of whom he has appeared, and is aware that it is essential that he maintain a spotless record as he is considered for a judicial appointment. David's current case, however, is challenging his efforts at maintaining respect and decorum.

David was hired by a complainant in a physical and sexual assault case to accompany her to court and depending on the outcome of the criminal case, to launch a civil law suit against the defendant. The relationship between the complainant and the defendant was co-dependant and abusive. For instance, the defendant would pressure the complainant into burglarizing wealthy homes in West Point Grey. If she refused, the defendant would become enraged and abusive. The complainant gave David a few pieces of jewelry from

Question 3, continued:

some of these homes to prove to him that she never wanted to participate in the burglaries in the first place.

Despite his client's clear status as a victim of an abusive partner, the Crown has repeatedly referred to the complainant's allegations as untruthful, outrageous, made up, and a waste of the court's time. David tried objecting to the Crown's use of derogatory language, but the judge has overruled every one of David's objections, including his objection to the Crown referring to his client as a shrill witch overlord. The judge's behaviour throughout the trial has David wondering whether the judge would benefit from education on what are now long-discredited myths and stereotypes about rape and sexual assault.

Recently, David learned that the judge lives in West Point Grey and may live in one of the houses that was burgled. David tells this to his client at their most recent meeting. "Make sure you don't mention anything about the burglaries when you're on the stand. I know cross-examination can be stressful and difficult, and what he made you do was horrible. It's definitely an example of how the defendant sexualized his intimidation. But you may lose sympathy with the judge if the judge finds out you were involved in those burglaries."

Overall, David is incensed at the behaviour of the judge in this case. "It's like the wild west in his courtroom," David told his spouse. "When I'm a judge, I'll definitely make sure to keep my courtroom under control."

What ethical issues and professional obligations are raised by this scenario? What courses of action would you recommend?

## **MARKS**

### **10 QUESTION 4.**

Answer ONE of the following two questions.

4a. Discuss two or three ways in which the regulation of the legal profession does not reflect the current state of the legal system and/or changing nature of the practice of law. Support your answer with reference to the BC Code, case law, and/or articles or other reference material from the textbook.

4b. The introduction to the BC Code of Conduct states that, "As participants in a justice system that advances the rule of law, lawyers hold a unique and important role in society. Self-regulatory powers have been granted to the legal profession in Canada on the understanding that the profession will exercise those powers in the public interest." Do you think the system of self-regulation is really about regulating in the public interest or rather about protecting the monopoly that lawyers have over the market for legal services? Are there instances where the code or case law prioritizes the public's interest over lawyers' interests? Please provide reasons and examples with your response.

**END OF EXAMINATION**