

**THIS EXAMINATION CONSISTS OF 5 PAGES
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**

**THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

FINAL EXAMINATION – DECEMBER 2021

**LAW 468
Ethics and Professionalism**

**Section 1
Professor Lisa Martz**

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS

- NOTE:**
- 1. This is an open book examination. Candidates may refer to their CAN, their own notes, printed copies of all or parts of the *Code of Professional Conduct for British Columbia, the Law Society Rules, the Legal Profession Act, S.B.C. 1998, c. 9*, and the course textbook: *Lawyers' Ethics and Professional Regulation*, 3rd ed. (Woolley, Devlin et al.).**
 - 2. ANSWER ALL QUESTIONS.**

THIS EXAMINATION CONSISTS OF 5 QUESTIONS

Part 1: FACT PATTERNS

Please identify and analyze any ethical issues that you think arise, or reasonably may arise, in the following three fact patterns and explain what you think is the appropriate course of action for each issue. Please answer all three questions.

MARKS

- 25** 1. You articulated with criminal defence lawyer, Ed Green, and have now been working with him for about a year. He does not like paperwork and never uses written retainer agreements, but you are enjoying the experience of getting into court a lot. You are junioring him on a case where you are representing two university students, Ken and Dan, who have been charged with uttering threats and assault against another student. Ken tells you that although he was at the scene of the assault, his girlfriend will testify that he was with her at her apartment when the assault is alleged to have taken place. Ken's girlfriend's parents have retained a lawyer to represent her because they are anxious about the impact of the situation on her future, but Ken tells you that she is willing to meet with you without telling her lawyer. Dan denies that he was at the scene of the assault at all.
- The Crown's case is based on the complainant's identification of both Ken and Dan as the people who assaulted him. However, it was a dark and rainy night, the alley where the assault is alleged to have taken place was not well-lit, and you think there are ways to challenge the accuracy of the identification.
- Ken and Dan tell you that the complainant deals drugs and that he confronted them prior to the day of the alleged assault because he mistakenly thought that they were also selling drugs and encroaching on his customers. The clients admit that they both use drugs but deny selling them. They say that the complainant is framing them to scare them off his turf and because he does not want to identify the people who really assaulted him because they are members of a gang.
- Ed assigns you the job of preparing the clients' testimony. They both want to testify. At your first meeting with them for this purpose, it comes out that you have not spoken to or met with Ken's girlfriend. Ken explodes in anger and accuses you of incompetence.
- Ed has also asked you to prepare outlines of the cross-examinations of the Crown witnesses that he will conduct, and you email them to him. He says he will review them, and also sit down with you to talk about the clients' testimony on direct examination, well ahead of the trial, which is coming up in a week. However, he ends up booking a wine-tasting tour with his old

Question 1, continued:

friends from law school for the week before trial. You know from experience that there will be a lot of drinking on the trip and the chances that you will have a chance to speak with him while he is away are low.

MARKS

- 25** 2. You are a family lawyer. You meet with Anika, a new client who says that she found you via your website. She says that your promise that you are “fearless” and ready to “make the bullies pay” told her that you were the right lawyer for her. Anika explains that she separated from her husband two years ago and has been involved in a high conflict fight with him over custody of their children. She says that her husband, who is a psychologist, has been verbally and physically abusive to her and their children. She tells you that she hates the idea that he might be involved in counselling women who are themselves victims of domestic violence. She explains that she had another lawyer, but that she ended up in a romantic relationship with him that ended badly and so she decided to change lawyers. She has since found out that the same thing happened to one of her friends who was also using him as her family lawyer. She says that her file hasn’t moved forward as quickly as it should have because of her relationship with her previous lawyer, but that she now wants to “play hard-ball” to get things resolved, including by telling her husband that she will report him to the College of Psychologists if he doesn’t agree to her having sole custody of the children. Anika is very emotional during your meeting and at times you find it difficult to keep things on track, but you agree to represent her.

It takes more than a month for you to get a copy of Anika’s file from her previous lawyer, and then several weeks after that before you have a chance to sit down and review it. When you do, you discover that there is a court order requiring her to produce documents by a date that is only one week away. You try to reach Anika, but she does not respond to your emails or phone calls. You are considering withdrawing as her counsel when she surfaces and explains that she has been and still is out of town in a remote community, out of cell range and without internet access, taking care of her mother who has had a heart attack. She says that she can have a friend go to her home to get documents and drop them off at your office. Several disorganized boxes are delivered to your office on the Friday before the court-ordered deadline for delivery of a list of documents on the following Monday. In order to review the documents to determine which of them should be disclosed and get the list of documents prepared in time, you are going to have to push your other files aside, work through the weekend, including late into the evenings. You think about asking your legal assistant if she would be willing to handle the project if she were paid overtime.

MARKS

- 25 3. You are the solicitor for a medical device company called Sanitas that was created by a group of professors from the medical and engineering faculties. The professors anticipate having a range of legal work, including handling their patent applications, negotiating contracts to purchase the supplies required to manufacture their devices, negotiating contracts for the sale of their devices to customers, and ensuring regulatory compliance. You work with a few other solicitors at your firm, one of whom is a patent agent, but none of you have done work for a medical company before. However, you are all keen to hold onto the client and to build up a health care industry practice. The company is just a start-up and you figure you can gain experience together. You speak to one of the professors more than the others and she is the one who gives you instructions most of the time. She tells you that there is no need to copy the other professors on any of your emails or other correspondence, as the others focus on the medical and engineering sides, and she is the one with the right skills to deal with legal matters.

Both the client relationship and Sanitas' business go well, and after a period of time you are able to attract a few more health care clients. The chief executive of the local biotech industry association becomes aware of your firm. He approaches you with a proposal that the association will pay your firm a confidential fee of \$7500 for each member company that it refers to you in order to encourage you to agree to act for small, start-up stage companies with limited ability to pay legal fees at the outset. You agree to this arrangement as it aligns well with your firm's own business development strategy. One of the companies that you are introduced to in this way, a company called Hygeia, turns out to be moving towards the manufacture of a medical device that is similar to one of the products made by Sanitas. You don't know if the professors behind Sanitas are aware of this, and you don't mention it to them. Another company referred to you by the association, called Toxon, ends up being the subject of a regulatory investigation. You meet with Toxon personnel to discuss their disclosure obligations in response to the regulator's order to produce documents. The project lead is very tech-savvy and assures you that any documents that might be a cause for concern are encrypted and stored in the cloud in such a way that the regulator's inspectors are very unlikely to become aware of them.

As a result of your relationship with the industry association, you start attending their conferences to speak on panels and are approached by a journalist to discuss the biotech industry. You are thrilled about how this has the potential to increase your firm's profile. During the interview with the reporter, you mention the names of a few of the companies that you act for and the products they are working on, including Sanitas and Hygeia. The CEO of Hygeia sees the article and telephones you in a rage, furious about it. You call a meeting with your colleagues to talk about what you should do.

Please answer the following question:

MARKS

- 10** 4. Explain the difference between an undertaking given by a lawyer and the implied undertaking rule. Include in your answer the purpose of each and an example of a situation in which it might be used/applied.

Part 3: POLICY QUESTION

Please answer one of the following questions:

MARKS

- 15** 5a. What do you think are the most effective ways to improve access to justice? (your answer may refer to initiatives already underway and/or new ideas that you think should be put into action in BC).

OR

- 5b. Do you think that corporate counsel should be held responsible for acting as “gatekeepers” (i.e. protecting the public from misconduct by the companies they work for) or even acting as “whistleblowers” (i.e. reporting misconduct by their companies), or do you think that these expectations go beyond the appropriate role of lawyers?

END OF EXAMINATION