Attachment: Relevant Statutory and Regulatory Provisions (5 Pages)

THIS EXAMINATION CONSISTS OF 10 PAGES (INCLUDING ATTACHMENT).

PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER.

THE UNIVERSITY OF BRITISH COLUMBIA

THE PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – DECEMBER 2022

LAW 372

Administrative Law

Section 004

Professor Ford

MARKS: 60

TIME ALLOWED: 2 HOURS

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NOTES:

1. This is an open book examination.
2. This examination is worth 60% of your final grade. Your exam will be 2 hours long.
3. This examination consists of one fact pattern, with 4 questions, and one policy question. **Please answer *all questions***. Each question is weighted and given an approximate time, as set out below. Students are cautioned to allocate their time accordingly.

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| EXAM PART | MARKS | SUGGESTED TIME including reading time |
| Fact Pattern  Question 1  Question 2  Question 3  Question 4  Policy Question | 11  18  6  5  20 | 22 minutes  36 minutes  12 minutes  10 minutes  40 minutes |
| TOTAL | **60** marks | **120** minutes (2 hours) |

1. If you are handwriting your exam, please double-space your answers.
2. Good luck!

FACT PATTERN (80 minutes)

MARKS

40 The Law Society of British Columbia (“LSBC” or “Law Society”) is the self-governing administrative body that regulates the legal profession in this province, established under the *Legal Professionals Act* of BC (the “*Act*”). It has a professional staff that carries out its day-to-day operations, and it has a governing board comprised of “Benchers.” The Benchers establish the Law Society Rules (the “Rules”), the *Code of Professional Conduct*, and board policies including governance policies. They also oversee the implementation and administration of programs carried out by Law Society staff. The Benchers constitute committees from time to time to manage particular projects. In particular, the *Act* requires the Benchers to establish an Executive Committee, which has particular functions.

The LSBC has 31 Benchers in total, of which six are appointed by the Lieutenant Governor in Council (i.e., provincial Cabinet). The other 25 are lawyers who are elected by other lawyers, in nine regions across BC. They serve two-year terms and can be re-elected for up to eight years total. In order to run for election as a Bencher, one has to be a member in good standing of the LSBC (i.e., a lawyer). Benchers come from a mix of large, small, and solo firms; from the public sector and private practice; and from across the province. Benchers are volunteers and are not paid.

A key provision in the Act is the unauthorized practice of law provision in s. 15. **An excerpt of this statute and associated Law Society Rules are attached to this examination**. Several staff people are assigned to enforcing this statutory prohibition against non-lawyers engaging in the practise of law.

Access to justice and the legal innovation sandbox

British Columbians suffer from an access to justice crisis. According to a 2020 Ipsos-Reid survey, 85% of British Columbians who experience a serious, difficult legal problem either get no legal help, or get legal help from someone other than a lawyer.

The provincial government believes that access to justice could be improved by creating a category of “licensed paralegals” to provide legal services. Licensed paralegals exist in Ontario. In that province, licensed paralegals must complete education requirements, a good character test, ongoing continuing education requirements, financial and background checks, and a Paralegal Proficiency Examination that is somewhat similar to a bar exam for lawyers. Once licensed, they can perform simpler legal tasks (uncontested divorces, basic wills, real estate transactions, simple motor vehicle, small claims matters) on their own. They charge much less than lawyers do, thereby increasing normal peoples’ access to legal services. They have been particularly active in helping people navigate family law matters, like uncontested divorces and simple asset division.

There is no established independent paralegal profession in BC. The *Legal Professionals Act* and the Law Society Rules require that paralegals must always work under the direct supervision of a lawyer. The LSBC has lobbied against the government’s efforts to establish an independent licensed paralegal regime in BC. As well, although the Benchers could license paralegals themselves under sections 1 and 14 of the Act, they have not done so. In response to ongoing pressure from the BC government to take steps toward independent paralegal licensing, however, the Benchers agree to create an “innovation sandbox” as a pilot project. In the words of the Law Society’s website,

*“The innovation sandbox will enable individuals, businesses or organizations that are currently not authorized to practise law to provide services that address the unmet need for legal advice and assistance within a structured environment that maximizes the benefits of the services while minimizing the risks associated with providing those services. Appropriate proposals will be considered by the Executive Committee. If the proposal is accepted, the proponent will be provided with a no-action letter.”*

Individuals apply to the sandbox pilot program, which relies on Law Society Rule 2-113 to issue “no action” letters. Since its inception in late 2020, the sandbox has approved one dozen individual proposals, most related to allowing law firms to engage in alternative business arrangements that would otherwise be prohibited (such as partnering with accountants and other non-lawyers.)

In January 2022, a licensed paralegal from Ontario applies to be recognized in BC through the sandbox, and succeeds in getting a No Action letter to provide legal advice, draft documents, and represent people, all in BC Small Claims Court. The sandbox receives a few more applications from Ontario paralegals over the next few months. Then, in September 2022, four Ontario licensed paralegals in a row succeed in obtaining No Action letters to engage in limited scope practice in BC. In November 2022, the Ontario Paralegal Association (“OPA”) applies to the LSBC sandbox for a blanket No Action letter that would allow any Ontario paralegal to be able to perform the same scope of work in BC that they could in Ontario, just as Ontario lawyers can practice in BC.

The eight members of the Executive Committee are split on how to respond. The President of the LSBC urges her fellow Executive Committee members to raise the issue during the Benchers’ monthly meeting on December 2, 2022. In anticipation of that meeting, OPA publishes an Op-Ed in the *Vancouver Sun*, expressing their position as follows:

*As we said in our submission to the sandbox, access to justice is a crisis. We know what good we do for the public in Ontario. We are well trained and well regulated. In BC, the sandbox was understood as a response to the need to establish a viable paralegal profession, to serve British Columbians better. Now, the Law Society is facing a crucial choice. It can choose to protect its statutory monopoly over legal services, or it can choose to put the public interest first. The right answer is clear.*

All Benchers attend the December 2 meeting including the Executive Committee members, and some other Benchers who have been vocal in their opposition to paralegals on the basis that allowing them to practise independently could undermine the rule of law and put vulnerable people at risk. The family law bar in particular remains strongly opposed to OPA’s application. Also present at the meeting are several guests, including members of the press. After about 20 minutes during which preliminary matters are discussed, the President moves the meeting to *in camera*. Minutes record that the *in camera* meeting ran for 3 hours. Benchers vote 21 to 10 to deny OPA and any individual licensed paralegals from Ontario access to BC sandbox going forward. The Executive Committee endorses the decision. Later in the week, a TV reporter sees the LSBC President on the courthouse steps and requests an interview. On camera, the President makes the following statements:

*BC needs to make its own decisions about paralegal licensing, and not just follow Ontario. The independence of the legal profession is fundamental to the rule of law. It shouldn’t be compromised without very careful thought. Our sandbox was never intended to create wholesale change in who can provide legal services in this province. If we want to tackle the access to justice problem, what’s really needed is more funding for legal aid. We are rededicating ourselves to advocating for legal aid funding, and protecting the public interest by ensuring that only qualified lawyers can represent British Columbians.*

OPA has standing in BC regarding the LSBC’s decision. The Act does not provide for a statutory right of appeal. The OPA files a petition seeking judicial review of the LSBC’s decision, which the Supreme Court of BC agrees to hear.

**QUESTIONS**

You are litigation counsel for the Law Society on this matter. Provide it with answers to the following questions:

MARKS

11 1. OPA submits that the Law Society Benchers and/or the Executive Committee are not sufficiently independent, and/or were biased in reaching the decision they did on December 2. Discuss.

18 2. The OPA submits that the Benchers committed reviewable substantive error in denying them and Ontario paralegals access to the sandbox. Identify and apply the appropriate standard of review. Explain your answer, including a specific description of how the court would approach the question and the likely outcome.

6 3. A *Vancouver Sun* reporter who attended the December 2 meeting was upset to see it move to *in camera*. They insist that deliberations on such an important public issue should have taken place during an open hearing. The *Sun* applies to intervene in the OPA’s judicial review application on the basis that the LSBC failed to consider the importance of freedom of expression and of the press when it moved the meeting to *in camera*. The court grants them intervenor status. Assume that at least a plausible argument that Charter freedom of expression rights has been triggered, and advise your client.

5 4. Now imagine that the *Administrative Tribunals Act* applies to the Law Society just as it applies to Hospital Appeal Board. How would this affect your analysis with regard to questions 2 and 3 above?

*In your answers:*

* *note that the Legal Professionals Act and associated Regulations, attached, are not exactly the same as any real statute or regulations. Do not rely on any experience you may have with any actual similar enactment.*
* *Do not address freedom of mobility arguments that could be brought under the Charter s. 6.*
* *be objective in your assessment, even though you are counsel for the LSBC.*
* *if you are missing information that you consider necessary, identify the information you are missing and state how it would affect your answer.*

POLICY QUESTION (40 minutes)

MARKS

20 The *Vavilov* case influenced the way that certain concepts are understood and applied in administrative law. Relying on cases and materials, and being as specific and detailed as you can, discuss and provide your opinion on how the concepts of the rule of law, and legislative intent, have evolved over time.

**END OF EXAMINATION**

**Attachment: RELEVANT STATUTORY PROVISIONS**

***Legal Professionals Act, SBC 1998, c. 9*** [excerpts]

**Definitions**

**1**   (1) In this Act:

"applicant" means a person who has applied for

(a) enrolment as an articled student,

(b) call and admission, or

(c) reinstatement;

"bencher" means a person elected or appointed under Part 1 to serve as a member of the governing body of the society;

"executive committee" means the committee established under section 10;

"lawyer" means a member of the society;

"member" means a member of the society and includes

1. a lawyer and
2. any other individual legal service provider as defined by the benchers;

"practice of law" includes

(a) appearing as counsel or advocate,

(b) drawing, revising or settling

(i) a petition, memorandum, notice of articles or articles under the Business Corporations Act,

(ii) a document for use in a proceeding, judicial or extrajudicial,

(iii) a will, deed of settlement, trust deed, power of attorney or a document relating to a probate or a grant of administration or the estate of a deceased person,

(iv) a document relating in any way to a proceeding under a statute of Canada or British Columbia, or

(v) an instrument relating to real or personal estate that is intended, permitted or required to be registered, recorded or filed in a registry or other public office,

(c) doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages,

(e) giving legal advice,

but does not include

(h) any of those acts if performed by a person who is not a lawyer and not for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed,

"practising lawyer" means a member in good standing who holds or is entitled to hold a practising certificate;

"president" means the chief elected official of the society;

"resolution" means a motion passed by a majority of those voting at a meeting;

"rules" means rules enacted by the benchers under this Act;

"society" means the Law Society of British Columbia;

**Object and duty of society**

**3**   It is the object and duty of the society to uphold and protect the public interest in the administration of justice by

(a) preserving and protecting the rights and freedoms of all persons,

(b) ensuring the independence, integrity, honour and competence of lawyers and members,

(c) establishing standards and programs for the education, professional responsibility and competence of lawyers and members, and of applicants for call and admission,

(d) regulating the practice of law, and

(e) supporting and assisting lawyers, members, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

**Benchers**

**4**   (1) The following are benchers:

(b) the persons appointed under section 5;

(c) the lawyers elected under section 7.

(2) The benchers govern and administer the affairs of the society and may take any action they consider necessary for the promotion, protection, interest or welfare of the society.

(3) The benchers may take any action consistent with this Act by resolution.

**Appointed benchers**

**5**   (1) The Lieutenant Governor in Council may appoint up to 6 persons to be benchers.

(3) A bencher appointed under this section has all the rights and duties of an elected bencher, unless otherwise stated in this Act.

**Elections**

7   (1) The benchers may make rules respecting the election of benchers.

(2) The rules made under subsection (1) must be consistent with the following:

(a) voting is by secret ballot;

(b) the right of each member to vote for a bencher carries the same weight as any other member who is entitled to vote for that bencher;

(c) only members in good standing are entitled to vote.

**Law Society committees**

**9**   (1) The benchers may establish committees in addition to those established by this Act.

(2) The benchers may authorize a committee to do any act or to exercise any jurisdiction that, by this Act, the benchers are authorized to do or to exercise, except the exercise of rule-making authority.

**Executive committee**

**10**   (1) The benchers must establish an executive committee.

(2) The benchers may delegate any of the powers and duties of the benchers to the executive committee, subject to any conditions they consider necessary.

**Law Society rules**

**11**   (1) The benchers may make rules for the governing of the society, lawyers, law firms, articled students and applicants, and for the carrying out of this Act.

**Part 2 — Membership and Authority to Practise Law**

**Members**

**14**   (1) The benchers may make rules to do any of the following:

(a) establish categories of members;

(b) determine the rights and privileges associated with categories of members;

(c) set the annual fee for categories of members other than practising lawyers;

(d) determine whether or not a person is a member in good standing of the society.

**Authority to practise law**

**15**   (1) No person, other than a practising lawyer, is permitted to engage in the practice of law, except

(a) a person who is an individual party to a proceeding acting without counsel solely on his or her own behalf,

(c) an articled student, to the extent permitted by the benchers,

(e) a lawyer of another jurisdiction permitted to practise law in British Columbia under section 16 (2) (a), to the extent permitted under that section,

**Enforcement**

**85**   (1) A person commits an offence if the person

(a) contravenes section 15.

***Law Society Rules***

**Procedure at Bencher meeting**

**1-16** (1) Subject to subrule (4), members of the Society in good standing and articled students are entitled to be present at Bencher meetings.

(3) The President may allow a person not referred to in subrule (1) to be present at all or part of a Bencher meeting, with or without the right to speak at the meeting.

(4) The President may order that only Benchers, or Benchers and specified employees of the Society, be present during the discussion of a confidential matter at a Bencher meeting.

(11) A Bencher present at a Bencher meeting is entitled to one vote.

(12) Voting at a Bencher meeting must be by show of hands, unless the President orders a secret ballot.

**Executive Committee**

**1-50** (1)The Executive Committee consists of the following Benchers:

(a) the President;

(b) the First and Second Vice-Presidents;

(d) 4 other Benchers elected under Rule 1-41.

(2) The President is the chair of the Executive Committee, and the First Vice-President is the vice chair.

(3) The Executive Committee is accountable and reports directly to the Benchers as a whole.

**Election of Executive Committee**

**1-41** (1) The Benchers must elect 4 Benchers from among the Benchers to serve as members of the Executive Committee for each calendar year as follows:

(a) 3 elected Benchers;

(b) 1 appointed Bencher.

**Powers and duties**

**1-51** The powers and duties of the Executive Committee include the following:

(a) authorizing appointment of counsel to advise or represent the Society when the Society is a plaintiff, petitioner or intervenor in an action or proceeding;

(b) authorizing the execution of documents relating to the business of the Society;

(e) approving agreements relating to the employment, termination or resignation of the Executive Director and the remuneration and benefits paid to the Executive Director;

(f) assisting the President and Executive Director in establishing the agenda for Bencher meetings and the annual general meeting;

(h) assisting the Benchers and the Executive Director on establishing relative priorities for the assignment of Society financial, staff and volunteer resources;

(l) overseeing Bencher elections in accordance with Division 1 of this Part;

(q) other functions authorized or assigned by these rules or the Benchers.

**Variations and No Action Letters**

**2-113** If it is satisfied that doing so is in the public interest, the Executive Committee may, on a pilot basis, exempt a person or group of persons from any provision of the *Act* or these Rules.

1. The Executive Committee must impose conditions or restrictions on the scope of any person or group of persons so exempted.
2. The Executive Committee will produce a No Action Letter confirming the Society will not prosecute or seek an injunction against that person or group of persons for acting within the scope of practice set out in (a) above.

***The Canadian Charter of Rights and Freedoms, being Schedule B to the Canada Act 1982 (UK), 1982, c 11***

2 Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(c) freedom of peaceful assembly; and

(d) freedom of association.