



Federation of Law Societies of Canada

National Committee on Accreditation

SAMPLE

Examination for Professional Responsibility

Candidate No.: _____

(To ensure your anonymity, please do not print or sign your name)

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SAMPLE

Examination for Professional Responsibility

General conditions of **ALL NCA** exams:

This is a **three (3) hour, open book** exam.

Answers should be **double-spaced** and written in **blue or black ink** (no pencils).

All answers **must** be completed on the pads provided unless space is expressly provided within the examination booklet.

The examination will be graded on a pass/fail basis (50% is a pass).

WRITE LEGIBLY. Writing considered illegible by the examiner may result in your exam not being fully graded **or your exam being disqualified**.

You must **return the exam questions in the envelope provided** along with your answers. Failure to return the questions will result in the **automatic disqualification** of your exam.

The contents of the examination, including the exam questions, **must not be disclosed** or discussed with others.

Each exam may have its own special instructions; therefore it is important for you to read these carefully before starting.

Instructions specific to this exam:

1. References should be made to specific course materials, including provisions of the Federation of Law Societies of Canada's *Model Code of Professional Conduct*, relevant case law and readings.

These sample exams are simply indications of the style/types of questions which may be asked in each exam; they do not reflect the content or actual format/structure of questions nor of their value. Actual exams vary from subject to subject and from exam session to exam session.



QUESTION 1: (30% OF EXAM GRADE; 54 MINUTES)

Suzanne Smith, a long-time friend of yours, is the executive director of a not-for-profit agency, Youth At Risk [YAR], that supports young people who are at risk of getting in trouble with the law. During the course of this friendship, Suzanne has occasionally asked for pro bono legal advice on matters related to YAR's lease of its office, and recently you have undertaken to negotiate the terms of a termination of an employee, YAR's financial assistant, who Suzanne recently fired. This negotiation has just commenced. You are asked to attend a meeting of the Board of Directors of YAR to report on these negotiations. At the Board meeting Frederika Flint, the assistant director of YAR asks to speak with you in private. You and Flint leave the Board meeting and she draws you into the hallway just outside the women's washroom. She tells you that she has information that Suzanne has been skimming money from YAR for her own benefit. She hands over to you copies of bank records that show a pattern of \$1,000 withdrawals each month from YAR's bank account, payable to Suzanne. She advises that the real reason that Suzanne fired the financial assistant is that she had discovered that Suzanne had been stealing from the YAR bank account. You advise Frederika that you will think about it and get back to her. Just as you end this conversation, Suzanne exits the women's washroom.

You arrange a meeting with Suzanne the following day. You confront her with the allegation. She responds by saying i) that Frederika Flint is after her job and that Flint has had a vendetta against her since she began work at YAR - 'it was Flint who told you about this?', she asks, and you confirm it – and ii) that there is absolutely no relationship between the firing of the assistant and the allegations being made by Flint. She continues, 'Look, you've been my lawyer here ever since I started work, and nothing untoward has ever occurred here'. This has been your experience and, upon being pressed by Suzanne, you have to agree.

She asks to see the bank records that Flint gave you, and you show them to her. She responds by saying that the withdrawals have nothing to do with anything improper, but are 'ex gratia payments' that YAR agreed to make to her in lieu of taking holidays over the previous number of years. In fact, she says, she has a copy of that agreement with her and shows it to you. The agreement is signed by Suzanne and the chair of the Board of Directors, and entitles her to pay herself \$1,000 per month for three years to compensate her for having foregone vacations. She asks you for the bank statement, and shows you that the amounts to which she is entitled in the agreement exactly correspond with the amounts that have been withdrawn from the YAR bank account. You are relieved. She takes the copy of the bank statement with her when she leaves.

A few days later you call Frederika Flint to tell her about the special agreement regarding vacation pay, and that there was an innocent explanation for the withdrawals. Within minutes you receive a phone call from the Chair of the Board of Directors. He informs you in no uncertain terms that there was never an agreement to pay Suzanne in lieu of vacation, and that Suzanne has taken the full amount of her vacation each year that she has been employed with YAR. And he asks you why you were talking about all of this with 'your friend Suzanne'. You don't answer, promise to get back to him shortly, and immediately go in search of Suzanne, only to learn that she has left town, having abandoned her apartment. She made one last visit to the



bank, the afternoon of her meeting with you, to withdraw \$30,000 from YAR's bank account and has not been seen since.

As you reflect on this turn of events, you begin to wonder whether you may not have handled this properly. What were your responsibilities, what mistakes may you have made, and what may be the consequences for you, if any? Give your reasoning in detail.



QUESTION 2: (30% OF EXAM GRADE; 54 MINUTES)

Robert Kaatsey is an inventor. He has invented many things that could have been very valuable on the market. Sadly, he never seems able to get them to the patent office or to market before someone else does, and as a result he continues to live with his mother and toil in her office or garage.

Kaatsey, who is a recreational curler with a lifelong fondness for the quintessentially Canadian sport of curling, has spent years developing a sophisticated system for gauging the effectiveness of curlers' performances in high level competitions – national and world championships and the Olympics for use in the broadcast of curling games on television and for analysis of curling games. He recently concluded that the invention of this system was complete and ready to be introduced to the world. He described the idea to his curling team, one of whom, Cal Cavendish, a lawyer, listened with interest but said little about the idea.

It turns out that Cal Cavendish does legal work for The Sports Broadcaster [TSB], a television network that broadcasts curling throughout Canada. He immediately saw the benefits of the invention for his client and contacted them the very next day to inform them of the idea. Unknown to Kaatsey, TSB immediately got to work on the concept independently and within weeks had applied to obtain a patent for a system identical to Kaatsey's. The legal work was done by Cal Cavendish.

Kaatsey met with a lawyer, Bob Burns, the following week. Burns proposed that they go into the project together, with Burns providing the legal advice, Kaatsey providing the "idea", and Kaatsey's mother providing the money. The three met and agreed to establish a company, Kaatsey Kurling Konzept Ltd., with each taking a 1/3 interest. Burns immediately applied to have Kaatsey's idea patented. It wasn't long before the Kaatseys, on a return visit to Bob Burns' office, learned two things. First, that Cavendish had shared the idea with TSB and that, on behalf of TSB, Cavendish had also applied to have the idea patented. Second, throughout the time when they had been meeting with Bob Burns, his small two person law firm had been negotiating to join Cal Cavendish's somewhat larger firm, and had, days earlier, joined with the larger firm. Burns told the Kaatseys that as a new member of the Cal Cavendish firm he was happy to continue to pursue the Kaatsey Kurling Konzept on their behalf. He also told them that if they are not prepared to continue to have Burns represent them then, pursuant to the terms of the agreement among them to develop the Kaatsey Kurling Konzept, the Kaatseys will be required to buy out his shares for their initial value, a value that corresponded with the value of the legal work he had performed in setting up the company and initiating the patent application, plus a 20% premium on his shares.

Needless to say, the Kaatseys and especially Robert are upset. What they thought was going to be a wonderful venture, a contribution to the curling world and possibly a lucrative company, seemed to have blown up in their faces. They have now come to you for advice regarding their treatment at the hands of Cavendish and Burns. [ASSUME FOR THE PURPOSES OF THIS QUESTION THAT THE KAATSEY CURLING CONCEPT IS PATENTABLE AND HAS BEEN PATENTED BY TSB.]

What advice would you provide them? What courses of action are open to them? Provide reasons, and authority, for your answer.



QUESTION 3: (15% OF EXAM GRADE; 27 MINUTES)

ANSWER EITHER PART A OR PART B

PART A

In Chapter 1 of the course materials, you were invited to examine the question of lawyers' ethics from the perspectives of 'loyalty', 'justice' and 'integrity'. As you worked your way through the syllabus, what specific examples of a lawyer's behavior did you encounter that aligned with one or other of these perspectives? Identify three such examples, and explain why the lawyer's approach corresponded with the perspective you associate with it. The examples should address at least two of the three perspectives.

OR

PART B

One of the common themes in legal ethics and professional responsibility is the nature of "role morality". It is often thought to be one of the reasons why lawyers are held in low esteem by the public. Putting it at its most disquieting, Macauley observed that a lawyer

"with a wig on his head and a band round his neck [will] do for a guinea what, without those appendages, he would think it wicked and infamous to do for an empire".

What observations would you make about this question of role morality? What concerns do you have about the issue of role morality? In what ways is it justified? What are its implications for the justice system? What are its implications for the moral compass of a lawyer?

QUESTION 4: (15% OF EXAM GRADE; 27 MINUTES)

In your own words describe the implications of the recent decision of the Supreme Court of Canada in *Wallace v. CN*. In what ways does it correspond with the existing law? In what ways does it introduce new issues or concepts? In what ways does it create implications for lawyers and the legal profession that were not present before the decision?

QUESTION 5: (10% OF EXAM GRADE; 18 MINUTES)

Some people argue that the problem of access to justice is one that lawyers are uniquely obligated to address. Identify the ways in which you agree or disagree, and identify the most important steps you would take to address the barriers to access to justice. Give your reasons. If you are of the opinion that there are no barriers to access to justice presently, identify the reasons why you think that the commentators on the question are wrong.



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