

Session: Legal Ethics

Topic: Conduct Unbecoming

Recommended time: 1 hour 15 minutes

Score: 100 Marks

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Conduct Unbecoming

Clark was called to the Saskatchewan bar 5 years ago, and he has remained in the practice of law since then without any discipline record, neither is he facing any disciplinary charges, at least up until now. Clark has not completed the CPD requirements for the current legal year even though his status indicates that he is still in active practice. The Administrative Secretary of the Law Society of Saskatchewan wrote him about 30 days to the expiration of the mandatory CPD period, to warn him that he may be administratively suspended if he did not report his CPD hours as required by the Rules of the Law Society.

Clark acknowledged this letter and in his response, he informed the Administrative Secretary that he was not able to complete the CPD requirements because he is presently serving a prison term. The Administrative Secretary wrote back to inquire for what purpose he is being incarcerated and whether Clark had informed the Law Society about this, to enable a review of the situation. Clark replied that he is serving a prison term of three years for possessing child pornography and this explains why he has not been able to complete the mandatory CPD hours. He also stated that he has not informed the Law Society as at that date.

In a further letter to Clark, the Administrative Secretary demanded full details of the conviction, notifying Clark that an investigation may be commenced into this matter. And that if there are sufficient facts, an application may be made to a disciplinary panel to conduct a hearing to

determine whether Clark's conduct constitutes conduct unbecoming the profession. There was no further response from Clark.

A panel was subsequently constituted to conduct the hearing. A Citation has been issued against Clark to the effect that his conviction and subsequent imprisonment for possessing child pornography constitutes conduct unbecoming the profession pursuant to S. 38(4) of the Legal Profession Act.

Clark however contends that the Law Society does not have the power to suspend him from practice on the grounds of non-compliance with CPD requirements. He argues that though the laws of the Law Society permits it to establish a CPD scheme, nowhere is it stated that a member who did not comply with the scheme shall be suspended without hearing or appeal. Further, Clark submits that though he admits he is presently serving a prison term, he disputes that the conviction for possessing child pornography constitutes conduct unbecoming. To Clark, this is a matter that happened in his home, in his private life, away from law practice and had no relation whatsoever with his practice of law.

You have been appointed as the chair of the panel to conduct the hearing. Prepare a draft of your ruling in this matter.