

Session: The Preservation of Client Confidences

Topic: Basic Confidentiality Obligations

Recommended time: 100 Minutes

Score: 55 Marks

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Facts

Logan was called to the Nova Scotia bar in 1998 and practices family law in Halifax. He is happily married and has a daughter of 19 years, Chloe. Last summer, Chloe invited her dad to an end of session party at her school which was attended by many parents. At the party, Chloe introduced Simon her boyfriend to Logan, and told him that her dad practices family law. Simon muttered, “Oh, what a disappointment! I had actually thought your dad was into intellectual property and patent”. Logan asked why Simon was particular about a patent practitioner and he answered that he had almost completed work on a computer application and needed a lawyer for some advice including how to register the patent. When Logan asked what kind of computer application, Simon explained that the app allows users to monitor their blood pressure and heart rates simply by holding their smartphones. When held in the left hand, the app’s super-sensitivity will draw from radial pulses on the wrist through which the user’s body temperature, blood circulation, heart beats, rhythms, blood pressure and pulses will be automatically measured. It will provide 24-hour diagnosis and the user does not have to do anything. The app will automatically calculate the figures and log them in the app, warning the user if there is any impending risk of stroke or heart attack. The app will revolutionize the world of medical science as it will reduce risks of death from heart related diseases, Simon said elatedly, concluding that he wanted this software protected by law as he had completed work on it and was about to launch. Logan asked some more questions about the app and then advised that Simon could file the patent application online himself, as there is no big deal in that. All he needed to do was to visit the Canadian Intellectual Property Office website and follow the process of filing a new application online. Simon thanked him profusely for this piece of information and promised to contact Logan again if he runs into any obstacle. Logan assured him he would render all the help he could and wished him well in his endeavors.

Last Sunday morning, Logan arrived home to meet his wife in the living room watching a religious program on TV with Reverend May speaking on the topic “Religion and Morality”. Logan hissed and walked straight into the bedroom. His wife ran after him, laughing and shouting, “When will you ever get

along with Reverend May? I don't know why she infuriates you so much". Logan replied that he will never respect the Reverend for her sheer hypocrisy and pretenses. "I've told you that these self-appointed folks are mere pretenders. Is it not the same Reverend May whose husband retained me in that messy divorce proceeding last year where the husband accused her of infidelity, drug abuse and theft?" Logan's wife replied that those could be mere allegations. "No!", shouted Logan. "See, I still have the details on my phone. Okay... see... here, in paragraph 5 of the affidavit filed by the husband, he presented irrefutable proofs of Reverend May's adultery with her church member Jerry, and the fact that she stole about \$126,120 from her church. Here in paragraph 6, the husband presented evidence of her extensive history of drug abuse, violence, irrational behaviors and extra-marital affairs with two other men. As a matter of fact, it was the crushing weight of this evidence that forced her into settlement and she pleaded for the matter not to be made public. Is that the same person that should be talking about morality and religion on TV?", Logan howled. His wife insisted that she would follow the message and not the messenger, as she still regarded her as a woman of God.

In the afternoon of that day, while eating out with his family, Logan received a call from the Chief Executive Officer (CEO) of Microtech Ltd requesting for an urgent meeting. When Logan responded that he was downtown with his family, the CEO asked if he could join them for lunch as the issue was extremely urgent. Logan said that was okay. When the meeting started, Logan's wife excused herself and sat at another table. Chloe was also about leaving when Logan held her hand and introduced her to the CEO, saying she would be taking notes for him during the meeting. The CEO asked if Chloe was a lawyer; Logan said no but that she had legal training and had always acted for him in that capacity. Logan winked at his daughter's shocked face and whispered into her ears, "Don't worry, nobody will find out. Just take notes as you would do in class."

Microtech's CEO informed Logan of their new product, a software particularly useful for patients with history of heart arrhythmia. The software detects heart rhythm disorders by measuring irregular heartbeats and calibrating the electrical signals emitted by the patient's pulses. He explained that the software has a wearable device but users have the option of installing the app on their smartphones which will work while the user is merely holding the phone. The app will also work to monitor vital signs including blood pressure, heart rates, body weight, respiration as well as sleeping and waking activities. The CEO indicated that he wanted Logan to file the necessary applications to patent this software urgently because he suspects his wife who has filed for divorce knows about it and might use the information to her own advantage. At any rate, he sought out Logan because he wanted him to also handle his ongoing divorce petition. So, he provided Logan with some information about his marital life. Logan retorted that he has some ideas about the workings of such applications which could benefit the company's app too. At the

end of discussions and given Logan's promises, the CEO agreed to give Logan 10% shareholding of the company in return for his legal services.

In the car on their way home, Chloe wondered if Microtech's software was not the same as that developed by her boyfriend. Logan's wife asked what software and Chloe explained the details of the medical diagnosis app Simon had told her about. Logan's wife asked him if it's true that the two applications were the same but Logan replied that the two apps were only similar but not the same. He explained the technical differences between the two according to the information received from the CEO. Besides, he concluded, he was not Simon's lawyer as he never signed any retainer with him and the last time he heard from Simon was two months ago when he called to ask Logan for some more advice relating to his app.

The Nova Scotia Barrister's Society has received complaints concerning the activities of Logan and you have been appointed as an investigator with respect to his law practice from last summer.

Prepare a draft of your report based on the facts above.

Notes:

This sample question tests your knowledge as to client's confidentiality: when and how does the duty of confidentiality arise? How and when can this duty be breached? Germane to the issues raised by the sample question is the issue of when a lawyer-client relationship is created, and once you miss this important point in your answers, it will negatively affect your conclusions.

The question also deals with the issue of conflicts of interest. The rules and case law explain when a conflict of interest will arise and what a lawyer must do in such circumstances.

In answering this type of question, you must be able to identify all the issues involved, as we have done in the sample answer below.