

NCA LIBRARY • STUDY GUIDE

Professional Responsibility

A complete guide to the NCA Professional Responsibility syllabus, topic by topic, with case snapshots, exam tips and practice problems with model answers.

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- Part A** The Legal Profession: Lawyers in Society and a Society of Lawyers
 - Part B** Ethics, Lawyering and Professional Regulation
 - Part C** Some Specific Practice Areas
 - Part D** Access to Justice

Follows: NCA Canadian Professional Responsibility syllabus, revised March 2022 (Parts A–D)

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This guide is a study aid, not legal advice. Always check the current NCA syllabus and the primary sources.

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The Legal Profession: Lawyers in Society and a Society of Lawyers

Syllabus Topics A1–A2

ON THE SYLLABUS

What the syllabus assigns for Part A

Course materials for the whole subject. Alice Woolley, Richard Devlin and Brent Cotter, *Lawyers' Ethics and Professional Regulation*, 4th ed (LexisNexis, 2021) (the "Casebook"), and the Federation of Law Societies of Canada, *Model Code of Professional Conduct* (the "Model Code"), read with its commentaries. The syllabus also expects you to know the Model Code's table of contents well enough to find the provisions that apply to a problem.

Topic A1, Professions and Professionalism: The Profession of Law and Law as a Profession. Required: Trevor C.W. Farrow, "Sustainable Professionalism" (2008) 46 Osgoode Hall Law Journal 51; Casebook, Chapter 1; a general review of the full Model Code. Optional: Chief Justice of Ontario Advisory Committee on Professionalism, "Elements of Professionalism"; Amy Salyzyn and Alice Woolley, "Protecting the Public Interest: Law Society Decision-Making after Trinity Western University" (2019) 97 Canadian Bar Review 70.

Topic A2, Regulation of Lawyers and Regulation of the Legal Profession. Required: Casebook, Chapters 2 (parts 2–3), 10 and 12; Model Code, Chapter 3 and commentaries, and rule 7.2 and commentaries; a brief skim of the governing materials of one Canadian jurisdiction. Optional: *Constitution Act*, 1867, s 92; Law Society of Ontario, "Protecting the Public"; *Law Society of New Brunswick v Ryan*, 2003 SCC 20 at para 36; Law Society of Ontario, "Paralegals"; Amy Salyzyn, "From Colleague to Cop to Coach: Contemporary Regulation of Lawyer Competence" (2017) 95 Canadian Bar Review 489; the websites of the fourteen provincial and territorial law societies.

NOTE

How this guide numbers the syllabus

The syllabus divides the course into four Parts, A to D, and restarts its topic numbers inside each Part. This guide keeps those letters and numbers, so Topic A1 is the first topic of Part A and Topic B2 is the second topic of Part B. Model Code rule numbers are those of the current Model Code. Where a rule was added after the October 2022 version that the syllabus links to, the guide says so.

Learning objectives

By the end of Part A you should be able to:

- explain what makes law a profession, what the "public interest" means in professional regulation, and why lawyers' monopoly and self-regulation come with obligations;
- set out the main ways of thinking about the lawyer's role (loyalty, justice and integrity), name the scholars behind each, and point to the Model Code provisions that support each one;
- explain Farrow's theory of sustainable professionalism accurately, and evaluate it;
- reason through a situation in which a lawyer's duties to the client, the court, society and the lawyer's own conscience pull in different directions;
- explain how lawyers are regulated in Canada: who regulates, under what authority, and through which tools (admission, good character, competence, discipline, and the prevention of unauthorized practice);
- discuss the equity, diversity and inclusion obligations of lawyers and law societies, including the lessons of the *Trinity Western* decisions.

How Part A is examined

Part A is the theory behind the whole course. It is examined in three ways.

Essays. The NCA can ask you to discuss a statement about lawyers' role morality, the "neutral partisan," self-regulation, or whether law is a business or a profession, and to set out arguments on both sides. These questions reward a clear thesis, accurate use of the readings (by author), the Model Code provisions that support each side, and a reasoned view of your own.

Statements to evaluate. Short statements ("a lawyer may decline any client for any reason," "law societies exist to protect lawyers") answered "correct," "partly correct" or "incorrect," with authority and a short paragraph of reasons.

Problems. Admission and good character, competence and discipline (Topic A2) are often set as fact problems. Even in problems on other topics, the ideas in Topic A1 help you explain *why* a rule exists, which is often the difference between a passing and a strong answer.

The NCA's published sample exam states the core marking instructions for this subject: references must be made to specific course materials, including provisions of the Model Code, relevant case law and readings; no credit is given for simply copying out provisions of the Model Code or passages from judgments; and answers must engage with the sources and explain how they apply to the facts, in full sentences and not in point form.

Topic A1: Professions and Professionalism: The Profession of Law and Law as a Profession

The syllabus frames Topic A1 around eight questions: what a profession is, what the public interest is, the role of lawyers in legal process and society, law as a business versus law as a profession, the power and responsibility of lawyers, what legal ethics is, whether lawyers' obligations to themselves, clients, the court and society conflict, and whether lawyers are moral or morally neutral actors. The subsections below follow those questions, then give Farrow's article its own treatment.

A1.1 What is a profession?

There is no single legal definition of a profession, but the classic accounts share four features.

1. **Specialized knowledge.** A profession practises a body of learning that takes years of formal education and supervised training to master. Lay people cannot easily judge the quality of the work, which is why they must trust the professional.
2. **A monopoly over the work.** The state reserves the practice of law to people the law society has licensed. Practising law without a licence is an offence in every province and territory (see Topic A2).
3. **Self-regulation.** The state delegates to the profession itself the power to set entry standards, write conduct rules, and discipline members. Canadian law societies are governed mainly by benchers elected by lawyers.
4. **A public service orientation.** The profession claims to put service to clients and the public ahead of its members' self-interest. Roscoe Pound's well-known description, in *The Lawyer from Antiquity to Modern Times* (1953), presents the profession as a group pursuing a learned art as a common calling in the spirit of public service, which remains a public service even though it is also how its members earn a living.

The four features depend on one another. Because clients cannot readily assess legal work, the state protects them by limiting who may do it. Because the work requires expert judgment, the state lets the experts regulate it. And because the profession receives both a monopoly and the power to govern itself, it is expected to use them for the public, not for itself. This is often described as a **bargain**: privileges in exchange for public-regarding obligations. The bargain reappears throughout the course, from the Model Code's Preface to the debates about self-regulation (Topic A2) and access to justice (Part D).

The Model Code's Preface states the bargain in so many words. It says that lawyers hold a "unique and privileged position in society," that self-regulatory powers were granted "on the understanding that the profession will exercise those powers in the public interest," and that "a special ethical responsibility comes with membership in the legal profession."

Critiques of the professional ideal. Sociologists and legal scholars have long questioned whether "profession" describes a real commitment to public service or a strategy for controlling a market. On the critical view, entry standards and conduct rules also restrict supply, raise prices and protect incumbents, and historically they were used to exclude women, racialized people, Indigenous people, Jewish lawyers and others from the bar. Both views have force, and a strong essay acknowledges both: the professional ideal is a real source of obligation, and it is also a claim that the profession must keep earning.

NOTE

Optional reading: "Elements of Professionalism"

The Chief Justice of Ontario's Advisory Committee on Professionalism (working paper of 2001, revised 2002) treats professionalism as a personal attitude marked by intelligence, integrity, maturity and thoughtfulness, and lists ten elements: scholarship, integrity, honour, leadership, independence, pride, spirit and enthusiasm, collegiality and civility, service to the public good, and balanced commercialism. The list is useful in essays as a Canadian, practitioner-led statement of what professionalism asks of lawyers *beyond* the minimum standards of a conduct code. Notice that "balanced commercialism" accepts that lawyers earn a living from law while insisting that service, not profit, should drive the practice.

A1.2 What is the "public interest"?

"Public interest" is the justification for almost everything in professional regulation, and it is notoriously open-ended. Three meanings are worth separating.

(1) The interests of clients and prospective clients as a class. Regulators protect people who buy legal services from incompetence, dishonesty and overreaching. This is the narrowest sense and the least controversial: trust accounting rules, competence requirements and conflict rules all serve it.

(2) The interests of the justice system. Lawyers are participants in the administration of justice. The public has an interest in courts that work, in the rule of law, and in public confidence that the system is fair. The Model Code's rules on candour to the tribunal (rule 5.1-1), on encouraging respect for and improving the administration of justice (rule 5.6-1), and on integrity (rule 2.1-1, commentary [2]) serve this sense.

(3) The interests of society more broadly, including equality, access to justice and the legitimacy of the profession itself. Many law society statutes now make these express. Ontario's *Law Society Act*, for example, directs the Law Society to have regard to principles that include a duty to maintain and advance the cause of justice and the rule of law, a duty to act so as to facilitate access to justice, and a duty to protect the public interest (s 4.2).

The Supreme Court has repeatedly tied the profession's self-governing powers to the public interest. In *Law Society of New Brunswick v Ryan*, 2003 SCC 20 (optional reading; see Topic A2), the Court described protecting the public as the law society's paramount role and adopted the view that a profession is granted the privilege of self-government only in exchange for, and to help with,

protecting the public interest in the services it provides (para 36). In the *Trinity Western* decisions (Topic A2), the Court accepted that a law society's public interest mandate is broad enough to include promoting equal access to the profession and diversity within it.

Why the meaning matters. The breadth of "public interest" is both a strength and a risk. It lets regulators respond to new problems (for example, systemic discrimination, technology, or the unaffordability of legal services). It also lets them reach into areas where reasonable people disagree, and it can be invoked to justify rules that mostly protect lawyers. When an exam question asks whether a law society has acted "in the public interest," a strong answer identifies which sense of the public interest is at stake, who benefits from the rule, and whether the rule is proportionate to the harm it targets.

A1.3 The role, power and responsibility of lawyers in legal process and society

Lawyers occupy several roles at once, and the Model Code describes duties that flow from each.

Role	What it involves	Leading Model Code provisions
Agent and fiduciary of the client	Advancing the client's lawful objectives; loyalty, confidentiality, competence, candour	rules 3.1 (competence), 3.2 (quality of service), 3.3 (confidentiality), 3.4 (conflicts), 3.4-1 commentary [5] (duty of loyalty)
Officer of the court	Candour, fairness, courtesy and respect toward tribunals; no misleading the court	rules 5.1-1, 5.1-2
Member of a self-governing profession	Upholding the profession's standards, reporting misconduct, courtesy and good faith with other lawyers	rules 2.1-2, 7.1, 7.2
Public citizen with special knowledge	Encouraging respect for and improving the administration of justice; speaking out against injustice; making legal services available	rules 5.6-1, 4.1-1

Power. Lawyers have real power over clients and over third parties. Clients depend on their lawyer's knowledge and often cannot evaluate it. Lawyers control access to courts and to the drafting of legal instruments, and so act as **gatekeepers**: the transactions, structures and litigation that society experiences often pass through a lawyer's hands. A lawyer who helps a client structure a transaction to evade regulators, or who uses litigation to silence critics, does harm that the client could not easily do alone. This is why the Model Code forbids a lawyer to knowingly assist in, or do anything the lawyer ought to know assists in, dishonesty, fraud, crime or illegal conduct (rule 3.2-7), and why its commentary warns lawyers against becoming the "tool or dupe" of an unscrupulous client.

Opportunity. Lawyers' skills also let them do good that others cannot: representing unpopular people, challenging unjust laws through test cases (rule 3.2-7, commentary [4] permits a bona fide test case), improving the law, and serving people who could not otherwise get help (rule 4.1-1, commentary [2] encourages pro bono work).

Responsibility. The rule of law depends on people knowing and asserting their legal rights, and in a complex legal system that usually requires a lawyer. Rule 5.6-1, commentary [1] says that a lawyer's responsibilities are "greater than those of a private citizen": a lawyer should not weaken public confidence in legal institutions by irresponsible allegations, yet should not hesitate to speak out against an injustice. Commentary [2] adds that admission to the profession implies a basic commitment to equal justice for all within an open, ordered and impartial system.

A1.4 Law as a business and law as a profession

The syllabus asks whether law as a business and law as a profession conflict, whether it must be one or the other, and what is at stake.

The "business" side. Most lawyers work in firms that must make a profit, pay staff and compete for clients. Billable-hour targets, origination credit, marketing, growth, and the economics of large firms all shape how law is practised. Legal services are also bought and sold in a market, and competition can benefit clients through lower prices, innovation and easier access. Canadian law societies have moved toward this view in some respects. Lawyers may now market their services by any means that is truthful, not misleading, and in the public interest (rules 4.1-1, 4.2-1), whereas law societies once banned advertising altogether. Some jurisdictions are experimenting with regulatory "sandboxes" and new delivery models.

The "profession" side. Clients are not ordinary consumers: they often cannot judge the service, they may be vulnerable, and their interests are protected by fiduciary duties that ordinary sellers do not owe. A lawyer's fee must be fair and reasonable and disclosed in a timely way (rule 3.6-1), a lawyer may not use marketing that takes advantage of a vulnerable person (rule 4.2-1 and its commentaries), and a lawyer's loyalty may not be compromised by the lawyer's own financial interest (rule 3.4-1, commentary [3]). The duty to make legal services available (rule 4.1-1) and the encouragement of pro bono service (commentary [2]) have no counterpart in an ordinary business.

Is it "one or the other"? Most scholars reject a stark choice. Former Supreme Court Justice Frank Iacobucci observed that lawyers who are financially successful often are so because they serve their clients' needs effectively and efficiently, which is admirable. Allan Hutchinson makes a similar point: that law is a business does not mean it must be practised unethically. Farrow's sustainable professionalism (A1.7) builds the lawyer's legitimate interest in being paid fairly into its account of professionalism, rather than treating it as an embarrassment.

What is at stake. The question matters because commercial pressures create predictable ethical risks:

- **Conflicts of interest** driven by the wish to keep or win a lucrative client (the subject of *Strother* and *McKercher*; see Topic B3);
- **Over-billing and padded time**, which the reasonableness requirement for fees addresses (rule 3.6-1; see Topic B1);

- **Competence risks** when lawyers accept work outside their experience because they need the fee (rule 3.1-2, commentary [5]: a lawyer should not undertake a matter without honestly feeling competent to handle it);
- **Exclusion** of people who cannot pay, which is the core of the access to justice problem (Part D);
- **Wellness costs** for lawyers themselves (A1.8).

EXAM TIP

Writing about "law as a business"

Avoid the false choice. A strong answer accepts that law is practised in a market, identifies the specific points where market incentives and professional obligations diverge (conflicts, fees, competence, marketing to vulnerable people, access to justice), and shows how particular Model Code rules manage each divergence. Then take a view on whether those rules strike the right balance.

A1.5 What is legal ethics?

Two dimensions. Legal ethics has two dimensions, and good answers keep them apart. The first is **constraint**: the rules, principles and legal duties that lawyers must obey (do not steal from clients, do not mislead the court, do not act in a conflict). There is broad agreement about these. The second is **aspiration**: how an ethical lawyer should decide what to do where the rules leave a choice (which clients to take, how hard to press an advantage, whether to disclose when the rules say "may"). Here there is much less agreement, and that is where most of the theory in this Topic does its work. A third question runs underneath both: whether helping clients pursue goals one does not share can be reconciled with a good and meaningful life. Charles Fried opened his well-known article "The Lawyer as Friend" (1976) by asking whether a good lawyer can be a good person.

Legal ethics is also distinct from **professional regulation**, which asks how ethical standards for lawyers are set and enforced, and by whom. In Canada the answer is mainly self-regulation by law societies, which is the subject of Topic A2.

Sources of guidance. A lawyer facing an ethical question can draw on four sources. Cite them separately, because they carry different consequences.

Source	Examples	What it offers and its limits
Case law and legislation	The law of negligence (<i>Central Trust Co v Rafuse</i> ; Topic B1), fiduciary duty (<i>R v Neil</i> , 2002 SCC 70; Topic B3), contract (the retainer: <i>Strother v 3464920 Canada Inc</i> , 2007 SCC 24 at para 34), solicitor-client privilege (Topic B2), the courts' power to remove counsel for conflicts (<i>MacDonald Estate v Martin</i> ; Topic B3) and to control withdrawal (<i>R v Cunningham</i> ; Topic B1), legal profession statutes	The most authoritative source, enforced through damages, disqualification, exclusion of evidence and prosecution. But many ethical questions are never litigated.

Source	Examples	What it offers and its limits
Rules of professional conduct	The Model Code, adopted in some form by every law society outside Québec	Covers most areas of practice and is the basis of discipline. But many rules are framed as "should" or "may," and law societies do not enforce every rule uniformly.
Law society disciplinary decisions	Decisions on dishonesty, trust accounting, incivility (Groia; Topic B4), good character (Topic A2)	Show what the rules mean and how misconduct is sanctioned. But they concentrate on clear violations and say little about genuinely hard choices.
Principles or norms of lawyering	Loyalty, justice, integrity (A1.6); sustainable professionalism (A1.7)	Guide the use of discretion and help lawyers notice ethical problems quickly. Their content is contested.

The Model Code describes itself as setting "only the minimum standards of professional conduct," notes that some provisions are aspirational and that a breach may or may not lead to discipline, and tells lawyers facing a situation it does not resolve to consult the law society, senior practitioners or the courts (Preface). Compliance with the Code is therefore necessary but not sufficient, and the Code leaves lawyers a great deal of discretion.

Principles matter for a further reason. Acting ethically requires more than knowing the rules: a lawyer has to *notice* that an ethical issue has arisen, *judge* what to do, and have the *motivation and courage* to do it. Psychologists describe these as components of ethical decision-making. A lawyer with a settled, well-understood view of what the lawyer's role requires is far more likely to spot problems quickly and act on them under pressure.

Ways of thinking about "ordinary" ethics. You do not need moral philosophy for its own sake, but the main approaches give you vocabulary for essays, and they often point to different answers.

- **Virtue ethics** (rooted in Aristotle) asks what a person of good character, using practical wisdom, would do. Applied to lawyers, it asks how virtues such as loyalty, honesty, care, justice and integrity should be balanced in the situation at hand, rather than applying a fixed rule.
- **Utilitarianism (consequentialism)** judges actions by their consequences: the right act produces the greatest good for the greatest number. "Rule" utilitarianism judges rules rather than single acts, so strict confidentiality can be justified because the rule produces good results overall, even if it does harm in a particular case. Consequences also matter after the fact: a decision that turned out to do serious harm (the Casebook's example is the suppression of the Bernardo videotapes in *R v Murray*, discussed below) can be judged unethical in part for that reason.
- **Kantian (deontological) ethics** holds that the right action follows from universal rules that respect every person's capacity to reason and choose: treat people always as ends and never merely as means. Consequences do not justify breaking such a rule.

One full practice problem, answered the way markers want it.

Every Part of the guide ends with original, exam-style problems and complete model answers. The next three pages are reproduced exactly as they appear in the guide: **Problem 1, "The balconies"**, a 45-minute fact pattern that combines privilege, a false affidavit, a public safety risk and withdrawal.

Issue	Each question in the fact pattern is turned into a precise legal issue.
Rule	Several Model Code rules and leading cases, stated accurately, with the may/must distinction made explicit.
Application	The rules applied to the specific facts, including the <i>Smith v Jones</i> factors for public safety.
Conclusion	A concrete course of action: what the lawyer should do first, and what happens if the client refuses.

The page begins with the end of the Part B essay angles, so you'll also see how the guide sets out an essay debate: both sides, the authors and cases to use, and what a strong answer does.

What a strong answer does. It sets out the framework accurately (bright line rule, substantial risk test, consent, transfer rules), uses at least three of the quartet plus *Chartis*, asks who benefits from flexibility (large firms and institutional clients) and who bears the risk (vulnerable clients), and proposes a concrete adjustment (B3.8).

Angle 3: After *Groia*, does civility regulation threaten resolute advocacy?

Yes, if applied loosely. "Civility" can be used to silence legitimate criticism of prosecutors, judges and powerful opponents, and Salyzyn argues that civility norms can reflect a narrow picture of who a lawyer is and how a lawyer should sound. *Groia* accepted that sanctioning lawyers for what they say engages s 2(b) of the *Charter* and that a high threshold is needed so that fearless advocacy is not chilled.

No; it protects the system advocacy depends on. Incivility can damage the client's case, distract the decision-maker, harm witnesses and erode public confidence (*Groia*). *R v R (AJ)* shows that abusive questioning can make a trial unfair, and *Schreiber* and *Laarakker* show that "incivility" often overlaps with dishonesty and sharp practice. The *Groia* factors (good faith and reasonable basis; manner and frequency; the judge's reaction) give lawyers a workable standard.

What a strong answer does. It explains the *Groia* framework precisely, distinguishes incivility from incompetence and dishonesty, uses *Laarakker* and *Schreiber* as contrasts, and addresses whether the context (criminal defence, self-represented opponents, online speech) should change the threshold.

Practice problems

NOTE

How to use these problems

The fact patterns are original and fictional, and they are set in a province that has adopted the Model Code. Write your answer in full sentences before reading the model. The models show the depth and use of authority that markers reward; they are not scripts to memorize.

Problem 1: The balconies (about 45 minutes)

Rupert Asante owns a 40-unit apartment building built in the 1960s. Last spring his insurer required a structural inspection before renewing his policy, and Rupert hired an engineer. The engineer's report concluded that six of the building's balconies are at serious risk of failure under normal use and recommended that they be closed "immediately" until repaired. Rupert did not close them, and tenants continue to use them. It is now early summer.

After a tenant complaint, the city issued an order requiring Rupert to have all balconies inspected within 60 days. Rupert has appealed the order to the city's property standards tribunal, arguing that the order is unnecessary, and the city has started proceedings to enforce it. Rupert retains Hana Kowalczyk to act for him in both proceedings.

At their first meeting, Rupert gives Hana the only copy of the engineer's report. "Keep this in your file," he says. "Now it's privileged, and the city never sees it." He also asks her to prepare an affidavit for him to swear for the tribunal hearing, stating that he "has no knowledge of any structural deficiency in the building." He says he will repair the balconies "next year, when the money is there."

(a) Is the report privileged? What may Hana do with it, and what must she not do? (b) May Hana prepare and file the affidavit Rupert wants? (c) May or must Hana tell anyone about the risk to the tenants? (d) If Rupert will not change his instructions, what should Hana do?

Model answer

Issue. The issues are (a) whether the engineer's report, or Rupert's communications about it, are privileged or confidential, and whether Hana can hold the report to keep it from the city; (b) whether she can file an affidavit she knows to be false; (c) whether the public safety exception allows or requires her to disclose the risk; and (d) whether she must withdraw, and how.

Rule. Solicitor-client privilege protects communications between lawyer and client made in confidence for the purpose of legal advice (*Wigmore*; *Descôteaux*). Pre-existing documents and objects do not become privileged because a client gives them to a lawyer (*Murray*). Litigation privilege protects material created for the dominant purpose of litigation (*Blank*). The ethical duty of confidentiality is broader, covering all information about the client's affairs (rule 3.3-1). A lawyer must not knowingly assist or permit a client to do anything dishonest or dishonourable (rule 5.1-2(b)), must not offer false evidence, rely on a false affidavit, or suppress what ought to be disclosed (rule 5.1-2(e)), and must never knowingly assist or encourage dishonesty or illegal conduct (rule 3.2-7). Discovery obligations require full and fair disclosure, and the lawyer must ensure the client understands and meets them (*Grossman*; *Myers v Elman*). A lawyer **may** disclose confidential information, no more than necessary, when the lawyer believes on reasonable grounds that there is an imminent risk of death or serious bodily harm and disclosure is necessary to prevent it (rule 3.3-3; *Smith v Jones*). A lawyer may seek ethical advice from another lawyer (rule 3.3-6). A lawyer must withdraw if a client persists in instructing the lawyer to act contrary to professional ethics (rule 3.7-7(b)), on the terms in rules 3.7-8 and 3.7-9.

Application.

(a) *The report.* The report is not privileged. It was prepared for the insurer, before any proceeding and before Hana was retained, so it is not a lawyer-client communication and was not created for the dominant purpose of litigation. Handing it to Hana does not change its character, just as handing the tapes to Murray did not make them privileged. Rupert's conversation with Hana about the report, including his request that she hide it, is a communication with his lawyer and is presumptively privileged, though a communication seeking help to deceive a tribunal may fall within the criminal communications exclusion (B2.3). Everything Hana learns is confidential under rule 3.3-1. Hana may keep a copy for the purpose of advising Rupert. What she must not do is use her file to keep the report away from the tribunal or the court. The report is plainly relevant to whether the balconies need inspection, so it will have to be listed in Rupert's documentary disclosure in the enforcement proceeding. As *Grossman* explains, the lawyer must tell the client that relevant documents must be

produced even when they hurt the client's case, and cannot accept a client's wish to hold them back. Rule 5.1-2A, on incriminating physical evidence, may not strictly apply, because this is a regulatory proceeding rather than a criminal one, but its underlying principle (a lawyer cannot simply keep evidence to conceal it) and rule 5.1-2(e) lead to the same result.

(b) *The affidavit.* Hana cannot prepare or file it. Rupert has the report and knows its conclusions, so a sworn statement that he has "no knowledge of any structural deficiency" would be false, and filing it would mean knowingly relying on a false affidavit (rule 5.1-2(e)), knowingly presenting a witness in a false way (rule 5.1-2(k)) and assisting dishonesty (rules 3.2-7, 5.1-2(b)). It could also expose Rupert to a perjury charge. Hana should explain this, and explain that Rupert can still argue his appeal honestly: for example, that a full inspection of all balconies is unnecessary because the problem is confined to six, which he will close and repair.

(c) *The tenants.* The exception in rule 3.3-3 is not limited to a client's plan to commit a crime; it applies to any imminent risk of death or serious bodily harm. Applying the *Smith v Jones* factors: **clarity**, the people at risk are identifiable (the tenants of six units and their visitors); **seriousness**, a balcony collapse can kill or seriously injure; and **imminence**, an engineer has recommended immediate closure, the balconies are in daily use, it is summer, and Rupert has said he will not act until next year. The commentary also asks whether there is any other feasible way to prevent the harm (rule 3.3-3, commentary [3]). That points to Hana's first step: persuade Rupert to close the balconies now, explaining his civil and regulatory exposure if someone is hurt. If he refuses, Hana has reasonable grounds to believe disclosure is necessary, and she **may** disclose, but only what is needed to prevent the harm: for example, telling the city's building department that specific balconies at the building are at risk of failure and should be closed. She should not volunteer the rest of her file or her client's admissions beyond that. Under the Model Code she is **permitted**, not **required**, to disclose, so she should first obtain ethics advice from the law society (rule 3.3-6; commentary [4]) and record her reasons. If her province has a different rule, it governs.

(d) *Withdrawal.* If Rupert insists on the false affidavit or on concealing the report, he is persisting in instructing Hana to act contrary to professional ethics, and she **must** withdraw (rule 3.7-7(b); rule 5.1-4, commentary [1]). She must give him written notice of her withdrawal and, because this is litigation, tell him the hearing will proceed as scheduled and he should retain new counsel promptly (rule 3.7-9(a)). She must deliver the papers and property he is entitled to (rule 3.7-9(b)). Returning his report does not breach her duties, but she must not take part in any plan to hide it, and she should confirm in writing her advice that it must be produced. In any notice to the tribunal she should not explain the reasons in a way that reveals confidential information. Her duty of confidentiality continues after she withdraws (rule 3.3-1, commentary [3]); withdrawing does not prevent her from making a permitted public safety disclosure.

Conclusion. The report is not privileged, and Hana cannot use her file to hide it or file a false affidavit. She should advise Rupert in writing that the report must be disclosed, that the affidavit he wants would be false, and that he must close the six balconies now. If he refuses to close them, she

END OF THE FREE SAMPLE

That was the opening. The full guide covers every Part.

The complete guide follows the NCA Canadian Professional Responsibility syllabus Part by Part and Topic by Topic, built around the Model Code and the cases the exam actually tests.

PART A • TOPICS A1–A2

The Legal Profession

The rest of Topic A1 (loyalty, justice and integrity; Farrow's sustainable professionalism) and all of A2: self-regulation, admission and good character, competence and candour, discipline, unauthorized practice and equity.

PART B • TOPICS B1–B4

Ethics, Lawyering and Professional Regulation

The core of the exam: the lawyer–client relationship and withdrawal (*Cunningham*), confidentiality and privilege (*Smith v Jones*, *McClure*, *Murray*), conflicts (*Neil*, *Strother*, *McKercher*) and advocacy (*Groia*, *Lyttle*).

PART C • TOPICS C1–C4

Some Specific Practice Areas

Honesty in negotiation (*Regular*), defending a client who has confessed, guilty pleas (*Johnson*), prosecutorial discretion (*Krieger*, *Anderson*), government lawyers (*Everingham*) and reporting up in organizations (rule 3.2–8).

PART D • TOPIC D

Access to Justice

Legal needs and the crisis debate, the state's duties (*Christie*, *Trial Lawyers Association*, *Moodie*), whether lawyers owe more (*Luban*, *Devlin*, *Woolley*), pro bono, limited scope services and paralegals.

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pages, following the NCA syllabus Part by Part

63

case snapshots: context, holding and why it matters

21

practice problems with full model answers

12

essay angles with both sides argued

40

true, false or partly true quick checks

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