



## **Facilitator's Guide Administrative Law Case Study**

### **The Expert Report**

#### **Opening Paragraph**

On the night of December 7, 2014, Alexandra Cooper was at her desk preparing for the next day's arbitration hearing when the phone rang. She represented the union in a grievance filed by a security guard who was dismissed after being caught stealing to support his drug addiction. The doctor who monitored Carl's monthly drug tests, and provided a report on which Alexandra had planned to rely, was calling to say that he could no longer stand by his opinion. Carl had just tested positive for drugs. Alexandra had twelve hours to decide what to do.

#### **Objectives**

1. This case is intended for a study group discussion session on professional responsibility in Administrative Law.
2. Participants will be expected to put themselves in the position of the lawyer in the case and to identify and analyze the legal, professional and personal challenges she faces.
3. Participants will also be expected to develop alternatives and an action plan for resolving the issues in accordance with the lawyer's professional obligations under the *Code of Professional Conduct*.

#### **Lawyer References**

- Honesty and Candour, subrule 2.02(2)
- Encouraging Compromise and Settlement, subrule 2.02(4)
- Dishonesty, Fraud by Client, subrule 2.02(7)
- Joint Retainer, subrules 2.04(5), (8) and (9)
- Obligatory Withdrawal, subrule 2.07(7)
- Advocacy, clauses 4.01(2)(b)(e)(f) and (g)
- Integrity, subrule 1.01(1)

### **Suggested Discussion Questions**

Assume that you are the lawyer in this case, and answer the following questions with reference to the relevant rules in the *Code of Professional Conduct*.

1. Who is your client? Are you in a joint retainer with the union and Carl?
2. What are your obligations under a joint retainer?
3. What are your obligations to the tribunal?
4. Are you able to follow Carl's instructions not to disclose his relapse to anyone, even the union?
5. If Carl insists on not disclosing his relapse, how should you proceed?
6. What steps, if any, can you take to resolve a conflict between Carl and the union, for instance, Carl tells you not to disclose his relapse and the union instructs you to disclose it?
7. If you cannot resolve the conflict, what should you do?
8. What advice should you give Carl and the union about this potentially damaging information?
9. Is Alexandra obliged to recommend a settlement in these circumstances?
10. Are there any circumstances under which you should withhold information from a client?