



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

### **The Inconsistent Witness**

#### **Opening Paragraph**

It was 3 p.m. on Friday November 12, 2014 and Philippa Enchin, acting for the union at an arbitration hearing of a grievance regarding scheduling, was in the middle of her direct examination of the client representative, local president, Jesse McCoy. When Philippa asked Jesse to identify a letter that the employer faxed to the union, which she planned to introduce as an exhibit, he flatly denied ever having seen it. After Philippa concluded her examination, the arbitrator called for a break, giving her fifteen minutes to decide what to do about Jesse's testimony, which she knew was almost certainly erroneous.

#### **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*.

#### **General References**

- *Law Society of Saskatchewan Rules*, Part 13, Rules 1020-1025

#### **Lawyer References**

- Dishonesty , Fraud by Client, subrule 2.02(7)
- Dishonesty, Fraud when Client an Organization, subrule 2.02(8)
- Confidential Information, subrule 2.03(1)
- Obligatory Withdrawal, subrule 2.07(7)
- Advocacy, clauses 4.01(2)(b) and (e)
- Disclosure of Error or Omission, subrule 4.01(4)
- Communication with Witnesses Giving Evidence, rule 4.04
- 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? What is your relationship with the union and client representative?
2. Based on the *Law Society of Saskatchewan Rules*, Part 13 Rules 1020-1025, who must you identify and how would you do so? Are you required to verify the client? Why or why not?
3. What information, if any, can you discuss with Jesse after concluding your direct examination prior to the start of his cross-examination?
4. What should you do if you discover that your client is intentionally lying while on the witness stand? Would your answer change if the client had innocently made an error in his/her recollection?
5. What should you do when your client is an organization and intends to or has acted dishonestly?
6. What should you do if you discover after the hearing has ended that your client was dishonest?