



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

Droit public et administratif

February 3, 2000

- 1) The examination in the PUBLIC ADMINISTRATIF section is intended to determine the extent to which you have met the ultimate goals set forth in the document entitled “Préambule de Droit Public et administratif”.
- 2) You have a maximum of four hours to complete the examination. You are entirely responsible for managing your time.
- 3) The examination contains questions relating to the following sections:
 - Droit public et administratif
 - Négociation
- 4) The questions total 100 marks. You must obtain a mark of 60% or more in order to pass this examination.
- 5) You may use any written documentation which you deem to be useful.
- 6) For photocopying purposes, kindly use a **pen with black ink** to write your answers in your answer booklet.
- 7) **You must write legibly, otherwise your answers will not be graded.**
- 8) Please ensure that your examination booklet contains 14 pages (including this page) and that your answer booklet contains 7 pages.

N.B.: You may assume that the Civil Code of Québec and Titles II and III of *An Act respecting the implementation of the reform of the Civil Code*, S.Q. 1992, c. 57 apply. Do not take the transitional provisions into account, except those relating to the publication of rights.

FILE 1 (24 MARKS)

The situation described is an evolving one: all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.

Roger Falardeau consults you today, February 3, 2000, with respect to two separate problems.

First Problem:

Roger is the president of *Les Produits du flétan inc.* *Les Produits du flétan inc.* wants to purchase an old fish processing plant which is not currently operating and which is located in Métis-sur-mer. Roger is convinced that it would be possible to take advantage of the Free Trade Agreement in order to satisfy the American craze for halibut. He has made an offer to purchase which is conditional upon obtaining a permit to operate an establishment for processing marine products.

The *Agricultural Products, Marine Products and Food Act* contains the following provisions:

(fictional section)

“10. Every person who applies for a permit to operate an establishment for processing or packing marine products shall send his application to the Minister. The Minister shall issue the permit if the applicant fulfils the conditions determined and pays the duties fixed by regulation.

No permit shall be issued unless, in the opinion of the Minister, the intended operations of the person applying for the permit are in the public interest. In evaluating the notion of public interest, unless there is a provision of another act to the contrary, the Minister shall take into account only public health and hygiene. The Minister shall, for such purpose, impose any necessary condition or restriction he determines and indicate it on the permit.”

The Minister in charge of carrying out the Act is the Minister of Agriculture, Fisheries and Food (hereinafter referred to as the “Minister”).

Moreover, section 59 of *An Act respecting the marketing of marine products* reads as follows:

(fictional section)

“Where an application for a permit is made to the Minister under the *Agricultural Products, Marine Products and Food Act* by a person or group of persons wishing to obtain a permit to operate an establishment for processing or packing marine products or where a holder of such a permit applies for its renewal, the Minister may take into account the activities of a marketing board in that sector, its marketing programs and objects, and extension orders, to establish whether or not it is in the public interest to issue or renew the permit.”

On December 3, 1999, Roger acting on behalf of *Les Produits du flétan inc.*, sent a permit application to the Minister and paid the duties fixed by regulation.

On December 15, 1999, the associate deputy minister sent the following letter:

Québec, December 15, 1999
<p><i>Les Produits du flétan inc.</i> 9200 Lanaudière Street Montréal, Quebec H8K 4Z9</p> <p><u>Attention:</u> Mr. Roger Falardeau</p> <p><u>RE:</u> <u>Permit Application</u></p> <p>Dear Sir:</p> <p>Please note that the Minister intends to refuse your permit application. If you have any additional comments or documents to submit, kindly forward them to us, no later than January 18, 2000, at 1100 Charest Blvd., Québec City, H2V 1Q3, telephone number (418) 514-4500.</p> <p><u>John Arnott</u> John Arnott Associate Deputy Minister</p>

On December 20, 1999, Roger was out of the country, and it was his wife who received the letter. She forgot to tell him about it, and Roger read the letter upon his return, on January 30, 2000.

On January 31, 2000, Roger received the following decision:

Québec, January 28, 2000
<p><i>Les Produits du flétan inc.</i> 9200 Lanaudière Street Montréal, Quebec H8K 4Z9</p> <p><u>Attention:</u> Mr. Roger Falardeau</p> <p><u>RE:</u> <u>Permit Application</u></p> <p>Dear Sir:</p> <p>Although the products of <i>Les Produits du flétan inc.</i> meet all the conditions fixed by regulation, the public interest requires that the permit application be refused. Indeed, on December 10, 1999, we received a petition signed by one thousand people from the Métis-sur-mer region. The people who signed the petition are opposed to the proposed re-opening of the establishment. In essence, the opponents fear that your project will threaten the <i>Les Pêcheries en vrac ltée</i> processing plant and the jobs attached thereto.</p> <p>Moreover, a marketing board is in the process of being formed for the sector in question and it should begin its activities in the summer of 2000. The programs currently under review should provide that there cannot be two fish processing establishments within 75 kilometres of each other. For these reasons, your permit application has been denied.</p> <p>You may contact the undersigned at 1100 Charest Blvd., Québec City, H2V 1Q3, telephone number (418) 514-4500.</p> <p>Yours truly, <u>Pierre E. Joubert</u> Pierre E. Joubert Minister of Agriculture, Fisheries and Food</p>

The *Agricultural Products, Marine Products and Food Act* does not provide any administrative recourse to contest the Minister's decision.

QUESTION 1 (12 marks)

State four specific factual or legal grounds which you could invoke in order to contest the legality of the decision rendered by the Minister.

ONLY THE FIRST FOUR GROUNDS WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

QUESTION 2 (5 marks)

Assuming that *Les Produits du flétan inc.* files a motion for mandamus, draft the essential conclusion which the motion should contain.

Second Problem:

Roger Falardeau explains to you that he was the victim of a car accident on September 6, 1996. The accident resulted in many after-effects.

Following this accident, he filed an application for compensation with the Société de l'assurance automobile du Québec. The Société de l'assurance automobile du Québec denied his application. Roger filed an application for review which was also denied. Finally, Roger brought the matter before the Administrative Tribunal of Québec within the prescribed deadline.

On January 26, 2000, the Administrative Tribunal of Québec rendered a decision which includes the following extracts:

“[...]”

3. On September 6, 1996, the applicant, who was then 42 years old, was the victim of a car accident. The car in which he was sitting was hit by another vehicle, skidded, went over the central divider and ended up in the opposite lane.

[...]”

9. At the time of the accident, Roger Falardeau was the main shareholder of three fish processing firms located in the Lower St. Lawrence region. He received an income replacement indemnity in accordance with the provisions of the *Automobile Insurance Act*.

[...]”

18. André Morin, the representative of the Société de l'assurance automobile du Québec, testified that he participated in the conciliation which took place in accordance with the *Act respecting administrative justice*. Roger Falardeau's attorney objected to the disclosure by Mr. Morin of the substance of the discussions which took place during the conciliation. At the hearing, the Tribunal dismissed the objection, because section 137 A.A.J. provides that a party may plead any ground of fact relevant to the determination of his rights and obligations. According to the Tribunal, this testimony is the deciding factor in resolving this dispute.

[...]

25. The other member of the Tribunal who heard this matter, Dr. Johanne Mailhot, was unable to participate in rendering the decision for health reasons. Given that the inquiry and hearing had been completed, the undersigned acted alone in deliberating and is hereby signing this decision.

[...]

For these reasons, the Tribunal dismisses Roger Falardeau's application.

Jacques Tremblay

M^e Jacques Tremblay

Member of the Administrative Tribunal of Québec"

QUESTION 3 (7 marks)

- a) **With respect to paragraph 18 of the decision, can Roger Falardeau file a motion for review pursuant to subsection 154 (3) of the *Act respecting administrative justice*?**
- **Justify your answer by referring to one or more specific and relevant provisions of the *Act respecting administrative justice* ?**
- b) **With respect to paragraph 25 of the decision, can Roger Falardeau file a motion for review pursuant to subsection 154 (3) of the *Act respecting administrative justice* ?**
- **Justify your answer by referring to one or more specific and relevant provisions of the *Act respecting administrative justice* ?**

FILE 2 (21 MARKS)

The situation described is an evolving one: all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.

Stacey O'Neill, who is 19 years old, consults you today and relates the following facts to you.

In the spring of 1999, after having completed her first year of studies in data technologies at the Collège Montmorency, she applied to various firms to get a summer job.

On April 27, 1999, she met with Maryse Bourguignon, director of human resources at *Digitex inc.*. This firm specializes in repairing and maintaining computer equipment and also offers round-the-clock computer support services. During the interview, Maryse asked Stacey whether she had a spouse, to which Stacey answered: "No, not at the moment." Then Maryse asked Stacey if she would be available to work evenings and weekends, because it was often necessary to carry out contracts after regular business hours. Stacey told her that she would be available to work during the required hours. At the end of the interview, Maryse thanked Stacey and indicated to her that she would get back to her by the end of the week.

QUESTION 4 (6 marks)

- a) Basing yourself solely on the *Charter of Human Rights and Freedoms*, was Maryse Bourguignon legally entitled to ask Stacey O'Neill if she had a spouse?
- Justify your answer by referring to one or more specific and relevant provisions of the *Charter of Human Rights and Freedoms*.
- b) Basing yourself solely on the *Charter of Human Rights and Freedoms*, was Maryse Bourguignon legally entitled to ask Stacey O'Neill if she would be available to work evenings and weekends?
- Justify your answer by referring to one or more specific and relevant provisions of the *Charter of Human Rights and Freedoms*.

SUPPLEMENTARY FACTS

On April 30, 1999, Maryse called Stacey to inform her that she had obtained the job and that she would start working for *Digitex inc.* on May 3, 1999. She added that her immediate supervisor would be André Dionne. Her weekly salary was established at \$300 and her employment contract was to terminate on September 3, 1999.

On May 3, 1999, at the end of Stacey's first day of work, André asked Stacey to come to his office. He congratulated her for the quality of her work and took the opportunity to invite her to the restaurant of her choice in order, as he said, "to acknowledge the start of a great relationship". Stacey politely declined the invitation.

On May 6, 1999, the firm's social committee held an early-evening cocktail party to which staff members were invited. During the evening, André drew Stacey aside and told her about the disappointments in his love life. During the conversation, he continually attempted to approach her and he caressed the back of her neck and shoulders on three or four occasions; this really annoyed Stacey. Her attempts to establish some distance between her and André were futile. He also complimented her on her beauty and her shapely figure "which would drive anyone crazy", and he told her that she was the kind of woman he wanted to have in his life.

In the following weeks, André surreptitiously continued his manoeuvres: there were more and more frequent invitations to go out, desirous looks, inappropriate compliments regarding Stacey's shape and instances of "involuntary" touching at the office. Stacey was very disturbed by the situation. She had trouble sleeping at night and concentrating during the day. She lost her appetite.

On May 24, 1999, on the advice of a more experienced work colleague, she met with Gilles Langis, the chief executive officer of *Digitex inc.*, in order to discuss her difficulties with André. Gilles Langis seemed rather indifferent to her concerns. He told her: "Come on, don't worry about it. Dédé's just an old cruiser... You have to take him the way he is! He's not bad deep down." In the following weeks, André continued to be as insistent.

On June 29, 1999, while conversing with Martine Dubé, a work colleague who is a full-time student in paralegal techniques during the school year, Stacey learned that Martine was earning a weekly salary of one hundred dollars (\$100) more than her salary, despite the fact that both of them were doing the exact same work.

On July 2, 1999, when Stacey asked André to explain the salary difference, he told Stacey that Martine is the niece of one of the directors of *Digitex inc.* At her wit's end, Stacey gave up and decided to hand in her resignation at the end of the work day.

On September 15, 1999, she returned to college to begin her second year of studies. Since then, she has not had any news about André Dionne and, consequently, her appetite has returned and she is once again able to sleep at night.

QUESTION 5 (6 marks)

- In your capacity as the attorney for Stacey O'Neill, state six rights or freedoms contemplated in separate sections of the *Charter of Human Rights and Freedoms* which have been infringed.
- Justify your answer by referring to one or more specific and relevant provisions of the *Charter of Human Rights and Freedoms*.

ONLY THE FIRST SIX RIGHTS OR FREEDOMS WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

QUESTION 6 (9 marks)

a) State two recourses that Stacey O'Neill can legally exercise.

- Justify your answer by referring to one or more specific and relevant provisions of the *Charter of Human Rights and Freedoms*.

ONLY THE FIRST TWO RECOURSES WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

b) Within the scope of either of these two recourses, can Stacey O'Neill claim damages for a material prejudice. If so, indicate the amount and show all your calculations. If not, explain your answer.

APRIL 1999

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

MAY 1999

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

JUNE 1999

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

JULY 1999

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

AUGUST 1999

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

SEPTEMBER 1999

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

FILE 3 (20 MARKS)

Sonia Demers is the director general of the City of Champfleuri, which has a population of 30,000. The municipality forms part of the RCM of Bouleaux. The director general consults you with respect to three of the municipality's files.

First File:

She first explains to you that the City intends to rebuild the infrastructure for its waterworks and sewers. For this purpose, the City must first hire an engineering firm to prepare the appropriate plans and specifications. Sonia would like to deal with *Groupe Champfleuri génie conseil* due to their acknowledged expertise. However, the mayor has pointed out to her that the City has the legal obligation to call for public tenders before awarding the contract which is estimated at \$75,000. Moreover, the mayor mentioned that the awarding of a contract to this firm would create a problem for Gustave Tremblay, one of the partners of *Groupe Champfleuri génie conseil*, who is a member of the municipal council. Sonia suggested to Gustave that, in order to avoid any problems, he should disclose his pecuniary interest in the matter, abstain from participating in the discussions and abstain from voting on the resolution awarding the contract.

QUESTION 7 (4 marks)

- **Can the City of Champfleuri legally award the contract for the preparation of the plans and specifications to *Groupe Champfleuri génie conseil* without calling for public tenders?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice, or, failing same, to relevant jurisprudence.**

QUESTION 8 (4 marks)

- **Will Sonia Demers' suggestion, regarding the manner in which Gustave Tremblay should behave, legally allow for the avoidance of any problems?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice, or, failing same, to relevant jurisprudence.**

Second File:

Sonia Demers suggested that the City ask the RCM of Bouleaux, within the scope of the latter's revision of its development plan, to amend the land use provided for in the development plan with respect to a large area of land known as the Julien sector. The purpose of the request would be to henceforth have this portion of the City's territory allocated to industrial use in order to attract new business. The revised development plan is scheduled to come into force on October 16, 2000. The RCM has not adopted any interim control measures during the review of its development plan.

According to the City's zoning plan, the land in the Julien sector currently forms part of commercial zone C-14 which authorizes shopping centres in particular.

The company *America inc.* has indicated its intention to build a shopping centre on land belonging to it and located in the Julien sector, and it intends to file its construction permit application during the last week of October of 2000.

The City's planning program currently places the Julien sector in a portion of its territory which is subject to a major allocation for residential land use.

The members of the council are in agreement as regards changing the general policies on land use set forth in the development plan in order to permit industrial land use in the Julien sector. They also support *America inc.*'s project. They are worried that the coming into force of the revised development plan, only a few days before *America inc.*'s permit application, will compromise the shopping centre project in this sector.

QUESTION 9 (4 marks)

- **Will the coming into force of the revised development plan of the RCM of Bouleaux, on October 16, 2000, legally have the effect of prohibiting the implementation of *America inc.*'s project?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice, or, failing same, to relevant jurisprudence.**

QUESTION 10 (4 marks)

- **Will the City of Champfleuri legally be required to refuse to issue to *America inc.* the permit allowing it to implement its shopping centre project merely on the ground that the Julien sector is located in a portion of the City's territory which is subject to a major allocation for residential land use ?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice, or, failing same, to relevant jurisprudence.**

Third File:

Sonia Demers tells you that she suggested to the mayor that the marina, which belongs to the City and is located within its territory, be leased to a private businessman. The mayor told her that this would not be a good idea, given that this municipal immovable is exempt from all real estate taxes. Consequently, the lessee would have an unfair advantage with respect to other marinas whose owners are required to pay taxes.

QUESTION 11 (4 marks)

- **Will the private businessman, as lessee of the marina, legally be exempted from the payment of the real estate taxes?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation, regulations or rules of practice, or, failing same, to relevant jurisprudence.**

FILE 4 (35 MARKS)

<p>NOTE: In this file, you represent the <i>Syndicat international des employés de peinture</i>. Pierre Roberge, the president of this union, consults you and relates the following to you.</p>

Plasco inc. is a small firm located in Magog which specializes in the manufacture of industrial paint. It has 75 employees assigned to three departments: the manufacturing department, which has 40 employees, the shipping department, which has 15 employees, and the administration department, which has 20 office employees. All the employees have the same work schedule, namely, Monday to Friday, from 8:00 a.m. to 4:00 p.m. None of the manufacturing department or shipping department employees are specialized employees. However, the manufacturing department employees have had a specific 10-week training period. The hourly rate for shipping department employees is 5% lower than the hourly rate for the manufacturing department employees.

On June 19, 1983, the *Association des employés de Plasco inc.* (hereinafter referred to as the “A.E.P.”) was certified to represent all the employees employed in *Plasco inc.*’s manufacturing department. At the time, the employer had opposed this unit and the commissioner had ruled that it was an appropriate unit.

Over the years, *Plasco inc.* and the A.E.P. entered into various collective agreements.

On December 9, 1996, *Plasco inc.* and the A.E.P. signed a collective agreement for the period from December 9, 1996 to December 9, 1999. The agreement was filed in accordance with section 72 of the Labour Code.

At the start of 1999, Alain Feinkel, an employee in the shipping department, organized a protest movement. The protesters alleged that the employees were underpaid and that their working conditions were hazardous to their health.

At the same time, *Plasco inc.* was negotiating a major contract with an American company. Before signing the contract, Théophile Gauthier, the president of *Plasco inc.*, wanted to ensure industrial peace for the term of the contract, namely, a period of two years.

On July 12, 1999, *Plasco inc.* and the A.E.P. signed an agreement to amend the collective agreement. The amendments read as follows:

[...]

“**Sec. 10.01.** As of July 12, 1999, section 10.01 shall be amended to provide a 10% salary increase to employees.

[...]

Sec. 30.07. Section 30.07 shall be amended so that, henceforth, it shall read as follows:

This collective agreement shall be in effect from December 9, 1996 to December 9, 2001.”

On July 14, 1999, the A.E.P. filed the amendments in accordance with section 72 of the Labour Code.

Unhappy with the agreement, which granted a salary increase only to the manufacturing department employees, on July 20, 1999 Alain Feinkel contacted the *Syndicat international des employés de peinture* (hereinafter referred to as the “S.I.E.P.”) and began a recruitment campaign in favour of the S.I.E.P.

On August 30, 1999, Théophile Gauthier learned that union recruitment was going on and this concerned him. He was worried that this measure would disturb labour relations. He immediately distributed a memo to each employee inviting employees to a meeting scheduled for 8:00 p.m. that evening at the Mercier Hotel. During this meeting, Théophile Gauthier spoke and expressed his fears to the 50 employees who were in attendance. He also told them that he preferred to negotiate with a well-established union rather than with an international union whose decisions were often made in Washington.

On September 7, 1999, the S.I.E.P. filed a statement of offence alleging that Théophile Gauthier had violated sections 13 and 143 of the Labour Code by inducing the employees to refrain from becoming members of the S.I.E.P.

On September 14, 1999, the S.I.E.P. served 15 resignations upon Emmanuel Kant, the secretary of the A.E.P. That same day, the S.I.E.P. filed with the office of the Labour Commissioner General a petition for certification to represent all the employees employed in *Plasco inc.*'s manufacturing department and shipping department. The S.I.E.P. attached to its petition photocopies of 28 membership applications from employees (15 manufacturing department employees and 13 shipping department employees) and a resolution authorizing the filing of the petition.

On September 29, 1999, the office of the Labour Commissioner General sent *Plasco inc.* a copy of the petition for certification filed by the S.I.E.P.

On September 30, 1999, in order to be in a position to deal with any possible future situation, the executive of the A.E.P. decided that it would also take the necessary steps to file a petition for certification.

On October 6, 1999, *Plasco inc.* provided the A.E.P. with a conference room. Moreover, the employer gave time off during working hours, without any loss of salary, to each employee in the manufacturing department so that the employee could go to the conference room. Each meeting proceeded in the same manner: the employee sat between two members of the executive, namely, Emmanuel Kant and Jacques Gosselin, neither of whom stopped arguing their position until the employee signed a membership application to join the A.E.P. Each time, Emmanuel Kant emphasized to the employee in question that it would be in his or her best interests to join the A.E.P. if the employee wanted to keep his or her job. By the end of the day, Emmanuel Kant and Jacques Gosselin managed to get the 40 employees from the manufacturing department to sign application forms to join the A.E.P.

On October 7, 1999, Théophile Gauthier wrote to the Labour Commissioner General in order to express his disagreement on the bargaining unit sought by the S.I.E.P. According to the employer, each department should form a separate unit.

On October 14, 1999, the A.E.P. filed with the office of the Labour Commissioner General a petition for certification to represent all the employees employed in *Plasco inc.*'s manufacturing department.

On October 22, 1999, Pierre Roberge, the president of the S.I.E.P., wrote a letter to the Labour Commissioner General in which the S.I.E.P. alleged that the A.E.P. was dominated by the employer within the meaning of the Labour Code and, consequently, the S.I.E.P. asked that the Labour Commissioner General decree the dissolution of the A.E.P.

The Labour Commissioner General called all the parties to a hearing scheduled to take place on March 2, 2000.

The *Syndicat international des employés de peinture*, (S.I.E.P.), gives you the mandate to represent it in order to attempt a negotiated settlement of the entire dispute.

A negotiating session is scheduled to take place on February 3, 2000. The following items are on the agenda:

- the validity of the petition for certification filed by the S.I.E.P.;
- whether or not the statement of offence filed against Théophile Gauthier is well-founded;
- whether or not the bargaining unit sought by the S.I.E.P. is appropriate;
- the request made by the S.I.E.P. for a decision to decree the dissolution of the A.E.P.

QUESTION 12 (6 marks)

In your capacity as representative of the S.I.E.P., state one answer that you can raise legally with respect to each of the following arguments which the A.E.P. intends to invoke in order to contest the validity of the petition for certification filed by the S.I.E.P.

ONLY THE FIRST ANSWER WRITTEN IN THE ANSWER BOOKLET WITH RESPECT TO EACH ARGUMENT WILL BE CORRECTED.

- **The S.I.E.P.'s petition for certification is inadmissible because the collective agreement in effect will terminate only on December 9, 2001.**
- **The S.I.E.P.'s petition for certification is inadmissible because the resignations were not served upon the A.E.P.**
- **The S.I.E.P.'s petition for certification is inadmissible because it was not accompanied with the originals of the applications for union membership.**

QUESTION 13 (10 marks)

In your capacity as representative of the S.I.E.P., anticipate five arguments of fact or of law that Théophile Gauthier can raise legally to contest the statement of offence filed pursuant to sections 13 and 143 of the Labour Code.

ONLY THE FIRST FIVE ARGUMENTS WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

QUESTION 14 (12 marks)

In your capacity as representative of the S.I.E.P., state six arguments of fact or of law that you can raise legally to support the appropriate character of the bargaining unit sought by the S.I.E.P.

ONLY THE FIRST SIX ARGUMENTS WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

QUESTION 15 (4 marks)

In your capacity as representative of the S.I.E.P., state two arguments of fact that you can raise legally to support the allegation that the A.E.P. is dominated by the employer.

ONLY THE FIRST TWO ARGUMENTS WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

QUESTION 16 (3 marks)

In your capacity as representative of the S.I.E.P., anticipate one preliminary argument of law that the A.E.P. can raise legally against the request for dissolution made by the S.I.E.P. to the Labour Commissioner General.

ONLY THE FIRST ARGUMENT WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

CORRIGE
Examen régulier - PUBLIC ADMINISTRATIF
Le 3 février 2000

DOSSIER 1

QUESTION 1 (12 points)

Énoncez quatre motifs précis de faits ou de droit que vous pourriez invoquer pour contester la légalité de la décision rendue par le ministre.

SEULS LES QUATRE PREMIERS MOTIFS INSCRITS AU CAHIER DE RÉPONSES SERONT CORRIGÉS.

3 points par bulle 4/5 1 **12**

1. Le ministre n'a pas informé au préalable l'administré des motifs sur lesquels se fonde son intention de refuser la demande de permis (art. 5 par. 1 *L.j.a.*). 1

2. Le ministre n'a pas informé au préalable l'administré de la teneur des oppositions ou de la pétition qui le concernent (art. 5 par. 2 *L.j.a.*). 2

3. Le ministre a pris en considération un élément non pertinent dans l'appréciation de la notion d'intérêt public, (soit une pétition signée par mille personnes) (art. 10 *Loi sur les produits aricoles, les produits marins et les aliments*). 3
OU .
 Le ministre, en vertu de la loi habilitante, ne pouvait tenir compte de la pétition
OU
 Le ministre a mal interprété la notion d'intérêt public

4. Le ministre ne peut refuser un permis sur la base des travaux d'un office de commercialisation qui n'est pas encore en activité. (art. 59 *Loi sur la commercialisation des produits marins*). 4

5. Le ministre ne peut refuser un permis en se fondant sur des programmes non encore en vigueur (art. 59 *Loi sur la commercialisation des produits marins*). 5

QUESTION 2 (5 points)

Dans l'hypothèse où *Les Produits du flétan inc.* présente une requête en mandamus, rédigez la conclusion essentielle que devrait comporter cette requête.

- Ordonner à Pierre E. Joubert ès qualités de ministre **OU** au ministre (de l'Agriculture, des Pêcheries et de l'Alimentation) **OU** à l'intimé. 2 **2**
- de délivrer un permis d'exploitation d'un établissement de préparation de produits marins en vertu de la *Loi sur les produits agricoles, les produits marins et les aliments* 3 **2**
- en faveur de la requérante **OU** à *Les Produits du flétan inc.* 4 **1**

QUESTION 3 (7 points)

a) Au regard du paragraphe 18 de la décision, Roger Falardeau peut-il présenter une requête en révision en vertu de l'article 154 (3) de la *Loi sur la justice administrative* ?

- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi sur la justice administrative*.

Oui, art. 122 *L.j.a.* 5 **3**

b) Au regard du paragraphe 25 de la décision, Roger Falardeau peut-il présenter une requête en révision en vertu de l'article 154 (3) de la *Loi sur la justice administrative* ?

- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de *Loi sur la justice administrative*.

Oui, art. 29 *L.j.a.* **OU** art. 145 *L.j.a.* 6 **4**

DOSSIER 2

QUESTION 4 (6 points)

- a) En vous fondant uniquement sur la *Charte des droits et libertés de la personne*, Maryse Bourguignon pouvait-elle légalement demander à Stacey O'Neill si elle avait un conjoint?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Charte des droits et libertés de la personne*.

Non, art. 18.1 *CDLP* (ET art. 10 *CDLP*) puisque la question porte sur l'état civil (l'état civil est sans lien avec le travail de technicienne en informatique)

OU

Non, art. 5 *CDLP*

OU

Non, art. 16 *CDLP* ET 10 *CDLP* puisque la question porte sur l'état civil

EST ÉGALEMENT ACCEPTÉ

Non, art. 20 *CDLP*

7 (3)

- b) En vous fondant uniquement sur la *Charte des droits et libertés de la personne*, Maryse Bourguignon pouvait-elle légalement demander à Stacey O'Neill si elle était disponible pour travailler les soirs et les fins de semaine?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Charte des droits et libertés de la personne*.

Oui, (puisque la question ne viole pas) art. 18.1 *CDLP* (ET 10 *CDLP*)

OU

Oui, (puisque'il n'y a pas de discrimination pour un motif énuméré à) l'art. 10 *CDLP*

EST ÉGALEMENT ACCEPTÉ

Oui, art. 20 *CDLP*

(puisque'il s'agit d'une exigence requise par l'emploi.)

8 (3)

QUESTION 5 (6 points)

À titre de procureur de Stacey O'Neill, énoncez six droits ou libertés visés par des articles différents de la *Charte des droits et libertés de la personne* auxquels on a porté atteinte.

- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Charte des droits et libertés de la personne*.

SEULS LES SIX PREMIERS DROITS OU LIBERTÉS INSCRITS DANS LE CAHIER DE RÉPONSES SERONT CORRIGÉS.

1 point par bulle 6/9 9 (6)

- Le droit à l'intégrité ou à la sûreté, art. 1 *CDLP*. 1 ○
- Le droit à la sauvegarde de la dignité ou de l'honneur, art. 4 *CDLP*. 2 ○
- Le droit de ne pas être harcelée en raison de son sexe, art. 10.1 *CDLP*. 3 ○
- Le droit à la non-discrimination dans un acte juridique (contrat de travail) en raison de l'état civil, art. 10 ET 13 *CDLP*. 4 ○
- Le droit à des conditions de travail exemptes de discrimination fondée sur l'état civil, art. 10 ET 16 *CDLP*. 5 ○
- Le droit à la non-discrimination dans la détermination du salaire fondée sur l'état civil, art. 10 ET 19 *CDLP*. 6 ○
- Le droit à des conditions de travail (justes et raisonnables), art. 46 *CDLP*. 7 ○
- Le droit à la non-discrimination lors d'une entrevue de sélection fondée sur l'état civil, art. 18.1 (ET 10 *CDLP*) 8 ○
- Le droit à la vie privée, art. 5 *CDLP* 9 ○

QUESTION 6 (9 points)

a) Indiquez deux recours que Stacey O'Neill peut légalement exercer.

- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Charte des droits et libertés de la personne* ou, à défaut, à la jurisprudence pertinente.

SEULS LES DEUX PREMIERS RECOURS INSCRITS DANS LE CAHIER DE RÉPONSES SERONT CORRIGÉS.

1. une plainte ou un recours (à la *CDPDJ*), art. 74 *CDLP*.
 OU
 Un recours devant la commission, art. 74 *CDLP*

10 (3)

2. une action en dommages-intérêts, art. 49 *CDLP*.
 OU
 Un recours en réparation du préjudice, art. 49 *CDLP*
 OU
 Un recours devant le tribunal de droit commun, art. 49 *CDLP*
 OU compte tenu de la documentation
 Un recours en dommages exemplaires, art. 49 *CDLP*

11 (3)

b) Dans le cadre de l'un ou de l'autre de ces recours, Stacey O'Neill peut-elle réclamer des dommages pour préjudice matériel ? Si oui, indiquez le montant et faites état de tous vos calculs. Si non, dites pourquoi.

Oui, 4 500 \$

12 (1)

OU

<p>9 semaines X 300 \$ = 2 700 \$ (démission involontaire)</p>
<p>18 semaines X 100 \$ = 1 800 \$ (discrimination salariale fondée sur l'état civil)</p>

<p>9 semaines X 400 \$ = 3 600 \$</p>
<p>9 semaines X 100 \$ = 900 \$</p>

13 (1)

14 (1)

DOSSIER 3

QUESTION 7 (4 points)

- La Ville de Champfleuri peut-elle légalement accorder le contrat pour la préparation des plans et devis au *Groupe Champfleuri génie conseil* sans demander de soumissions publiques?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi, de règlements, de règles de pratique ou, à défaut, à la jurisprudence pertinente.

Oui, art. 573 par. 1 *L.c.v.*,

15 (4)

QUESTION 8 (4 points)

- La suggestion de Sonia Demers au sujet du comportement que devrait adopter Gustave Tremblay permet-elle légalement d'éviter tout problème?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi, de règlements, de règles de pratique ou, à défaut, à la jurisprudence pertinente.

Non, art. 304 *L.e.r.m.*

16 (4)

QUESTION 9 (4 points)

- L'entrée en vigueur, le 16 octobre 2000, du schéma révisé de la MRC les Bouleaux aurait-elle légalement pour effet d'interdire la réalisation du projet de *America inc.*?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi, de règlements, de règles de pratique ou, à défaut, à la jurisprudence pertinente.

Non, *St-Michel-Archange c. 2419-6388 Québec inc.* (1992) R.J.Q. 875 (C.A.).

17 (4)

QUESTION 10 (4 points)

- La Ville de Champfleuri devra-t-elle légalement refuser de délivrer à *America inc.* le permis permettant la réalisation de son projet de centre commercial au seul motif que le secteur Julien est situé dans une portion du territoire de la Ville visée par une grande affectation résidentielle ?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi, de règlements, de règles de pratique ou, à défaut, à la jurisprudence pertinente.

Non, *Lynch c. Aylmer*, (1989) R.D.I. 768 ou *Cousineau c. Boucherville*, (1986) R.J.Q. 318.
(Le plan d'urbanisme ne produit pas d'effets directs sur les citoyens.)

OU

18 (4)

Non, *Gagné c. Corp. du Mouvement du Graal du Canada* J.E. 92-1526 (C.S.), conf. par J.E. 95-1902.
(En cas de conflit entre le plan d'urbanisme et le règlement de zonage, c, et ce dernier qui doit prévaloir)

OU

Non, *St-Michel-Archange c. 2419-6388 Québec inc.* (1992) R.J.Q. 875 (C.A.).

QUESTION 11 (4 points)

- L'entrepreneur privé, locataire de la marina, serait-il légalement exempté du paiement des taxes foncières?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi, de règlements, de règles de pratique ou, à défaut, à la jurisprudence pertinente.

Non, art. 208 (al. 2) *L.f.m.*

19 (4)

DOSSIER 4

QUESTION 12 (6 points)

À titre de représentant du S.I.E.P., énoncez une réponse que vous pourrez légalement faire valoir à l'égard de chacun des arguments suivants que l'A.E.P. entend invoquer pour contester la validité de la requête en accréditation déposée par le S.I.E.P.

SEULE LA PREMIÈRE RÉPONSE INSCRITE À L'ÉGARD DE CHACUN DES ARGUMENTS AU CAHIER DE RÉPONSES SERA CORRIGÉE.

- **La requête en accréditation du S.I.E.P. est irrecevable puisque la convention collective en vigueur ne prendra fin que le 9 décembre 2001.** 20 (2)

La requête en accréditation du S.I.E.P. (du 14 septembre 1999) est recevable parce que faite durant la période de remise en question de l'accréditation, période qui est d'ordre public (du 90^{ième} au 60^{ième} jour précédant l'expiration de la convention collective, soit entre le 10 septembre et le 10 octobre 1999) (art. 22 d) C.t.)

La notion d'ordre public de l'art. 22d) C.t. est exigée

OU

La requête en accréditation du S.I.E.P. (du 14 septembre 1999) est recevable parce que les modifications à la convention collective n'ont aucun effet à l'égard du S.I.E.P. qui est un tiers.

- **La requête en accréditation du S.I.E.P. est irrecevable puisque les démissions n'ont pas été signifiées à l'A.E.P.** 21 (2)

La requête en accréditation est recevable parce que les démissions ont été portées à la connaissance de l'A.E.P.: la signification à un membre de l'exécutif est valable.

OU

La requête en accréditation est recevable parce que la signification des démissions ne constitue pas une condition de recevabilité de la requête en accréditation du S.I.E.P.

- **La requête en accréditation du S.I.E.P. est irrecevable puisqu'elle n'est pas accompagnée des originaux des formules d'adhésion syndicale.** 22 (2)

La requête en accréditation du S.I.E.P. est recevable puisque la production de photocopies des formules d'adhésion est valide (art. 25 et 36.1 C.t.).

QUESTION 13 (10 points)

À titre de représentant du S.I.E.P., anticipez cinq arguments factuels ou juridiques que Théophile Gauthier peut légalement faire valoir à l'encontre du constat d'infraction déposé en vertu des articles 13 et 143 du Code du travail. SEULS LES CINQ PREMIERS ARGUMENTS INSCRITS AU CAHIER DE RÉPONSES SERONT CORRIGÉS.

2 points par bulle 5/7 23 (10)

1. L'employeur est titulaire de la liberté d'expression (art. 3 C.D.L.P.) 1 ○

2. L'employeur n'a jamais intimidé ou menacé ses salariés (au sens de l'art. 13 C.t.)

OU 2 ○

Les propos de l'employeur : ("Je préfère négocier avec un syndicat bien établi plutôt qu'avec un syndicat international dont les décisions se prennent souvent à Washington".) ne constituent pas une menace ou une intimidation.

3. Les propos de l'employeur : ("Je préfère négocier avec un syndicat bien établi plutôt qu'avec un syndicat international dont les décisions se prennent souvent à Washington".) ne comportent aucun mensonge ni exagération. 3 ○

4. Les propos de l'employeur : ("Je préfère négocier avec un syndicat bien établi plutôt qu'avec un syndicat international dont les décisions se prennent souvent à Washington".) s'adressent à la raison et ne s'attaquent pas à la crédibilité du S.I.E.P. 4 ○

5. Les salariés ont reçu un mémo les invitant à une rencontre avec l'employeur : ils n'étaient pas tenus d'y assister.

OU 5 ○

L'employeur n'a pas contraint les salariés à entendre ses propos

6. La rencontre a eu lieu en dehors des heures de travail 6 ○

7. La rencontre a été tenue à l'extérieur du lieu de travail. 7 ○

QUESTION 14 (12 points)

À titre de représentant du S.I.E.P., énoncez six arguments factuels ou juridiques que vous pouvez légalement faire valoir pour soutenir le caractère approprié de l'unité de négociation recherchée par le S.I.E.P.

SEULS LES SIX PREMIERS ARGUMENTS INSCRITS AU CAHIER DE RÉPONSES SERONT CORRIGÉS.

2 points par bulle 6/8 24 **12**

1. Le S.I.E.P. dispose de l'appui majoritaire des salariés du service de l'expédition
OU
13 salariés sur 15 du service de l'expédition ont adhéré au S.I.E.P. 1
2. Les salariés des services de la production et de l'expédition ont manifesté le désir de former une unité de négociation.
OU
28 salariés sur 55 des services de la production et de l'expédition ont adhéré au S.I.E.P. 2
3. Il existe une communauté d'intérêts entre les employés des services de la production et de l'expédition 3
4. Il s'agit d'employés non spécialisés dans les deux services. 4
5. Les employés des deux services ont le même horaire de travail. 5
6. Les employés des deux services sont soumis à la même autorité (Théophile Gauthier). 6
7. Les employés des deux services n'ont qu'une légère différence dans leur taux horaire de rémunération. 7
8. L'unité de négociation est appropriée puisqu'elle favorise la paix industrielle.
OU
L'unité de négociation est appropriée parce qu'elle évite la multiplication des unités de négociation. 8

QUESTION 15 (4 points)

À titre de représentant du S.I.E.P., énoncez deux arguments factuels que vous pouvez légalement faire valoir pour soutenir que l'A.E.P. est dominée par l'employeur.

SEULS LES DEUX PREMIERS ARGUMENTS INSCRITS AU CAHIER DE RÉPONSES SERONT CORRIGÉS.

2 points par bulle 2/3 25 **4**

1. L'employeur a mis une salle de conférence à la disposition de l'A.E.P. 1
2. L'employeur a libéré les salariés du service de la production, sans perte de salaire (pour qu'ils signent des formules d'adhésion en faveur de l'A.E.P.). 2
3. L'employeur a libéré les salariés du service de la production, pendant les heures de travail (pour qu'ils signent des formules d'adhésion en faveur de l'A.E.P.). 3

QUESTION 16 (3 points)

À titre de représentant du S.I.E.P., anticipez un argument juridique que l'A.E.P. peut légalement faire valoir préliminairement à l'encontre de la demande de dissolution présentée par le S.I.E.P. devant le Commissaire du travail.

SEUL LE PREMIER ARGUMENT INSCRIT AU CAHIER DE RÉPONSES SERA CORRIGÉ.

Le commissaire du travail n'a pas compétence pour ordonner la dissolution d'une association de salariés.

OU

Seul le Tribunal du travail peut prononcer la dissolution d'une association de salariés (art. 149 C.t.).

26 **3**