



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

Droit public et administratif

February 7, 2001

- 1) The examination in the DROIT PUBLIC ET 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 section :
 - Droit public et administratif
- 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 **15** pages (including this page) and that your answer booklet contains **6** 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 (30 MARKS)

The situation described in File 1 is an evolving one : all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.

Joseph St-Laurent, who is 48 years old, has been living in the City of Sainte-Foy since 1967. In 1972, he married Cécile Duguay. They have two children, Robert and Chantal. Robert is 27 years old and lives in Costa Rica where he earns approximately \$23,000 per year as a bush pilot. Chantal is 24 years old and lives in Chicoutimi; she works in a hotel and has an annual salary of \$18,300.

Cécile has been working in a bookstore since 1978. Her current salary is \$14,800 per year. In 1995, Joseph lost his sight after a hunting accident and had to leave his job. The couple was able to provide for its needs through the savings it accumulated over the years.

In 1998, Joseph and Cécile separated. At that time, Cécile found a place to live in Quebec City and she has been living there since the *de facto* separation. She does not pay any support to Joseph. However, the couple is still on good terms and Cécile regularly visits Joseph to take care of his dwelling and prepare his meals. She also runs various errands for him to help him out and she spends the night at his place fairly regularly.

On October 15, 1999, given that Joseph has used up all his financial resources, he applies to the Minister of Social Solidarity to obtain financial assistance pursuant to *An Act respecting income support, employment assistance and social solidarity (excerpts reproduced in a schedule hereto)*. Because of his disability, as of November 1, 1999, he receives monthly benefits of \$720 payable on the first day of each month, the whole pursuant to sections 23 and 25 of the Act.

In December of 1999, the *Visually Impaired Persons Association of the Quebec City region* puts him into contact with Georges Larivière, the owner of the firm *Télémarketing Larivière enr.* Georges Larivière hires him for temporary work from December 15 to December 24, 1999. During this period, he works 20 hours at an hourly rate of \$10 and is paid in cash. Both parties are satisfied with the experience. Consequently, Georges Larivière offers Joseph the opportunity to work for the firm on a regular basis, for 30 hours a week at the same hourly rate, beginning in January of 2000.

Joseph believes his work will remain secret, given that he continues to be paid « under the table », namely, without any deductions at source. Therefore, he decides not to inform the ministère de la Solidarité sociale about his income.

He thinks he will get away with it until, on May 25, 2000, he receives a phone call from Sylvie Durand of the ministère de la Solidarité sociale. She informs him that the Minister intends to terminate his benefits and claim the amounts he has already received since November of 1999 because of the relations he maintained with Cécile Duguay and because of his undeclared income. She indicates to him that if he wishes to provide additional information, he must send such information to her within the next ten days at the address she gives him.

On June 19, 2000, Joseph receives the following letter :

SOLIDARITÉ SOCIALE QUÉBEC
 Sainte-Foy Centre
 930 Sainte-Foy Road
 Quebec City, G1S 4X3

File number: STLJ 302406A6

Notice of Decision
True Copy

Date of issuance of notice : June 16, 2000
 Decision number : 26437622500309

Mr. Joseph St-Laurent
 2234 Bourguignon Street
 Sainte-Foy
 G1S 4X3

Dear Sir,

We have examined your file. We consider that you were ineligible for the benefits which were paid to you as of November 1, 1999.

Consequently, the payment of your benefits is interrupted and we hereby claim from you the repayment of \$5,760. We must receive this amount in one instalment within the delay for applying for a review of this decision.

You may apply for a review of this decision and present your observations by sending an application within 60 days of the receipt of this letter. Your application must be sent to the following address :

Direction régionale Sécurité du Revenu
 4500 Henri-Bourassa Blvd., 1st Floor
 Charlesbourg
 G1H 3A5

Sylvie Durand

Sylvie Durand, Officer in Charge of the Decision

QUESTION 1 (8 marks)

- **State four irregularities committed by the Minister of Social Solidarity in processing the application or in the decision rendered.**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

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

SUPPLEMENTARY FACTS

On June 29, 2000, Joseph sends an application for review.

On July 6, 2000, Joseph sends his observations in support of his application for review.

On July 25, 2000, he receives a letter informing him that his application for review has been dismissed and that the decision rendered on June 16, 2000 has been upheld.

On August 16, 2000, Joseph sends a contestation of this decision to the Administrative Tribunal of Québec.

On September 8, 2000, Joseph receives a notice of hearing for October 23, 2000. On this date, he appears before the Administrative Tribunal of Québec. A few minutes before the hearing starts, Réal Dumais, the social worker assigned to hear the case, contacts the president of the Tribunal and informs him that due to exceptional circumstances he will not be able to take part in the hearing. Therefore, the president appoints Georges Dicaire, a physician, to complete the panel which is presided by M^e Danielle Beauregard.

On November 30, 2000, the Administrative Tribunal of Québec renders a decision of which the following are excerpts :

[...]
9. At the hearing, the applicant denied owing the amount claimed from him by the ministère de la Solidarité sociale.

10. With respect to the income earned by the applicant, the Tribunal heard Paul Marchand, an investigator with the ministère du Revenu du Québec, who stated that he had investigated the activities of *Télémarketing Larivière enr.* During his testimony, he indicated that the applicant earned \$8,000 during his period of employment, namely, \$200 for the month of December of 1999 and \$300 per week from January of 2000 to June of 2000, inclusively.

[...]
16. With respect to the relation between the applicant and Cécile Duguay, based on the evidence heard, the Tribunal concludes that they were not cohabiting during the period in question, even if Cécile Duguay spent the night at the applicant's home fairly regularly.

17. However, because of the close relationship of assistance which existed between the applicant and Cécile Duguay, who were still spouses, the Tribunal concludes that they must be considered « spouses » within the meaning of the Act for the period in question.

[...]
20. The ministère's representative introduced evidence that the applicant had a son and a daughter who had sufficient income to provide him with financial assistance. The applicant objected to this evidence and the Tribunal took the matter under advisement. The Tribunal considers the objection to have been well founded, because this evidence is not relevant. Consequently, the Tribunal will not take this evidence into account.

[...]
25. Given that the applicant failed to advise the ministère de la Solidarité sociale of the changes in his financial circumstances.

FOR THESE REASONS, THE TRIBUNAL :

DISMISSES the applicant's contestation;

ORDERS the applicant to pay \$864 to the Minister of Revenue of Québec as unpaid income taxes;

DECLARES the applicant ineligible for any benefits payable in virtue of *An Act respecting income support, employment assistance and social solidarity* for a period of six months as of the date of this decision, given that the applicant failed to advise the ministère de la Solidarité sociale of the changes in his financial circumstances.

[...]
Georges Dicaire

GEORGES DICAIRE, physician

Danielle Beauregard

M^E DANIELLE BEAUREGARD

QUESTION 2 (12 marks)

- a) **State three grounds of fact or of law that Joseph St-Laurent could raise in order to contest the legality of the decision rendered by the Administrative Tribunal of Québec.**

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

- b) **State the rule of judicial review (norme de contrôle judiciaire) which applies to each of these grounds. Explain your answer.**

ONLY THE FIRST RULE WRITTEN FOR EACH GROUND WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

SUPPLEMENTARY FACTS

On December 4, 2000, Joseph St-Laurent, who is totally destitute, files a motion with the office of the Administrative Tribunal of Québec in order to have the execution of the decision rendered on November 30, 2000 suspended long enough to allow him to file a motion for judicial review in order to have the decision quashed.

QUESTION 3 (5 marks)

Is this motion to suspend the execution of the decision receivable? Explain your answer.

SUPPLEMENTARY FACTS

On December 28, 2000, Joseph St-Laurent serves and files a motion for judicial review of the decision rendered by the Administrative Tribunal of Québec on November 30, 2000.

On January 26, 2001, the Superior Court dismisses the motion for judicial review, from the bench with costs.

Joseph intends to appeal this decision.

QUESTION 4 (5 marks)

- **What written proceeding must Joseph St-Laurent serve?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

**EXCERPTS OF AN ACT RESPECTING INCOME SUPPORT, EMPLOYMENT
ASSISTANCE AND SOCIAL SOLIDARITY**

[...]

TITLE II

FINANCIAL ASSISTANCE PROGRAMS

CHAPTER I

EMPLOYMENT-ASSISTANCE PROGRAM

[...]

DIVISION II

ELIGIBILITY

14. Independent adults or families that establish that, according to the rules provided in Division IV of this chapter, their resources fall short of the amount that is necessary to provide for their needs, according to the basic benefit applicable to them combined with the amount of any applicable adult or dependent children allowances or adjustments and of any applicable special benefits, are eligible under the program.

[...]

DIVISION III

DEFINITIONS

19. The word « spouses » means

(1) persons who are married to each other and who cohabit;

(2) persons who cohabit and who are the mother and father of a child;

(3) persons of full age, of the opposite or the same sex who live together in a de facto union, and who, at any one time, cohabited for a period of not less than one year.

Such persons remain spouses or, for the purposes of subparagraph 3 of the first paragraph, are presumed to have continued to cohabit despite the temporary absence of one of them.

20. Except in the cases and subject to the conditions determined by regulation, the following persons are considered to be dependants of their father or their mother or of another adult designated by regulation if they are dependent on one of such persons for their subsistence :

(1) minor children who are neither fully emancipated nor the father or mother of a child who is their dependant; and

(2) children of full age who attend an educational institution and who are neither the spouse of another person nor married nor the father or mother of a child who is their dependant.

[...]

21. An adult is a person other than a dependent child.

[...]

DIVISION IV

ESTABLISHMENT AND PAYMENT OF BENEFIT

23. The benefit payable to an independent adult or a family eligible under the program is established on the basis of the basic benefit applicable to that adult or family, according to the amount, in the cases and under the conditions determined by regulation.

[...]

25. A severely limited capacity for employment allowance, in the amount prescribed by regulation, shall be added to the basic benefit where the independent adult or an adult member of the family produces a medical report establishing that the adult's physical or mental condition is significantly and in all likelihood permanently or indefinitely deficient or impaired and that, for that reason and in view of the adult's socio-professional profile, the adult has a severely limited capacity for employment.

[...]

DIVISION V

RECIPROCAL RIGHTS AND OBLIGATIONS

[...]

39. A recipient must

(1) advise the Minister promptly of any change in the recipient's circumstances or the circumstances of the recipient's family which may affect the benefit granted ;

(2) at intervals prescribed by regulation, file a statement with the Minister on the form supplied by the Minister.

[...]

40. At least 10 days before reducing or ceasing to pay an amount granted under this chapter on the ground that a person did not declare his or her real circumstances, the Minister shall give the person a written notice, with reasons.

The person may present observations before the effective date of the Minister's decision and, if need be, produce documents to complete the file.

[...]

CHAPTER II

RECOVERY

100. A person must repay to the Minister any amount granted under Title I or under a last resort financial assistance program which should not have been granted to the person or the person's family, except an amount prescribed by regulation or an amount paid by reason of an administrative error that the person could not reasonably have noticed.

[...]

112. The Minister shall send a formal notice to the debtor of an amount recoverable under this Act, indicating the amount of the debt, the reasons for which the debt is due and the debtor's right to apply for a review. The notice must also contain information on the recovery procedure, in particular as to the issue and effects of the certificate.

A formal notice under this section interrupts prescription.

[...]

CHAPTER IV

REMEDIES

128. Any person to whom a decision of the Minister under this Act applies may apply in writing for a review of the decision within 90 days of the date on which the person was advised of the decision.

[...]

129. Decisions shall be reviewed by a person designated by the Minister for the term specified in the instrument of designation. The reviewers shall form part of a review service and shall come under the same authority within the Ministère de l'Emploi et de la Solidarité.

130. [...]

Decisions concerning an application for a severely limited capacity for employment allowance or a permanently or indefinitely limited capacity for employment allowance must be reviewed by two members of the review service, one being a physician and the other a professional working in the social sector.

[...]

133. Any person having applied for the review of a decision must be given the opportunity to present observations and, if need be, to produce documents to complete the file.

[...]

139. Any person who feels wronged by a review decision may contest the decision before the Administrative Tribunal of Québec within 60 days of notification of the decision.

[...]

FILE 2 (50 MARKS)

The situation described in File 2 is an evolving one : all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.

Métal Supérieur inc., of which Michel Simon is the sole shareholder and director, operates an office equipment manufacturing plant in Boisbriand. The firm has 100 employees, of which 52 work in the production department.

On February 23, 1998, the *Association des salariés de M.S. inc.* (hereinafter referred to as the *Association*) was certified to represent all the employees employed in the production department of *Métal Supérieur inc.* at the Boisbriand establishment.

On June 1, 1998, *Métal Supérieur inc.* and the *Association* signed a collective agreement. The agreement, which was duly filed with the office of the Labour Commissioner General, contains the following provisions, among others :

[...]

Section 5.01 *Any complaint regarding the interpretation or application of the Collective Agreement may be made by means of a grievance signed by the employee and filed within fifteen days of the event the employee intends to contest.*

Section 5.02 *In disciplinary matters, the arbitrator may confirm, amend or set aside the decision of the employer and, if such is the case, substitute therefor the decision he deems fair and reasonable, taking into account all the circumstances.*

[...]

Section 6.01 *After consulting the employee, the employer shall determine the date on which the maternity leave will begin on the basis of the production needs of the firm.*

[...]

Section 18.01 *This Collective Agreement shall be in effect from June 1, 1998 until January 31, 2001.*

On October 24, 2000, Léa Bastien, who is an employee in the production department and is four months pregnant, consults Marcel Beauchamps, the president of the *Association*. He indicates to her that pursuant to the collective agreement, it is ultimately up to the employer to determine the date on which an employee's maternity leave will begin. Léa Bastien doubts that this opinion is well founded. In discussions with her co-workers, she notes that many other employees are very dissatisfied with the *Association's* services.

On November 1, 2000, Léa Bastien meets with a representative of the *Syndicat des travailleurs et travailleuses des industries connexes* (hereinafter referred to as the *STTIC*). At that time, she fills out a resignation form to resign from the *Association* and joins the *STTIC* as a member thereof. Thereafter, Léa Bastien participates actively in a recruitment campaign to recruit her co-workers for the *STTIC*.

On November 14, 2000, the *STTIC* serves 30 resignations upon the *Association*. That same day, the *STTIC* files, with the office of the Labour Commissioner General in Montreal, a petition for certification to represent all the employees employed in the production department of *Métal Supérieur inc.* at the Boisbriand establishment. The petition is filed together with the appropriate resolution and 30 membership cards for membership in the *STTIC*.

On November 15, 2000, Léa Bastien gives her employer a written notice informing it that she intends to start her maternity leave on February 26, 2001 and return on June 26, 2001. The notice is sent with a medical certificate attesting to her pregnancy and stating that the expected date of delivery is March 27, 2001.

On November 16, 2000, Léa Bastien learns that the *Association* is in intensive negotiations with the employer and that it is likely that they will reach an agreement to renew the collective agreement before the Christmas holidays. She quickly informs the *STTIC* representatives about this.

On November 17, 2000, the *STTIC* files a motion to suspend the negotiations.

On November 20, 2000, Michel Simon gives Léa Bastien the following letter :

<i>November 20, 2000</i>
<i>Dear Ms. Bastien,</i>
<i>You did not consult us before determining the date on which your maternity leave will begin. We consider this to be serious act of insubordination. We have no other choice but to dismiss you immediately.</i>
<i>Michel Simon</i>
<i>Métal Supérieur inc.</i>
<i>Per : Michel Simon, President</i>

On November 23, 2000, Léa Bastien files a complaint with the office of the Labour Commissioner General in accordance with section 16 of the Labour Code. On the same day, she also files a complaint with the *Commission des droits de la personne et des droits de la jeunesse* (hereinafter referred to as the *CDPDJ*).

On December 4, 2000, the Labour Commissioner renders a decision which orders that the negotiations be suspended.

On December 5, 2000, the *Association* appeals the decision rendered by the Labour Commissioner which ordered that the negotiations be suspended to the Labour Court.

On December 11, 2000, the parties proceed before the Labour Commissioner. He first hears Léa Bastien's dismissal complaint and then the *STTIC*'s petition for certification.

On December 20, 2000, the Labour Commissioner renders a decision in which he allows Léa Bastien's dismissal complaint and orders *Métal Supérieur inc.* to reinstate the complainant with full compensation for her lost salary.

On December 22, 2000, *Métal Supérieur inc.* appeals the decision rendered by the Labour Commissioner with respect to Léa Bastien's dismissal complaint. In the meantime, Michel Simon refuses to reinstate Léa Bastien pending the appeal.

On December 27, 2000, in a decision rendered and mailed on the same day, the Labour Commissioner certifies the *STTIC* to represent all employees in the production department of *Métal Supérieur inc.* at its Boisbriand establishment.

On January 12, 2001, the *Association* serves the other parties, as well as the Labour Commissioner General with a declaration of appeal which is filed that same day with the office of the Labour Court. In its declaration of appeal, the *Association* claims that the Labour Commissioner should have ordered that a secret ballot be held, given that the *Association* comprised between 35 % and 50 % of the employees in the bargaining unit.

On January 16, 2001, the *CDPDJ* adopts a resolution in which it concludes that Léa Bastien was the victim of discrimination based upon her pregnancy and it proposes remedial measures demanding that the employer :

- reinstate Léa Bastien;
- pay her \$5,000 as moral damages;
- pay her \$2,000 as punitive damages;

failing which the *CDPDJ* will apply to the Human Rights Tribunal after the expiry of 30 days.

On January 18, 2001, the employer denies all liability on its part and notifies the *CDPDJ* that it categorically refuses to comply with the proposed remedial measures.

On January 22, 2001, Léa Bastien consults you and asks your opinion regarding various aspects of the case.

DECEMBER 2000

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JANUARY 2001

SU	M	T	W	T	F	SA
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28	29	30	31			

QUESTION 5 (4 marks)

- Was the *Association* entitled to appeal the decision rendered on December 4, 2000 by the Labour Commissioner which ordered that the negotiations be suspended?
- Justify your answer by referring to TWO (2) specific and relevant provisions of any legislation.

QUESTION 6 (6 marks)

Aside from the recourses Léa Bastien has already exercised, state two other recourses which she could have exercised in order to contest her dismissal. Explain your answer.

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

QUESTION 7 (5 marks)

As regards Marcel Beauchamp's opinion to the effect that, in virtue of the collective agreement, it is ultimately up to the employer to determine the date on which an employee's maternity leave will begin, is this opinion well founded? Explain your answer.

QUESTION 8 (4 marks)

- Is the refusal of *Métal Supérieur inc.* to reinstate Léa Bastien, pending the appeal, well founded?
- Justify your answer by referring to one or more specific and relevant provisions of any legislation.

QUESTION 9 (5 marks)

- Was the *Association's* appeal of the decision rendered on December 27, 2000 by the Labour Commissioner brought within the delay prescribed by law?
- Justify your answer by referring to one or more specific and relevant provisions of any legislation.

QUESTION 10 (6 marks)

- a) As regards the *Association's* claim in its declaration of appeal to the effect that the Labour Commissioner should have ordered that a secret ballot be held, is this claim well founded?
 - Justify your answer by referring to one or more specific and relevant provisions of any legislation.
- b) Does the *STTIC* have a recourse against the *Association's* declaration of appeal? If so, state the most effective recourse. If not, explain your answer.

SUPPLEMENTARY FACTS

On January 23, 2001, the *CDPDJ* makes an application to the Human Rights Tribunal to institute proceedings with respect to Léa Bastien's complaint of discrimination.

Upon receipt of the application, *Métal Supérieur inc.*'s attorney files a motion to dismiss in which he alleges that the application to institute proceedings is premature because the delay of 30 days given by the *CDPDJ* to act upon the complaint has not expired.

On January 30, 2001, the Human Rights Tribunal dismisses the motion to dismiss and schedules the hearing on the merits for February 7, 2001.

QUESTION 11 (4 marks)

- **Can *Métal Supérieur inc.*'s attorney appeal the decision of the Human Rights Tribunal which dismissed the motion to dismiss?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

SUPPLEMENTARY FACTS

On February 7, 2001, at the hearing on the merits before the Human Rights Tribunal, the attorney for *Métal Supérieur inc.* wants to call as a witness the investigator of the *CDPDJ* who carried out the investigation in Léa Bastien's case.

QUESTION 12 (4 marks)

Can the attorney for the *CDPDJ* raise an objection to oppose the testimony of the investigator? If so, formulate the objection. If not, explain your answer.

SUPPLEMENTARY FACTS

During the hearing before the Human Rights Tribunal, Léa Bastien is called as a witness. She wants to produce before the Tribunal a recording of a telephone conversation she had with Michel Simon on the evening of November 19, 2000. In the recording, one hears Michel Simon say to Léa Bastien : « If you think the fact that you're pregnant entitles you to hurt the firm's production, I've got news for you! You just watch me... ».

The attorney for *Métal Supérieur inc.* objects to the production of this item of evidence on the ground that it was obtained in breach of Michel Simon's right to privacy.

QUESTION 13 (4 marks)

- **What legal ground can the attorney for the *CDPDJ* assert against the objection raised by the attorney for *Métal Supérieur inc.*?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

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

SUPPLEMENTARY FACTS

Léa Bastien gives birth to a boy on March 24, 2001. She has a hard time when she returns home. In addition to the fact that the newborn is not sleeping through the night, she soon realizes that her two-and-a-half room dwelling in Blainville is too small. She therefore begins to look for a place to live.

On May 21, 2001, she goes to Boisbriand and visits a dwelling located just above the dwelling occupied by the owner of the building, Jean-Denis LaForge, a retired bachelor.

The four-and-a-half room dwelling is located near all services and the \$375 monthly rent is very affordable. Léa Bastien is willing to lease it immediately. Jean-Denis LaForge tells her that he would like to think about it because he is worried that a small baby will disturb his peace and quiet.

On May 23, 2001, Jean-Denis LaForge calls Léa Bastien to say that he regrets that he will not be leasing the dwelling to her. He explains that he leased the dwelling to Eugénie Leulalie. After some checking, Léa Bastien learns that Eugénie Leulalie is a widow with no children.

QUESTION 14 (4 marks)

Can Léa Bastien file a complaint with the *Commission des droits de la personne et des droits de la jeunesse* against Jean-Denis LaForge? If so, state which right stipulated in the *Charter of Human Rights and Freedoms* Léa Bastien can invoke in support of her complaint. If not, explain your answer.

IF APPLICABLE, ONLY THE FIRST RIGHT WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

SUPPLEMENTARY FACTS

During the evening of May 23, 2001, Léa Bastien discovers, without any difficulty, a five-and-a-half room dwelling which has an even better location than Jean-Denis LaForge's apartment and whose price is slightly lower. She is very satisfied with it, but nevertheless considers that Jean-Denis LaForge treated her unfairly.

QUESTION 15 (4 marks)

Assuming that Léa Bastien were to decide to apply directly and exclusively to a court of original general jurisdiction for a recourse in damages founded on the right to equality guaranteed under the *Charter of Human Rights and Freedoms*, what legal ground could the owner Jean-Denis LaForge assert as a defence?

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

FILE 3 (20 MARKS)

The situation described in File 3 is an evolving one : all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.

The City of Sainte-Camille has a population of 9,500. On January 15, 2001, at approximately 10:00 p.m., a fire breaks out in a downtown building. The fire quickly spreads to two neighbouring buildings, thereby forcing the evacuation under dangerous conditions of a large number of residents, many of whom are elderly.

Sainte-Camille's volunteer fire brigade is comprised of 30 people, including Diane Masson who has been a member thereof for 15 years. In addition, she is a Sainte-Camille municipal councillor, having been elected to the council for the first time during the most recent municipal elections in 1998.

The brigade is unable to control the flames. Moreover, two fire hydrants in the sector are not working and the wind is such that the city's mayor and the fire chief fear that the fire will spread to other buildings.

Municipal councillor Hugues Fortin is on the scene. He is vice-president of *Exca-Démo inc.* in which he holds 15 % of the non-voting shares. This is the only demolition firm in the region. When the mayor sees him, he asks him to take the necessary measures to demolish the next building which is likely to catch on fire. There is no by-law granting the mayor such a decision-making power, but the mayor believes that it is necessary to avoid having the fire spread further to the other buildings in the sector which would force the evacuation of other residents under very dangerous conditions.

In accordance with the mayor's instructions, *Exca-Démo inc.* demolishes the building and the fire is finally brought under control.

At the next regular meeting of the council, which takes place on February 5, 2001, the mayor reports the above facts and files the invoice from *Exca-Démo inc.* in the amount of \$15,786.

QUESTION 16 (4 marks)

- **Was the mayor entitled to award the demolition contract in this manner?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

QUESTION 17 (4 marks)

- **Can councillor Hugues Fortin be forced to stop sitting on the municipal council due to the contract awarded to *Exca-Démo inc.*?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

QUESTION 18 (4 marks)

- **Could municipal councillor Diane Masson be elected to the municipal council in 1998 despite her contract of employment as a volunteer firefighter?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

SUPPLEMENTARY FACTS

In the days following the fire, an inspection of the municipality's fire hydrants shows that six other fire hydrants were not working. Certain municipal council members wonder whether the director of public works, who has been employed by the municipality since November 6, 2000, is able to properly manage his department and the employees thereof.

At the regular meeting of the council which takes place on February 5, 2001, at which the mayor and three of the six councillors are in attendance, one of them proposes a resolution providing for the removal of the director of public works; this resolution is adopted thanks to the vote of the other two councillors. The mayor not only refuses to vote on the resolution, he refuses to approve it when the clerk presents it to him for his signature the next day. Shortly thereafter, he states the following to the director of public works : « You can rest easy, you'll never lose your position as long as I'm mayor of this city, because I will always refuse to approve or sign a resolution removing you, even if it is adopted by all the other council members.»

QUESTION 19 (4 marks)

- **Was the resolution of the municipal council adopted by a sufficient majority to remove the director of public works?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

QUESTION 20 (4 marks)

- **As regards the statement made by the mayor to the director of public works to the effect that he will never lose his job because the mayor will always refuse to approve or sign a resolution removing him, is this statement well founded?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

CORRIGÉ
DROIT PUBLIC ET ADMINISTRATIF - EXAMEN RÉGULIER
7 février 2001

DOSSIER 1 (30 POINTS)

QUESTION 1 (8 points)

- Énoncez quatre irrégularités commises par le ministre de la Solidarité sociale dans le traitement de la demande ou dans la décision rendue.
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

SEULES LES QUATRE PREMIÈRES IRRÉGULARITÉS INSCRITES AU CAHIER DE RÉPONSES SERONT CORRIGÉES.

1. Le ministre n'a pas donné de préavis écrit. 1.
Art. 40 de la *Loi sur le soutien du revenu et favorisant l'emploi et la solidarité sociale*.
2. La décision n'est pas motivée. 2.
Art. 8 de la *Loi sur la justice administrative*.
OU
La décision ne contient pas les motifs d'exigibilité de la dette.
Art. 112 de la *Loi sur le soutien du revenu et favorisant l'emploi et la solidarité sociale*.
3. La décision ne comporte pas d'informations relatives à la délivrance du certificat ou aux modalités de recouvrement et à ses effets. 3.
Art. 112 de la *Loi sur le soutien du revenu et favorisant l'emploi et la solidarité sociale*.
4. Le délai mentionné dans la décision pour demander la révision est inexact (devrait être de 90 jours). 4.
Art. 128 de la *Loi sur le soutien du revenu et favorisant l'emploi et la solidarité sociale*.

QUESTION 2 (12 points)

- a) Énoncez trois motifs de faits ou de droit que Joseph St-Laurent pourrait invoquer pour contester la légalité de la décision rendue par le Tribunal administratif du Québec.

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

- b) Énoncez la norme de contrôle judiciaire qui s'applique à chacun de ces motifs. Dites pourquoi.

SEULE LA PREMIÈRE NORME INSCRITE POUR CHACUN DES MOTIFS INSCRITS AU CAHIER DE RÉPONSES SERA CORRIGÉE.

MOTIFS	NORMES	POURQUOI
1. Le Tribunal administratif du Québec ne pouvait pas condamner le requérant à payer les impôts impayés au ministre du Revenu. 5. <input type="text" value="2"/>	Erreur simple 6. <input type="text" value="1"/>	Absence de compétence. 7. <input type="text" value="1"/>
2. Le Tribunal administratif du Québec a erré dans l'interprétation de la définition de « conjoints ». (Ne peuvent être considérés comme conjoints au sens de la loi des époux qui ne cohabitent pas). 8. <input type="text" value="2"/>	Erreur manifestement déraisonnable 9. <input type="text" value="1"/>	Erreur de droit dans l'interprétation d'un texte juridique qui relève du domaine de compétence du T.A.Q. 10. <input type="text" value="1"/>
3. Le Tribunal administratif du Québec a erré en déclarant le requérant inadmissible aux prestations pour une période de 6 mois. 11. <input type="text" value="2"/>	Erreur simple 12. <input type="text" value="1"/>	Absence de compétence (aucune disposition de la loi ne permet d'imposer une telle sanction). 13. <input type="text" value="1"/>

NOTA :

- Les cases concernant la norme de contrôle et le pourquoi sont corrigées **SEULEMENT** si l'étudiant inscrit le bon motif.
- Pour la case 5, la notion de « le ministère du Revenu n'est pas une partie au litige » n'est pas une bonne réponse. **TOUTEFOIS, L'AJOUT DE CETTE NOTION EST ACCEPTÉ.**
- Pour les cases 5 et 11, la notion de « *ultra petita* » n'est pas une bonne réponse. **TOUTEFOIS, L'AJOUT DE CETTE NOTION EST ACCEPTÉ.**

QUESTION 3 (5 points)

Cette requête pour faire suspendre l'exécution de la décision est-elle recevable? Dites pourquoi.

Non, (la Loi sur la justice administrative) ne confère pas ce pouvoir au T.A.Q.

OU

Non, seule la Cour supérieure peut ordonner le sursis d'exécution de la décision. (Art. 834.1 C.p.c.)

14.

QUESTION 4 (5 points)

- **Quel acte de procédure Joseph St-Laurent doit-il faire signifier?**
- **Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.**

Une requête pour permission d'en appeler, 26 *in fine*. C.p.c. **OU** art. 494 C.p.c.

15.

DOSSIER 2 (50 POINTS)

QUESTION 5 (4 points)

- L'Association pouvait-elle en appeler de la décision rendue le 4 décembre 2000 par le commissaire du travail qui ordonnait de suspendre les négociations?
- Appuyez votre réponse en faisant référence à deux dispositions précises et pertinentes de tout texte de loi.

SEULES LES DEUX PREMIÈRES DISPOSITIONS LÉGISLATIVES INSCRITES AU CAHIER DE RÉPONSES SERONT CORRIGÉES.

Non, art. 42 **ET** 118 C.t.

16.

QUESTION 6 (6 points)

Outre les recours que Léa Bastien a déjà exercés, énoncez deux autres recours qui auraient pu être exercés par celle-ci afin de contester son congédiement. Dites pourquoi.

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

1. Un grief, parce qu'il s'agit de la contestation d'une mesure disciplinaire.
2. Une plainte à l'encontre d'une pratique interdite par la *Loi sur les normes du travail*, parce que Léa Bastien a été victime d'un congédiement à la suite de l'exercice d'un droit prévu par la loi (expédition d'un avis écrit à l'employeur, art. 81.6 *L.n.t.*) **ou** parce que Léa Bastien est enceinte.

17.

18.

QUESTION 7 (5 points)

L'avis de Marcel Beauchamps selon lequel, en vertu de la convention collective, il appartient en dernier lieu à l'employeur de déterminer la date du début du congé de maternité d'une salariée, est-il bien fondé? Dites pourquoi.

Non, les dispositions de la *Loi sur les normes du travail* **ou** du Règlement sur les normes du travail relatives à la date du début du congé de maternité (art. 81.6 *L.n.t.* ou art. 17 du Règlement)⁽¹⁹⁾ ont préséance sur les dispositions contraires de la convention collective **OU** sont d'ordre public (art. 93 *L.n.t.*)⁽²⁰⁾.

19.

20.

QUESTION 8 (4 points)

- Le refus de *Métal Supérieur inc.* de réintégrer Léa Bastien, pendant la durée de l'appel, est-il bien fondé?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Non, art. 130 al. 4 C.t.

21.

L'AJOUT DE L'ALINÉA 3 EST ACCEPTÉ

QUESTION 9 (5 points)

- L'appel de l'Association à l'encontre de la décision rendue le 27 décembre 2000 par le commissaire du travail a-t-il été formé dans les délais prévus par la loi?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Oui, art. 130 C.t. **OU** 151.4 C.t.

22.

QUESTION 10 (6 points)

- a) La prétention de l'Association, dans sa déclaration d'appel, selon laquelle le commissaire du travail aurait dû ordonner la tenue d'un scrutin secret, est-elle bien fondée?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Non, art. 37 al. 2 C.t.

23.

- b) Le *STTIC* dispose-t-il d'un recours à l'encontre de cette déclaration d'appel de l'Association? Si oui, énoncez le recours le plus efficace. Si non, dites pourquoi.

Oui, une requête pour rejet sommaire de l'appel (art. 130.1 C.t.)

24.

QUESTION 11 (4 points)

- Le procureur de *Métal Supérieur inc.* peut-il en appeler de la décision du Tribunal des droits de la personne rejetant la requête en irrecevabilité?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Non, art. 132 *CDLP* (puisque'il ne s'agit pas d'une décision finale).

25.

QUESTION 12 (4 points)

Le procureur de la *CDPDJ* peut-il formuler une objection pour s'opposer au témoignage de l'enquêteur? Si oui, formulez l'objection. Si non, dites pourquoi.

Oui. Je formule une objection au témoignage de l'enquêteur de la *CDPDJ* puisque ce dernier ne peut être contraint de faire une déposition portant sur un renseignement obtenu dans l'exercice de ses fonctions (art. 95 *CDLP*).

26.

QUESTION 13 (4 points)

- Quel motif de droit le procureur de la *CDPDJ* peut-il faire valoir à l'encontre de l'objection formulée par le procureur de *Métal supérieur inc.*?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

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

Il n'y a pas d'atteinte au droit à la vie privée, art. 5 *CDLP* OU art. 35 C.c.Q.

OU

Il n'y a pas d'atteinte au droit à la vie privée **ou** l'utilisation de cet élément de preuve n'est pas susceptible de déconsidérer l'administration de la justice, art. 2858 C.c.Q.

(car la preuve tend à démontrer que le congédiement de Léa Bastien était planifié ou car la preuve tend à démontrer que le motif de congédiement allégué par l'employeur est un prétexte).

OU

S'il y a atteinte au droit à la vie privée, elle est justifiée en vertu de l'art. 9.1 *CDLP*

(car la preuve tend à démontrer que le congédiement de Léa Bastien était planifié ou car la preuve tend à démontrer que le motif de congédiement allégué par l'employeur est un prétexte).

27.

QUESTION 14 (4 points)

Léa Bastien peut-elle porter plainte à la *Commission des droits de la personne et des droits de la jeunesse* contre Jean-Denis La Forge ? Si oui, énoncez quel droit de la *Charte des droits et libertés de la personne* peut être invoqué par Léa Bastien au soutien de sa plainte. Si non, dites pourquoi.

LE CAS ÉCHÉANT, SEUL LE PREMIER DROIT INSCRIT AU CAHIER DE RÉPONSES SERA CORRIGÉ.

Oui. Le droit de conclure un acte juridique sans être exposé à un acte discriminatoire fondé sur l'état civil ou sur l'âge.

(Art. 10 et 12 *CDLP*)

28.

QUESTION 15 (4 points)

Dans l'hypothèse où Léa Bastien déciderait de saisir directement et uniquement le tribunal de droit commun d'un recours en dommages fondé sur le droit à l'égalité garanti par la *Charte des droits et libertés de la personne*, quel motif de droit le propriétaire Jean-Denis LaForge pourrait-il faire valoir en défense?

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

Il n'y a pas de discrimination en l'espèce puisque Léa Bastien n'a pas subi de préjudice.

OU

Il ne peut y avoir de dommage compensatoire (moral ou matériel), puisque Léa Bastien n'a pas subi de préjudice.

OU

Il ne peut y avoir de dommage exemplaire puisqu'il n'y a pas eu d'atteinte intentionnelle.

29.

DOSSIER 3 (20 POINTS)

QUESTION 16 (4 points)

- Le maire pouvait-il ainsi octroyer le contrat de démolition?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Oui, art. 573.2 *L.C.V.*

OU

Oui, art. 412 par. 42 *L.C.V.*

30.

QUESTION 17 (4 points)

- Le conseiller Hugues Fortin peut-il être contraint de cesser de siéger au conseil municipal en raison du contrat octroyé à *Exca-Démo inc.*?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Non, art. 305 par. 9 *L.E.R.M.*

31.

QUESTION 18 (4 points)

- La conseillère municipale Diane Masson pouvait-elle être élue au conseil municipal en 1998 malgré son contrat de travail à titre de pompière volontaire?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Oui, art. 63 par. 1 *L.E.R.M.*

32.

QUESTION 19 (4 points)

- La résolution du conseil municipal a-t-elle été adoptée à une majorité suffisante pour destituer le directeur des travaux publics?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Oui, art. 329 *L.C.V.*

OU

Oui, art. 71 *L.C.V.* car le directeur n'a pas été au service de la municipalité depuis au moins 6 mois.

OU

De toute façon, le maire a exercé son droit de veto, art. 53 *L.C.V.*

33.

QUESTION 20 (4 points)

- La déclaration faite par le maire au directeur des travaux publics selon laquelle il ne perdra jamais son emploi puisqu'il refusera toujours d'approuver et de signer une résolution le destituant, est-elle bien fondée?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Non, art. 53 *L.C.V.*

34.