



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

DROIT PUBLIC ET ADMINISTRATIF SUPPLEMENTAL EXAMINATION

May 25, 2000

- 1) The supplemental 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 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 **19** 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 (28 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.

Claude Allard-Desbiens, who is 25 years old, develops a project to start up a business offering a « de grand luxe » limousine transportation service between Quebec City and Montreal for people who want to attend « Expos » baseball games. With the financial assistance of his father, Victor Allard, he rents premises and buys two limousines in order to implement his project.

On July 6, 1999, Claude files an application pursuant to *An Act respecting transportation by taxi* (excerpts reproduced in a schedule hereto) for a permit to provide transportation « de grand luxe » limousine; the application is filed with the Commission des transports du Québec which was constituted pursuant to the *Transport Act* (excerpts reproduced in a schedule hereto).

After a notice setting forth this application is published in a local newspaper, Georges Leblanc, the owner of the company *Autobus Leblanc inc.*, a bus transportation firm, sends a letter of opposition to the Commission. He alleges that a new competitor would threaten the survival of the transportation firms in the Quebec City region which already offer services of the same type.

QUESTION 1 (4 marks)

- **Assuming that the Commission des transport du Québec decides to grant the permit application, must it inform Claude Allard-Desbiens about *Autobus Leblanc inc.*'s opposition before rendering its decision?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

SUPPLEMENTARY FACTS

On August 3, 1999, after having complied with all the requirements of *An Act respecting administrative justice*, the Commission des transports du Québec renders a decision, of which the following are excerpts:

[...]

WHEREAS the Quebec City region currently has public transportation firms which offer a transportation service similar to that which Claude Allard-Desbiens wishes to operate;

WHEREAS the Commission is of the opinion that the public in the Quebec City region is sufficiently served by the existing transportation services;

WHEREAS it is consequently contrary to the public interest that the permit requested be issued;

WHEREAS the opposition of *Autobus Leblanc inc.* is well founded;

THE COMMISSION rejects the application filed by Claude Allard-Desbiens for a permit to provide transportation by « de grand luxe » limousine;

[...]

QUESTION 2 (4 marks)

- **Assuming that Claude Allard-Desbiens wants to contest the decision, must he necessarily apply for a review before applying to the Administrative Tribunal of Québec?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

SUPPLEMENTARY FACTS

On August 9, 1999, Claude Allard-Desbiens is notified of the Commission's decision. He is very disappointed, but after some thinking, he decides to give up on his project and take a few weeks of vacation.

On September 13, 1999, after returning from his vacation, Claude informs his father of the substance of the Commission's decision. He tells his father that he does not intend to do anything whatsoever, because he has given up on his project and intends to find a job.

After some time passes, Victor Allard notices that his son, who has not yet found a job, is completely unmotivated. Given that he attributes his son's condition to the failure of his project, Victor Allard decides to act on his own, and he sends out the following letter:

Quebec City, January 5, 2000

Administrative Tribunal of Québec
Édifice Lomer Gouin
575 St-Amable Street
Quebec City, Quebec
G1R 5R4

RE: Application for a permit to provide transportation by “de grand luxe” limousine

Sir or Madam:

I hereby contest the decision rendered by the Commission des transports du Québec on August 3, 1999, a copy whereof is annexed hereto.

The Commission erred in its interpretation of the facts and the law, in that the permit in question was requested for the purposes of establishing a very specialized service which would not compete with the existing firms.

For these reasons, I request that the Administrative Tribunal of Québec quash the decision rendered on August 3, 1999 and issue a permit to provide transportation by “de grand luxe” limousine,

Victor Allard

Victor Allard

1242 St-Amable Street

Quebec City, Quebec, J2C 1W3

Tel: (418) 672-3245

The hearing is scheduled for April 4, 2000. A notice of the hearing, in accordance with *An Act respecting administrative justice*, is sent to Victor Allard and *Autobus Leblanc inc.*

On April 4, 2000, Victor Allard attends the hearing held before the Administrative Tribunal of Québec. Georges Leblanc is absent, but the Tribunal nevertheless decides to proceed. At the end of the hearing, the matter is taken under advisement.

On May 11, 2000, the Administrative Tribunal of Québec renders a decision of which the following are excerpts :

[...]

15. The Tribunal considers that Victor Allard had a serious reason for missing the 30-day deadline within which to file his contestation. It was only on September 13, 1999 that he became aware of the decision of the Commission des transports du Québec, and the matter is a complex one.

[...]

17. During his testimony, Victor Allard filed as evidence a market-research study indicating that the proposed firm is economically viable and that the public has an interest in having a transportation service specializing in this field. This study had not been submitted to the Commission des transports du Québec, but the Tribunal considers it to be relevant evidence.

[...]

20. Richard Loranger, a journalist who was present at the hearing, asked the Tribunal for permission to ask Victor Allard some questions. The Tribunal refused the request, because he is not a party to the dispute.

[...]

32. Even if the public in the Quebec City region is sufficiently served by the existing transportation services, the Tribunal is of the opinion that it is not contrary to the public interest to allow the requested permit to be issued. In fact, the public interest is better served by healthy competition between firms offering similar services. According to the Tribunal, the Commission erred in giving a narrow interpretation to the concept of public interest.

[...]

FOR THESE REASONS, THE TRIBUNAL:

ALLOWS Victor Allard's motion;

RELIEVES Victor Allard from the failure to have acted within the 30-day deadline in order to file his motion;

ORDERS the Commission des transports du Québec to issue the requested permit.

Marc Fitzpatrick _____

M^c Marc Fitzpatrick

Attorney

Maryse Landrôt _____

M^c Maryse Lanctôt

Notary

On May 23, 2000, Georges Leblanc learns of the decision and consults you.

QUESTION 3 (16 marks)

- (a) **State four grounds of fact or of law that you could raise in order to contest the legality of the decision rendered by the Administrative Tribunal of Québec.**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

ONLY THE FIRST FOUR 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, and explain your answer.**

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

QUESTION 4 (4 marks)

- **Assuming that neither a motion for a declaratory judgment nor an action for a declaratory judgment is the appropriate recourse, state three recourses which can be instituted in order to have the decision rendered by the Administrative Tribunal of Québec quashed.**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

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

SCHEDULE

AN ACT RESPECTING TRANSPORTATION BY TAXI L.R.Q., c. T-11.1.

CHAPTER IV.1: PROCEEDING BEFORE THE ADMINISTRATIVE TRIBUNAL OF QUÉBEC

68.1. Any decision of the Commission may be contested before the Administrative Tribunal of Québec by the person to whom the decision applies, an opponent or the Attorney General within 30 days following the date on which the decision takes effect.

68.2. The Attorney General may, ex officio and without notice, take part in a hearing as if he were party thereto.

68.3. When assessing the facts or the law, the Tribunal may not substitute its assessment of the public interest for the assessment thereof made by the Commission before making its decision pursuant to this Act or the regulations.

DIVISION II: TRANSPORTATION BY «DE GRAND LUXE» LIMOUSINE

94.0.1. The Commission may issue a «de grand luxe» limousine permit to any person who applies therefor and who meets the conditions prescribed by regulation of the Government.

94.0.2. A «de grand luxe» limousine permit is a specialized taxi permit restricted to the specialized transportation it authorizes.

94.0.3. A «de grand luxe» limousine permit shall be issued for the whole territory of Québec.

94.0.4. Transportation by «de grand luxe» limousine shall be supplied with the automobile to which the permit is related and which meets the conditions prescribed by regulation.

TRANSPORT ACT
L.R.Q., c. T-12.

DIVISION V:
COMMISSION DES TRANSPORTS

§001. — Constitution of the Commission

14. A body is constituted under the name of «Commission des transports du Québec».

16. The Commission consists of nine members, including a president and two vice-presidents, appointed for a term of not over five years by the Government, which shall fix their salaries and their other conditions of employment.

Continuance in office.

The members remain in office at the expiry of their terms until they are reappointed or replaced.

17.2. Every interested person may apply to the Commission for a review of any decision rendered by the Commission in respect of which no proceeding has been brought before the Administrative Tribunal of Québec

(1) to present a new fact which, if it had been known in due time, might have justified a different decision;

(2) where, being a party to the issue, he was, for reasons considered sufficient, unable to present observations;

(3) where a substantial or procedural defect is likely to invalidate the decision.

A decision containing an error in writing or in calculation or any other clerical error may be corrected by the Commission.

17.3. An application for a review must give the reasons therefor and be notified to the Commission within 30 days after the date the decision has taken effect.

17.4. Where the Commission gives leave for review of a decision, the leave therefor suspends the execution of the decision, unless the Commission decides otherwise in cases of special urgency.

19. The administrator of the Commission, the secretary, the inquiry commissioners, the investigators and the other members of the personnel of the Commission are appointed and remunerated in accordance with the Public Service Act (chapter F-3.1.1).

President's powers.

However, the president of the Commission shall exercise in this respect the powers granted by such act to the chief executive officer of an agency.

22. Decisions of the Commission must be rendered with dispatch, in writing, and state the reasons on which they are based; they shall form part of the records of the Commission.

The Commission shall send forthwith, to the parties and to the Minister, a certified copy of every decision rendered; it shall also send to the Minister, at his request, copy of any other document relevant to any matter.

27. Except on a question of jurisdiction, no remedy under article 33 of the Code of Civil Procedure (chapter C-25) or extraordinary recourse within the meaning of that Code may be exercised and no injunction may be granted against the Commission or against any of its members acting in their official capacity.

A judge of the Court of Appeal may, upon a motion, annul by a summary proceeding any proceeding brought or decision rendered contrary to the first paragraph.

FILE 2 (20 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.

Martin Sawyer, who is 16 years old, has been attending the *École polyvalente des Hautes-Forges* since the fall of 1997. The high school is located on the territory of the *Commission scolaire de la Grande-Île*. In September of 1999, Martin starts grade 7 for the third time. Since having started high school, his school failures have increased. All in all, he has shown very little interest in his studies.

Instead, he devotes most of his time to the *Predators*, a street gang of which he is the leader. The philosophy of the group, for which he claims to be the « brains », defends the supremacy of the white race, in the manner of the *Ku Klux Klan*.

On February 9, 2000, Martin plasters the walls of the student Coffeehouse with posters which read: « No immigrants in the student Coffeehouse. »

On February 10, 2000, Claudette Bellemare, a French teacher and the person in charge of the student Coffeehouse, removes the posters which Martin put up. She meets with him in order to tell him that she does not approve of his behaviour and that she finds the posters to be unacceptable. At that point, Martin tells her that she has not seen the last of him.

During the night of February 16, 2000, Claudette's car is vandalized. Each of the doors is marked with a painted « P ». Some of the teachers who work with Claudette tell her that, according to them, the « P » could well be the insignia of the *Predators*.

On April 3, 2000, Martin attends his natural sciences class bearing a knife on his belt. The teacher, Jean-Marc Lescop, asks Martin to give him the knife; Martin refuses. Jean-Marc grabs the knife and expels Martin from the class on the ground that a school rule forbids the possession of weapons with a blade.

On April 7, 2000, while Claudette is entering the classroom in order to teach her French class, she sees Martin physically abusing a student of Maghrebian origin who was having a peaceful discussion with a classmate. Given that this is the second incident of this kind in which Martin has been involved in less than a month, Claudette expels him from the class and orders him to go immediately to the office of the principal, Benoît Genest. The principal tells Martin to go home and not to come back to school until he hears otherwise.

On April 15, 2000, the director general of the *Commission scolaire de la Grande-Île* writes to Lisa Sawyer, Martin's mother; the letter contains the following excerpts :

[...] This letter is a follow-up to the meeting of the Council of Commissioners held on April 13, 2000 at which we heard the representations you made on behalf of your son, Martin. I hereby inform you that the Council has decided to expel Martin from its schools, in accordance with section 242 of the *Education Act*. :

242. A school board may, at the request of the principal and for just and sufficient cause, and after giving the student and his parents an opportunity to be heard, enrol him in another school or expel him from its schools; in the latter case, it shall inform the director of youth protection.

Since arriving at our school, your son has continuously broken the school's rules of conduct and has disturbed the peacefulness required for teaching our students. His chronic lateness, his arrogance, his disrespect for his teachers and for some of his classmates who are of a different ethnic origin than his own (posters in the student Coffeehouse), his strong propensity for violence (physical assault of two students, bearing a dangerous knife) and his carrying out of mischief on the personal property of a teacher are all elements justifying his immediate expulsion. [...]

On April 28, 2000, M^e Lydia O'Connor serves the *Commission scolaire de la Grande-Île* with an action for a permanent injunction which is accompanied by a motion for an interlocutory injunction requesting that Martin Sawyer be readmitted to the *École polyvalente des Hautes Forges*. In essence, the motion is based upon the following allegations :

18. The Defendant violated on many occasions Martin Sawyer's rights as guaranteed under the *Charter of Human Rights and Freedoms*, in that the Defendant's employees:
 - (a) violated his freedom of expression by removing, as an act of pure censorship, the posters placed on the walls of the student Coffeehouse;
 - (b) denied him the right to carry a knife, despite the fact that a student of the Sikh faith was allowed to bear the traditional knife (religious symbol), which is discriminatory;
19. By expelling Martin Sawyer from its schools, the Defendant violated Martin Sawyer's right to a free public education as guaranteed under the *Charter of Human Rights and Freedoms*;

20. Moreover, the Defendant violated Martin Sawyer's constitutional rights as guaranteed under the *Canadian Charter of Rights and Freedoms* because, acting through one of its employees, it interfered with his right of ownership by taking away his knife.

The *Commission scolaire de la Grande-Île* gives you the mandate to represent it at the hearing on the motion for an interlocutory injunction, which motion is presentable on May 26, 2000.

QUESTION 5 (16 marks)

- (a) State two arguments of law based upon different sections of the *Charter of Human Rights and Freedoms* which you will assert against the allegation set forth in paragraph 18(a) of the motion.
- Justify your answer by referring to the specific and relevant provisions of the *Charter of Human Rights and Freedoms*.

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

- (b) State one argument of law based upon the *Charter of Human Rights and Freedoms* which you will assert against the allegation set forth in paragraph 18(b) of the motion.
- Justify your answer by referring to one or more specific and relevant provisions of the *Charter of Human Rights and Freedoms*.

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

- (c) State one argument of law based upon the *Charter of Human Rights and Freedoms* which you will assert against the allegation set forth in paragraph 19 of the motion.
- Justify your answer by referring to one or more specific and relevant provisions of the *Charter of Human Rights and Freedoms*.

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

QUESTION 6 (4 marks)

Assuming that the *Canadian Charter of Rights and Freedoms* is applicable to the dispute, state one argument of law based upon the *Canadian Charter of Rights and Freedoms* which you will assert against the allegation set forth in paragraph 20 of the motion.

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

FILE 3 (20 MARKS)

Note: File 3 is comprised of 2 distinct and independent problems.

1st Problem

Today, May 25, 2000, Juliette Tremblay meets with you and provides you with the written proceedings which were served upon her this morning.

CANADA

PROVINCE OF QUEBEC

DISTRICT OF SAINT-FRANÇOIS

NO.: 450-02-001236-005

COURT OF QUÉBEC

Paul Gendron, domiciled and residing at 1900 Principal Blvd., in Sherbrooke, in the district of Saint-François, G4R 3X1

Applicant

v.

Juliette Tremblay, residing at 1900 La Grande Blvd., in Sherbrooke, in the district of Saint-François, G3T 4W7

Respondent

MOTION TO OUST A PERSON FROM A MUNICIPAL OFFICE

(art. 838 C.C.P.)

TO THE JUDGES OF THE COURT OF QUÉBEC, SITTING IN AND FOR THE PRACTICE DIVISION OF SAINT-FRANÇOIS, THE APPLICANT STATES THE FOLLOWING:

1. The Applicant has been domiciled for more than 15 years in the City of Sherbrooke and he is a person eligible to vote;
2. Since 1995, the Respondent has been the president of *Location industrielle inc.*, a firm in which she holds 9% of the voting common shares;

3. On November 2, 1997, as a result of the general election held in the City of Sherbrooke, the Respondent was elected mayor of the City for a term of four years;
4. As at the date hereof, the Respondent still holds the office of mayor;
5. On March 15, 1999, the City of Sherbrooke and *Location industrielle inc.* entered into a contract of lease, as it appears from Exhibit A-1;
6. Pursuant to the contract, *Location industrielle inc.* leased the following industrial equipment to the City of Sherbrooke, from April 1, 1999 to December 31, 1999 :
 - a *Bernouilli*-make, model C 3410 compressor;
 - a *Martel*-make, model H 36 pneumatic hammer;
 - a trailer;
 - a *Niagara*-make, model 044X high capacity pump;
7. In accordance with the contract, the City of Sherbrooke paid *Location industrielle inc.* a total amount of \$18,432.26;
8. Thus, the Respondent had an interest in the contract entered into between the City of Sherbrooke and *Location industrielle inc.*;
9. The Respondent knew she had an interest in the contract entered into with the City of Sherbrooke, given that she disclosed the nature of her interest with respect to this matter and abstained from participating in the discussion and in the vote at the time when this decision was to be taken up for consideration, as it appears from a certified copy of the minutes of the sitting of the municipal council of March 10, 1999, Exhibit A-2.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

DECLARE that the Respondent is disqualified from holding office as a member of the council of a municipality for a period of five years.

The whole with costs.

Sherbrooke, May 25, 2000

ATTORNEY FOR THE APPLICANT

The following are the only documents provided with the motion (not reproduced):

- a simple affidavit from Paul Gendron;
- a detailed affidavit from Paul Gendron;
- a notice of presentation;
- copies of Exhibits A-1 and A-2.

Juliette Tremblay gives you the mandate to represent her. She informs you that all the facts alleged in the motion are true.

QUESTION 7 (12 marks)

- **State four grounds for contestation which you will assert against the motion.**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation or, failing same, to the relevant jurisprudence.**

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

* * *

2nd Problem

On May 25, 2000, André Breton received a letter from the clerk in charge of planning for the City of Sherbrooke; the letter includes the following excerpts:

[...]

This letter is written in response to your application for a certificate of authorization allowing you to open a restaurant at 1250 des Gourmets Street. After a review of your file, we must inform you that your application has been refused.

The premises you leased at 1250 des Gourmets Street are located in zone RB-12 according to zoning by-law 62-105. Since the coming into force of by-law 62-105, on July 1, 1962, only residential uses have been permitted in this zone.

From August 1, 1959 to January 31, 2000, the premises contemplated in your application were used as a restaurant by *2434-1218 Québec inc.* which currently still owns the building .

The information contained in your application indicates that you leased the premises beginning on May 1, 2000 and that your establishment is scheduled to open on June 1, 2000.

The first reason for refusing your application results from section 18.2 of our zoning by-law which reads as follows: “A non-conforming use protected by acquired rights shall cease if such use has been interrupted for a period of at least three months.”

In the case at hand, the premises at 1250 des Gourmets Street have been vacant since January 31, 2000. Consequently, the right to operate a restaurant in those premises is extinguished.

The second reason for refusing your application is that, as the lessee, you cannot avail yourself of the right to operate a restaurant in the said premises, given that this right was reserved solely for the owner, namely, *2434-1218 Québec inc.*

[...]

QUESTION 8 (8 marks)

Can the two grounds for refusal asserted by the City of Sherbrooke be contested legally? Explain your answer.

FILE 4 (32 MARKS)

Today, May 25, 2000, you represent Pierre Lacroix, president and chief executive officer of *Pièces d'auto Lacroix inc.* He consults you and relates the following facts to you.

Pièces d'auto Lacroix inc. operates a huge warehouse in Montreal East; the warehouse contains parts, equipment and supplies for the automotive industry. The firm services a large number of retailers, workshops, garages and automobile dealers. The *Syndicat des employés de l'automobile* (hereinafter referred to as the *Syndicat*) has been certified for many years in order to represent all the firm's employees, excluding the office employees. The collective agreement, which was duly filed in accordance with section 72 of the *Labour Code*, provides as follows, among other things :

[...]

Section 11.01 Grievance Settlement Procedure

A party who believes that its rights under the Agreement have been breached, must, under penalty of nullity, submit a grievance in writing to the other party within ten (10) days immediately following the events or knowledge of the events which gave rise to the grievance.

[...]

Section 13.04 Promotions Outside the Bargaining Unit

If an employee is promoted to a position outside the bargaining unit, the employee may return to the bargaining unit in either of the following circumstances and in accordance with the procedure established hereinbelow:

- (a) If the employee is not satisfied with his employment during his probationary period of ninety (90) days, he shall be entitled to return to his former position without prejudice to the rights he had at the time he accepted the promotion.*
- (b) During the ninety (90) days following the employee's appointment to a position which is outside the bargaining unit, the employer shall be entitled to return the employee to his former position for any reason whatsoever.*

[...]

Section 33.01 Term

This Agreement shall come into effect on February 28, 1998 and shall terminate on February 29, 2000. However, it shall continue to apply until a new agreement is signed.

On February 7, 2000, Pierre Lacroix receives a phone call from Émile Léveillé, the president of the *Syndicat*, in order to begin negotiations for the renewal of the collective agreement. During their telephone conversation, Émile Léveillé informs Pierre Lacroix that the first negotiating session will take place on February 25, 2000.

In order to free himself from certain management duties, Pierre Lacroix proposes to Marc Gingras, an employee with more than 12 years of seniority, that he be promoted to the position of warehouse manager. Marc Gingras accepts and begins in his new position on February 21, 2000.

During the first negotiating session on February 25, 2000, there is no agreement regarding the renewal of the collective agreement, and the next negotiating session is scheduled for April 7, 2000.

On April 3, 2000, Marc Gingras instructs all warehouse employees that from now on they will have to punch a time card at the beginning and end of each work shift. According to Marc Gingras, this procedure is necessary in order to deal with the numerous incidents of lateness on the part of warehouse personnel.

On April 7, 2000, during the second negotiating session, Émile Léveillé informs Pierre Lacroix that the employees believe they are being harassed by Marc Gingras and that a petition is being circulated asking that he stop acting as warehouse manager. Émile Léveillé also asks that the obligation for employees to punch a time card be removed and that the situation return to what it was previously. Pierre Lacroix refuses categorically, at which point Émile Léveillé breaks off the negotiations and leaves the meeting room.

On April 17, 2000, the *Syndicat* files a disagreement pursuant to sections 59 and 100.10 of the *Labour Code*, alleging that the employer illegally changed the conditions of employment of his employees by imposing the obligation to punch a time card.

On April 28, 2000, Pierre Lacroix receives a petition signed by all the employees, which petition asks that Marc Gingras stop acting as warehouse manager within the next ten days. Pierre Lacroix is worried at this turn of events and meets with Marc Gingras. Marc Gingras informs Pierre Lacroix that he has a handle on the situation and that he intends to remain in his position.

On May 9, 2000, after beginning their work shift, the employees leave the work premises to set up a picket line in front of the establishment. Pierre Lacroix immediately contacts Émile Léveillé and is told that the employees will not consider going back to work at all as long as Marc Gingras remains in the position of warehouse manager.

That same day, given that the work stoppage is creating losses for the firm of more than \$40,000 per day, Pierre Lacroix informs Marc Gingras that he is being removed from his position as warehouse manager and that he must return to his former position. Marc Gingras refuses to comply with Pierre Lacroix's request and storms out of the establishment.

After Marc Gingras' departure and upon the recommendation of their union, the employees go back to work at the beginning of the work shift on May 10, 2000. Nonetheless, Pierre Lacroix continues to require that the employees comply with the obligation to punch a time card at the beginning and end of their work shift.

On May 11, 2000, after having inquired into the matter, Pierre Lacroix learns that the work stoppage had been organized by Luc Poitras, the *Syndicat*'s secretary. On May 12, 2000, Pierre Lacroix imposes a one-week suspension on Luc Poitras for having organized the work stoppage and having participated therein. On May 19, 2000, Luc Poitras, acting through the *Syndicat* which has been duly mandated, files a complaint with the labour commissioner general pursuant to section 16 of the *Labour Code*, which complaint contests the suspension.

On May 23, 2000, *Pièces d'auto Lacroix inc.* files a grievance, claiming damages of \$40,000 from the *Syndicat* resulting from the work stoppage of May 9, 2000.

On May 24, 2000, the *Syndicat* sends the following letter to *Pièces d'auto Lacroix inc.*:

May 24, 2000

Pièces d'auto Lacroix inc.

c/o: Mr. Pierre Lacroix

Your grievance dated the 23rd of May is entirely unfounded in fact and in law for the following reasons:

- (i) *Only a court of original general jurisdiction has jurisdiction to hear and rule upon your claim for damages.*
- (ii) *The work stoppage of May 9, 2000 is legal because of the notice of meeting of February 7, 2000; the Syndicat had acquired the right to strike.*
- (iii) *The grievance is prescribed pursuant to section 11.01 of the Collective Agreement.*
- (iv) *Subsidiarily, this was a spontaneous act on the part of the employees for which the Syndicat cannot be held liable.*

Finally, given the departure of Marc Gingras, the Syndicat intends to resume negotiations and would appreciate meeting with you as soon as possible.

Syndicat des employés de l'automobile

Per: Émile Léveillé, President

On May 24, 2000, *Pièces d'auto Lacroix inc.* receives a demand letter from Marc Gingras who has not gone back to work since May 9, 2000. He alleges having been subject to a disguised dismissal and claims 18 months of salary in lieu of a notice of termination.

A negotiating session with the *Syndicat* is scheduled for May 25, 2000 in order to try to settle the issues in dispute. The following subjects are on the agenda:

- The disagreement pursuant to sections 59 and 100.10 of the *Labour Code*.
- *Pièces d'auto Lacroix inc.*'s grievance.
- Luc Poitras' complaint pursuant to section 16 of the *Labour Code*.

A negotiating session has also been scheduled for that same day with Marc Gingras as regards the demand letter dated May 24, 2000.

QUESTION 9 (4 marks)

In your capacity as representative of *Pièces d'auto Lacroix inc.*, state the legal argument that you can raise to show that the disagreement filed on April 17, 2000 pursuant to sections 59 and 100.10 of the *Labour Code* is not well founded.

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

QUESTION 10 (16 marks)

State one answer to each of the following arguments which the *Syndicat des employés de l'automobile* intends to invoke against the grievance filed by *Pièces d'auto Lacroix inc.* on May 23, 2000.

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

- Only a court of original general jurisdiction has jurisdiction to hear and rule upon the claim for damages.
- The work stoppage of May 9, 2000 is legal because of the notice of meeting of February 7, 2000; the Syndicat had thus acquired the right to strike.
- The grievance is prescribed pursuant to section 11.01 of the Collective Agreement.
- This was a spontaneous act on the part of the employees for which the Syndicat cannot be held liable.

QUESTION 11 (6 marks)

State two arguments of fact or of law that you can raise to show that the complaint filed by Luc Poitras on May 19, 2000 pursuant to section 16 of the *Labour Code* is not well founded.

ONLY THE FIRST TWO ARGUMENTS OF FACT OR OF LAW WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

QUESTION 12 (6 marks)

When you meet with Marc Gingras, in your capacity as representative of *Pièces d'auto Lacroix inc.*, state two arguments of fact or of law that you will be able to raise against Marc Gingras' allegation that he was the subject of a disguised dismissal.

ONLY THE FIRST TWO ARGUMENTS OF FACT OR OF LAW WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

CORRIGE
Examen reprise - PUBLIC ADMINISTRATIF
Le 25 mai 2000

DOSSIER 1 (28 points)

QUESTION 1 (4 points)

Dans l'hypothèse où la Commission des transports du Québec décidait d'accueillir la demande de permis, serait-elle tenue d'informer Claude Allard-Desbiens de l'opposition de *Autobus Leblanc inc.* avant de rendre sa décision?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Non, art. 5 *L.j.a.*

1

QUESTION 2 (4 points)

Dans l'hypothèse où Claude Allard-Desbiens veut contester cette décision, doit-il obligatoirement faire une demande de révision avant de s'adresser au Tribunal administratif du Québec?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Non, art. 68.1 de la *Loi sur le transport par taxi*

OU

Non, art. 17.2 de la *Loi sur les transports*

2

QUESTION 3 (16 points)

Voir tableau à la page suivante

QUESTION 4 (4 points)

En tenant pour acquis que la requête en jugement déclaratoire et l'action déclaratoire sont des recours inappropriés, énoncez trois recours qui peuvent être intentés pour faire annuler la décision du Tribunal administratif du Québec.

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

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

1. Requête en révision judiciaire, art. 846 *C.p.c.*

19

2. Action directe en nullité, art. 33 *C.p.c.*

20

3. Recours en révision, en révocation ou en réexamen, art. 154 (3°) *L.j.a.*

21

QUESTION 3 (16 points)

a) Énoncez quatre motifs de faits ou de droit que vous pourriez invoquer pour contester la légalité de la décision rendue par le Tribunal administratif du Québec. Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi. SEULS LES QUATRE PREMIERS MOTIFS INSCRITS AU CAHIER DE RÉPONSES SERONT CORRIGÉS.

b) Énoncez la norme de contrôle judiciaire qui s'applique à chacun de ces motifs et dites pourquoi. SEULE LA PREMIÈRE NORME INSCRITE POUR CHACUN DES MOTIFS INSCRITS AU CAHIER DE RÉPONSES SERA CORRIGÉE.

MOTIFS	DISPOSITIONS	NORMES	POURQUOI
1. Victor Allard n'avait pas l'intérêt requis (pour contester la décision de la Commission des transports du Québec puisqu'il n'était pas partie au dossier dont celle-ci était saisie)	art. 101 <i>L.j.a.</i> ou art. 55 <i>C.p.c.</i> OU art. 846 <i>C.p.c.</i> OU 68.1 de la <i>Loi sur les transports</i>	Erreur simple 5 <input type="text" value="1"/>	Excès de compétence 6 <input type="text" value="1"/>
2. Le Tribunal a prolongé un délai au-delà de la limite permise par la loi.	art. 106 par. 2 <i>L.j.a.</i>	Erreur simple 9 <input type="text" value="1"/>	Excès de compétence 10 <input type="text" value="1"/>
3. Le Tribunal a substitué son appréciation de l'intérêt public à celle de la Commission des transports du Québec.	contrairement à l'article 68.3 de la <i>Loi sur le transport par taxi.</i>	Erreur simple 13 <input type="text" value="1"/>	Excès de compétence 14 <input type="text" value="1"/>
4. Le recours a été instruit et décidé par une formation composée d'un avocat et d'un notaire.	contrairement à l'article 37 <i>L.j.a.</i>	Erreur simple 17 <input type="text" value="1"/>	Excès de compétence 18 <input type="text" value="1"/>

NOTA: Les cases concernant la disposition, la norme de contrôle et le pourquoi ont été corrigées SEULEMENT si l'étudiant avait inscrit le bon motif.

DOSSIER 2 (20 points)**QUESTION 5 (16 points)**

- a) Énoncez deux arguments de droit fondés sur des articles différents de la *Charte des droits et libertés de la personne* que vous ferez valoir à l'encontre de l'allégation contenue au paragraphe 18a) de la requête.
- Appuyez votre réponse en faisant référence aux dispositions précises et pertinentes de la *Charte des droits et libertés de la personne*.

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

4 points par bulle 2/3

22

8

1. La liberté d'expression doit s'exercer en conformité avec les valeurs démocratiques, l'ordre public et le bien-être général des citoyens du Québec, art. 9.1 de la *Charte des droits et libertés de la personne*. 1
2. Nul ne peut diffuser ou publier un avis comportant discrimination fondée sur la race, la couleur ou l'origine ethnique ou nationale, art. 10 ET 11 de la *Charte des droits et libertés de la personne*. 2
3. Nul ne peut par discrimination fondée sur la race, la couleur ou l'origine ethnique ou nationale, empêcher autrui d'avoir accès à lieux publics, art. 10 ET 15 e la *Charte des droits et libertés de la personne*. 3

- b) Énoncez un argument de droit fondé sur la *Charte des droits et libertés de la personne* que vous ferez valoir à l'encontre de l'allégation contenue au paragraphe 18b) de la requête.
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Charte des droits et libertés de la personne*.

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

Il n'y a pas de discrimination pour un motif énoncé à l'article 10 *CDLP*

23

4

- c) Énoncez un argument de droit fondé sur la *Charte des droits et libertés de la personne* que vous ferez valoir à l'encontre de l'allégation contenue au paragraphe 19 de la requête.
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Charte des droits et libertés de la personne*.

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

L'art. 40 de la *Charte des droits et libertés de la personne* permet de limiter le droit à l'instruction publique gratuite de Martin dans la mesure et suivant les normes prévues par la loi (et l'art. 242 de la *Loi sur l'instruction publique* autorisait la Commission scolaire à expulser Martin).

OU

Le droit à l'instruction publique gratuite n'est pas absolu et on peut y déroger par une disposition législative, art. 52 de la *Charte des droits et libertés de la personne*.

24

4

QUESTION 6 (4 points)

En tenant pour acquis que la *Charte canadienne des droits et libertés* s'applique au litige, énoncez un argument de droit fondé sur la *Charte canadienne des droits et libertés* que vous ferez valoir à l'encontre de l'allégation contenue au paragraphe 20 de la requête ?

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

Le droit de propriété n'est pas protégé par la *Charte Canadienne des droits et libertés*.

OU

Il ne s'agit pas d'une saisie abusive, art. 8 *Charte Canadienne des droits et libertés*.

25

4

DOSSIER 3 (20 points)**QUESTION 7 (12 points)**

Indiquez quatre motifs de contestation que vous ferez valoir à l'encontre de cette requête. Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi ou, à défaut, à la jurisprudence pertinente.

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

3 points par bulles 4/5

26 **12**

1. La Cour du Québec n'a pas compétence pour entendre cette requête (seule la Cour supérieure est compétente), *Vanier c. Rioux*, [1983] C.A. 43; **OU** *Séminaire de Chicoutimi c. Cité de Chicoutimi*, [1973] R.C.S. 682; **OU** *Cain c. St-Pierre*, [1977] R.P. 97 (C.S.); **OU** *Bélanger c. Vézina*, [1977] R.P. 102 (C.S.); **OU** *Langelier c. Huard*, [1977] R.P. 169 (C.S.); **OU** *Provost c. Lefort*, [1980] C.S. 1013; **OU** *Duchesne c. Giasson*, J.E. 97-398 (C.A.); **OU** *Pelletier c. Lefebvre*, J.E. 96-1099 (C.S.); **OU** *Dastous c. Proteau*, J.E. 96-549 (C.S.); **OU** *Three Rivers Boatman c. C.C.R.O.*, [1969] R.C.S. 616;
OU
Selon l'article 96 de la Loi constitutionnelle de 1867, la Cour du Québec n'a pas compétence 1
2. La requête est mal fondée parce qu'à la date où le recours a été intenté, la cause d'incapacité n'existait plus.
OU
Le contrat a pris fin le 31 décembre 1999 et la requête n'est intentée que le 25 mai 2000. Le recours aurait dû être intenté pendant la durée du contrat 2
Désaulniers c. Désaulniers, (1913) 22 B.R. 71; *Paquette c. Sigouin*, [1958] C.S. 363
OU
Le délai pour prendre la procédure n'a pas été respecté; *Therriault c. Laflamme* (1932) R.J. 117 (C.S.)
3. Le tribunal ne peut accorder la conclusion concernant l'incapacité, art. 838 C.p.c. 3
4. Le tribunal ne peut que déposséder l'intimée de sa charge pour la durée de son mandat, art. 838 C.p.c.
OU tel qu'interprété par la jurisprudence,
Trudeau c. Robillard, [1949] B.R. 382; *Painchaud c. Lavoie*, J.E. 91-1373 (C.S.) 4
5. La requête n'est pas accompagnée du certificat du greffier attestant le dépôt au greffe d'une somme de 500 \$ pour tenir lieu de cautionnement, art. 839 C.p.c. 5

QUESTION 8 (8 points)

Les deux motifs de refus invoqués par la Ville de Sherbrooke peuvent-ils légalement être contestés ? Dites pourquoi.

1^{er} motif

Oui, l'article 18.2 du règlement de zonage n'est pas conforme à l'article 113 (alinéa 2), paragraphe 18° a) de la *Loi sur l'aménagement et l'urbanisme*

OU
Oui, parce que la période de temps prévue au règlement pour la perte des droits ne peut être inférieure à 6 mois). 27 **4**

2^e motif.

Oui, les droits acquis avantagent l'immeuble qui en tire profit (et profitent donc à son locataire.) 28 **4**

DOSSIER 4 (32 points)**QUESTION 9 (4 points)**

À titre de représentant de *Pièces d'auto Lacroix inc.*, énoncez l'argument juridique que vous pourrez faire valoir à l'encontre du bien-fondé de la mésentente en vertu des articles 59 et 100.10 du *Code du travail*.

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

L'article 59 du *Code du travail* est inapplicable puisque la convention collective continue de s'appliquer.

OU

L'article 33.01 de la convention collective prévoit qu'elle continue de s'appliquer.

29

OU

L'article 59 du *Code du travail* n'a pas pour effet d'empêcher l'employeur de modifier, dans l'exercice de son pouvoir normal de gérance, les modes de contrôle d'application des conditions de travail préexistantes.

QUESTION 10 (16 points)

Pour chacun des arguments suivants que le *Syndicat des employés de l'automobile* entend invoquer à l'encontre du grief de *Pièces d'auto Lacroix inc.*, énoncez une réponse que vous pourrez faire valoir.

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

Seul le tribunal de droit commun est compétent pour entendre et disposer de la réclamation en dommages.

En raison de l'existence de la convention collective, seul l'arbitre est compétent pour accorder une réparation à l'employeur.

30

L'arrêt de travail du 9 mai 2000 est légal en raison de l'avis de rencontre du 7 février 2000, le *Syndicat* avait alors acquis le droit à la grève.

(L'arrêt de travail du 9 mai 2000 est illégal) : l'avis du 7 février 2000 est sans effet puisqu'il ne s'agit pas d'un avis écrit. (tel qu'exigé par l'article 52 du *Code du travail*. Le droit à la grève n'est acquis qu'à compter du 30 mai 2000 en vertu des articles 52.2 et 58 du *Code du travail*.)

31

En vertu de l'article 11.01 de la convention collective, le grief est prescrit.

Le grief n'est pas prescrit puisqu'il a été déposé à l'intérieur du délai de 15 jours prévu au *Code du travail* (art. 100.0.1 C.t)

32

Il s'agit d'un mouvement spontané des salariés pour lequel le *Syndicat* ne peut être tenu responsable.

Il s'agit d'une cessation concertée de travail puisque le *Syndicat*, par le biais de son secrétaire, Luc Poitras, a organisé l'arrêt de travail en incitant les salariés à cesser de travailler.

33

QUESTION 11 (6 points)

Énoncez deux arguments factuels ou juridiques que vous pourrez faire valoir à l'encontre du bien-fondé de la plainte en vertu de l'article 16 du *Code du travail* de Luc Poitras.

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

1. L'organisation et la participation à une grève illégale ne constituent pas l'exercice d'un droit qui résulte du *Code du travail*. (art. 15 et 17 C.t.) (l'organisation et la participation à une grève illégale ne constituent pas l'exercice d'un droit pouvant donner ouverture à la présomption prévue à l'article 17 C.t.) 34

2. L'organisation et la participation à une grève illégale constituent un motif réel et sérieux justifiant la suspension. 35

QUESTION 12 (6 points)

Lors de la rencontre avec Marc Gingras, à titre de représentant de *Pièces d'auto Lacroix inc.*, énoncez deux arguments factuels ou juridiques que vous pourrez faire valoir à l'encontre de la prétention de Marc Gingras qui soutient avoir fait l'objet d'un congédiement déguisé.

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

- À la suite du refus de Marc Gingras de réintégrer le poste qu'il occupait antérieurement, son départ constitue une démission. 36
- L'article 13.04 par. b) de la convention collective autorise l'employeur à retourner Marc Gingras à sa fonction antérieure. (Marc Gingras a été promu le 21 février 2000 et l'employeur entend le retourner à sa fonction antérieure le 9 mai 2000, soit dans le délai de 90 jours) 37