



FORMATION PROFESSIONNELLE DU
BARREAU DU QUÉBEC

EXAMINATION BOOKLET

DROIT PUBLIC ET ADMINISTRATIF SUPPLEMENTAL EXAMINATION

May 30, 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 « Preamble 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 **13** pages (including this page) and that your answer booklet contains **5** 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.

Pursuant to *An Act respecting childcare centres and childcare services* (hereinafter referred to as the « *Act* », of which certain extracts are reproduced in a schedule hereto at the end of File 1), the Minister of Child and Family Welfare (hereinafter referred to as the « Minister ») has, among other things, the power to issue a permit to a « childcare centre » (C.P.E., in French). Such a centre is responsible for coordinating home childcare and recognizing certain persons as home childcare providers. Thus, in order to provide « home childcare » a person must be recognized by a childcare centre.

On April 6, 1999, pursuant to section 7 of the *Act*, the Minister issues a childcare centre permit to *C.P.E. du Bon Conseil*, a non-profit legal person. *C.P.E. du Bon Conseil* is the permit holder. On June 7, 1999, pursuant to section 8 of the *Act*, *C.P.E. du Bon Conseil* recognizes Antonine Mailloux as a home childcare provider.

On August 3, 1999, Antonine Mailloux begins operating her home childcare service under the name of *Service de garde les Filles d'Ève*.

At the beginning of May 2000, Antonine Mailloux changes the admission policy for her home childcare service. Indeed, after some unfortunate experiences with young boys, whom she believes to be more unruly, she has decided to admit only girls.

At the beginning of June 2000, namely, the time for re-registration, she refuses children of the male gender, using the excuse that there are not enough spaces. Line Lacasse, whose four-year old son attended this home childcare service, finds it strange that her son's registration is suddenly refused. She has one of her friends call Antonine Mailloux who states that she has two spaces available for young girls. Line Lacasse is outraged and writes to Roger Lompré, president of the board of directors of *C.P.E. du Bon Conseil* to complain about the new policy adopted by Antonine Mailloux. Roger Lompré informs Line that he will submit the complaint to the members of the board of directors.

On September 6, 2000, after a meeting of the board of directors of *C.P.E. du Bon Conseil*, Roger Lompré sends Line Lacasse the following letter.

<p style="text-align: right;"><i>September 6, 2000</i></p> <p><i>Ms. Line Lacasse 4598 Monette Street Rosemère, Quebec H6B 9K9</i></p> <p><u>RE : Complaint relating to Service de garde les Filles d'Ève</u></p> <p><i>Dear Ms. Lacasse :</i></p> <p><i>At its meeting held September 5, 2000, the board of directors of C.P.E. du Bon Conseil reviewed your complaint relating to Service de garde les Filles d'Ève. The board of directors considers that your complaint is unfounded.</i></p> <p><i>Yours truly,</i></p> <p style="text-align: right;"><u><i>Roger Lompre</i></u> Roger Lompré, for C.P.E. du Bon Conseil</p>	
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Line Lacasse is dissatisfied with this decision and therefore consults M^e Alfred Bernard who sends the following letter to *C.P.E. du Bon Conseil*.

September 27, 2000

*C.P.E. du Bon Conseil
c/o Roger Lompré
200 Principale Street
Rosemère, Quebec
H6B 8J7*

RE : *Decision relating to the complaint of Line Lacasse*

Dear Sir :
Our client, Line Lacasse, has given us the mandate to write this letter to you following the decision rendered by C.P.E. du Bon Conseil on September 5, 2000. We believe that this decision is illegal because it does not provide reasons, contrary to the requirements of An Act respecting administrative justice.

Consequently, you are hereby put in default to resume the decision-making process and render a new decision, the whole within fifteen days of your receipt of this letter.

Do govern yourselves accordingly.

Alfred Bernard

 Alfred Bernard, lawyer

QUESTION 1 (5 marks)

- **Is M^e Alfred Bernard's allegation in respect of the legality of the decision well founded? Explain your answer.**
- **Justify your answer by referring to one or more specific and relevant provisions of *An Act respecting administrative justice*.**

SUPPLEMENTARY FACTS

On October 17, 2000, Line Lacasse discovers a new home childcare service which agrees to admit her son.

On November 21, 2000, Line Lacasse sends a complaint to the Minister in which she accuses *C.P.E. du Bon Conseil* of having failed to respond to the letter sent by her lawyer. Moreover, she complains about the fact that Antonine Mailloux of *Service de garde les Filles d'Ève* refused to re-register her son. She also claims that the equipment used by this childcare service is not safe for infants.

The Minister is concerned about the situation. Therefore, he delegates an inspector who meets with Roger Lompré, visits the premises occupied by *Service de garde les Filles d'Ève* and has a discussion with Antonine Mailloux, after which he drafts a report which he presents to the Minister. In his report, the inspector specifies, among other things, that the equipment used by *Service de garde les Filles d'Ève* endangers the safety of the infants. Moreover, he indicates that the policy adopted by *Service de garde Les Filles d'Ève* is discriminatory given that distinctions based on sex are contrary to the right to equality recognized in section 15 of the *Canadian Charter of Rights and Freedoms*.

QUESTION 2 (5 marks)

Is the inspector correct in claiming that the *Canadian Charter of Rights and Freedoms* applies in this case? Explain your answer.

SUPPLEMENTARY FACTS

Upon receipt of the inspector's report, the Minister sends the parties a prior notice, in compliance with the applicable legislative provisions, informing them of his intention to appoint a person to act as provisional administrator of *C.P.E. du Bon Conseil* and to revoke the recognition of Antonine Mailloux.

On May 1, 2001, the Minister renders two decisions, with reasons therefor, in which he invokes, among other things, the threat to the health and safety of the children. The first decision appoints Isabelle Courteau to act as provisional administrator of *C.P.E. du Bon Conseil* and the second revokes Antonine Mailloux's recognition.

QUESTION 3 (7 marks)

a) State one ground of law that Antonine Mailloux can raise in order to contest the legality of the Minister's decision revoking her recognition.

- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

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

b) Assuming that Antonine Mailloux were to ask the Superior Court to exercise its power of judicial review with respect to the Minister's decision to revoke her recognition, which rule of judicial review (*norme de contrôle judiciaire*) would apply with respect to the ground you have raised? Explain your answer.

SUPPLEMENTARY FACTS

On May 22, 2001, Roger Lompré, acting in his personal capacity, contests, by means of a motion for judicial review, the legality of the decision rendered by the Minister appointing Isabelle Courteau as provisional administrator. The motion includes, among other things, a conclusion asking the Superior Court to stay the decision rendered by the Minister.

QUESTION 4 (5 marks)

- **At which location must Roger Lompré serve his motion?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

QUESTION 5 (8 marks)

- **State two grounds of law that the respondent could assert to challenge the admissibility of the motion for judicial review.**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

ONLY THE FIRST TWO GROUNDS OF LAW WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

SCHEDULE

EXCERPTS OF AN ACT RESPECTING CHILDCARE CENTRES AND CHILDCARE SERVICES

CHAPTER I

INTERPRETATION AND APPLICATION

[...]

Object.

1.1. The object of this Act is to enhance the quality of educational childcare provided by childcare centres, day care centres, nursery schools and home childcare providers and of childcare provided by stop over centres so as to ensure the health and safety and foster the development and well-being of the children to whom childcare is provided.

A further object of this Act is to foster the harmonious development of childcare by facilitating the development of childcare centres, having regard to the rules relating to grants.

[...]

CHAPTER II

ORGANIZATION OF CHILDCARE

DIVISION I

PERMITS

3. No person,

[...]

(2) except the holder of a childcare centre permit issued by the Minister, may coordinate or claim to coordinate home childcare or recognize persons as home childcare providers within the meaning of section 8;

[...]

4. No person, except a person holding a permit issued for that purpose by the Minister, may

(1) operate a childcare centre, a day care centre or a nursery school, or operate a stop over centre on a permanent basis in the cases and on the conditions determined by regulation;

[...]

7. The Minister may issue a childcare centre permit to a non-profit legal person or a cooperative two-thirds or more of the members of whose board of directors of not fewer than seven members are parents who are future users of the educational childcare coordinated or provided by the childcare centre but are neither members of its staff, nor home childcare providers or their assistants.

[...]

Person responsible for home childcare.

8. A natural person who provides childcare for a consideration in a private residence, for periods which may exceed 24 consecutive hours, may be recognized as a person responsible for home childcare by the holder of a childcare centre permit, in the manner determined by regulation.

[...]

9. The holder of a childcare centre permit shall coordinate, monitor and supervise the educational childcare provided by home childcare providers recognized by the permit holder and, for that purpose, shall

(1) promote the development of home childcare;

(2) recognize home childcare providers according to the needs identified by the permit holder;

(3) maintain an information service concerning available home childcare;

(4) promote the implementation of a professional training and development course for home childcare providers;

(5) offer technical and professional support to home childcare providers;

(6) implement the monitoring and supervision measures, including suspension or withdrawal of recognition, determined by regulation applicable in respect of home childcare providers recognized by the permit holder.

[...]

Suspension.

19. The Minister may suspend, revoke or refuse to renew a permit, where

- (1) the permit holder has committed, authorized the commission of, consented to or participated in the commission of an offence against this Act or the regulations;
- (2) the permit holder has ceased to fulfil the conditions provided by this Act or the regulations for the issue of a permit;
- (3) the health, safety or well-being of children to whom childcare is being provided in a childcare centre, day care centre, nursery school or stop over centre or to whom home childcare is being provided is endangered;
- (4) the holder of a permit made a false declaration or distorted a material fact upon applying for the issue or the renewal of a permit, or in a report, a document or information required by the Minister under this Act or the regulations;
- (5) the permit holder ceased to operate without first complying with section 18;
- (6) the permit holder has refused or neglected to comply with a notice issued under section 36.1;
- (7) the permit holder has refused or neglected to pay a sum owed to the Minister under this Act or the regulations.

20. Before refusing to issue, suspending, revoking or refusing to renew a permit, the Minister shall notify the applicant or permit holder in writing and give the applicant or permit holder at least 10 days to present observations.

21. The decision of the Minister shall be communicated in writing to the applicant or permit holder.

[...]

DIVISION II PROVISIONAL ADMINISTRATION

Provisional administration.

23. The Minister may designate a person to assume, for a period of not over 90 days, provisional administration of a childcare centre, a day care centre, a nursery school or a stop over centre

- (1) if the permit under which it is operated has been suspended or revoked in accordance with this Act;
- (2) if the permit holder engages in practices or tolerates a situation which could endanger the health, safety or well-being of the children;

[...]

Powers.

25. From the date on which the administrator designated by the Minister assumes provisional administration of a childcare centre, a day care centre, a nursery school or a stop over centre, the powers of the permit holder are suspended.

[...]

Inquiry.

30. The Minister may entrust a person with making an inquiry into any matter in connection with the administration or operation of a childcare centre, a day care centre, a nursery school or a stop over centre.

Powers of commissioner.

The person designated under this section has, for the purposes of inquiry, the powers and immunity of a commissioner appointed under the Act respecting public inquiry commissions (chapter C-37), except the power to impose imprisonment.

Administrator.

When an inquiry is ordered under this section, the Minister may suspend the powers of the permit holder and appoint an administrator to exercise them for the duration of the inquiry.

[...]

DIVISION V PROCEEDING BEFORE THE ADMINISTRATIVE TRIBUNAL OF QUÉBEC

42. Any applicant whose application for a permit is refused, any permit holder whose permit is suspended, revoked or not renewed or any home childcare provider whose recognition is suspended or withdrawn by the holder of a childcare centre permit having recognized the home childcare provider may, within 60 days of notification of the decision of the Minister or the holder of a childcare centre permit, as the case may be, contest the decision before the Administrative Tribunal of Québec.

[...]

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.

A calendar is reproduced at the end of the file, on page 11.

Jean-Marc Dion is a mechanic. In January of 1999, he is hired by *Galvanizor inc.*, a firm specializing in the manufacture, machining and servicing of components for heavy vehicles.

Galvanizor inc. has a plant in Vanier City, near Quebec City, where the components are manufactured by about fifteen employees. The operations relating to the mechanical servicing of vehicles take place in an establishment located in the James Bay region, because *Hydro-Québec* is the firm's only customer. Twenty employees work there, including Jean-Marc Dion.

At the time Jean-Marc is hired, Georges Lemire, the human resources manager for *Galvanizor inc.*, has him sign a contract of employment which includes the following provisions:

[...]

4. Unless the employee has obtained the authorization of a superior to be absent, the employee shall at all times remain on the site of the establishment to which he has been assigned, except during the employee's annual vacation.
5. The employee shall work 50 hours from Monday to Saturday of each week.
6. The employee shall be entitled to two weeks of vacation per year, which weeks shall be taken during the third and fourth weeks of July of each year.

[...]

8. The wage shall be \$ 40 an hour. Any hours worked in addition to the regular work-week determined by the *Act respecting labour standards* shall entail a premium of 50 % of the hourly wage paid to the employee.

[...]

10. The employee shall not fraternize with, or have any intimate or amorous relationship with any aboriginal persons.
11. The employer may terminate this contract unilaterally for any reason that it considers valid, upon paying the employee an amount of \$ 500 within 30 days of the end of the contract. However, this compensation shall not be paid to the employee if the employee commits a serious fault.
12. The employer shall provide lodging to the employee, but reserves the right to access the lodging, without notice, for purposes of maintenance or safety, or to verify that the premises comply with the by-laws.

[...]

On March 11, 2001, Jean-Marc is on a day off. Without being authorized to do so, he goes for a walk in the forest outside the site of the establishment. At that time, he meets Myriam and Mélanie Picard, two young aboriginal persons who are going fishing. At their invitation, he spends the day with them.

Upon returning to the firm's site, he invites them to have a meal and share a bottle of wine with him. During the evening, the watchman who is doing his walk-around check hears shouts of laughter coming from residence no. 2. When he arrives at the scene, he notices Jean-Marc and his guests and smells an odour of cannabis.

Notwithstanding Jean-Marc's protests, the watchman enters his room, searches the cupboard and finds two ounces of cannabis in it, something which the firm's regulations strictly forbid.

On the morning of March 12, 2001, the supervisor presents Jean-Marc with a letter signed by Georges Lemire of which the following is an excerpt :

[...]

Through your unacceptable conduct on Sunday, March 11, 2001, not only did you breach sections 4 and 10 of your contract of employment, but you also violated the regulation which forbids the possession and use of narcotics on the site of the establishment. For these reasons, you are dismissed immediately. Given the seriousness of the faults for which you are being reproached, you are not entitled to the compensation referred to in section 11 of the contract of employment.

[...]

On March 15, 2001, Jean-Marc consults you. During the meeting, he informs you that he attempted unsuccessfully to convince his co-workers at the James Bay establishment to join a union in December 2000 and that, since then, his relationship with his bosses has continuously deteriorated. Moreover, he informs you that he was not paid for his last week of work. He wants your opinion regarding the legality of certain provisions of his contract of employment, the legality of his dismissal and his claim for his wages.

QUESTION 6 (4 marks)

- **In addition to the rights to liberty, dignity and honour, state a right or freedom contemplated in a section of the *Charter of Human Rights and Freedoms* which could be raised to contest the validity of section 4 of the contract of employment.**
- **Justify your answer by referring to one specific and relevant provision of the *Charter of Human Rights and Freedoms*.**

ONLY THE FIRST RIGHT OR FREEDOM WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

QUESTION 7 (5 marks)

- **Can Jean-Marc Dion file a complaint with the Commission des droits de la personne et des droits de la jeunesse to contest the search carried out by the watchman?**
- **Justify your answer by referring to one or more specific and relevant provisions of the *Charter of Human Rights and Freedoms*.**

QUESTION 8 (5 marks)

Does section 5 of the contract of employment violate the *Act respecting labour standards*? Explain your answer.

QUESTION 9 (5 marks)

- **Assuming that Jean-Marc Dion were to institute proceedings to claim his unpaid wages, what prescription period would apply?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

SUPPLEMENTARY FACTS

Jean-Marc Dion's co-workers are outraged at the way the employer treated him. During the week following the dismissal, nine of them organize a secret meeting and decide that this time they will sign the membership cards for membership in the *Union des employés de garage* (hereinafter referred to as the *U.E.G.*) of which the president is Paul Laviolette. Jean-Marc's return to the firm is at the heart of their priorities.

On April 9, 2001, Jean-Marc telephones Paul Laviolette to ask him to contest his dismissal. That same day, Paul Laviolette signs and files, with the office of the Labour Commissioner General, a complaint in accordance with section 16 of the Labour Code contesting Jean-Marc's dismissal.

On April 10, 2001, in accordance with the provisions of the Labour Code, the *U.E.G.* files a petition for certification to represent all the employees of *Galvanizor inc.* who work at the James Bay establishment. In addition to the resolution authorizing the filing, the petition is filed together with nine membership cards duly completed and signed at the meeting.

On April 11, 2001, *Galvanizor inc.* receives a copy of the petition for certification sent by the office of the Labour Commissioner General.

On April 19, 2001, the *U.E.G.* is informed that *Galvanizor inc.* is contesting the admissibility of the complaint under section 16 of the Labour Code on the ground that it was not signed by Jean-Marc.

On April 30, 2001, the human resources manager of *Galvanizor inc.* writes to the Labour Commissioner General. He asks to see the membership cards filed by the *U.E.G.* in order to ensure the genuineness of the signatures. Moreover, *Galvanizor inc.* claims that the bargaining unit sought by the *U.E.G.* is not appropriate because it must also include the employees at the Vanier City plant.

On May 28, 2001, the *U.E.G.* consults M^e Lucie Deschênes and requests her opinion on various issues.

QUESTION 10 (5 marks)

Is *Galvanizor inc.*'s claim as to the inadmissibility of the complaint under section 16 of the Labour Code well founded? Explain your answer.

QUESTION 11 (4 marks)

- Is *Galvanizer inc.*'s request to consult the membership cards well founded?
- Justify your answer by referring to one or more specific and relevant provisions of the Labour Code.

QUESTION 12 (5 marks)

- At the beginning of the hearing before the Labour Commissioner, what ground of law will M^e Lucie Deschênes, the lawyer for the *U.E.G.*, raise in order to prevent *Galvanizer inc.* from opposing the appropriateness of the character of the bargaining unit sought?
- Justify your answer by referring to one or more specific and relevant provisions of the Labour Code.

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

QUESTION 13 (5 marks)

- Assuming that the employer's claims regarding the bargaining unit are dismissed, can the Labour Commissioner certify the *U.E.G.* immediately? Explain your answer.
- Justify your answer by referring to one or more specific and relevant provisions of the Labour Code.

SUPPLEMENTARY FACTS

On June 7, 2001, as the lawyer for Jean-Marc Dion, you institute proceedings in Superior Court against *Galvanizer inc.* in which you claim six months of wages as compensation in lieu of notice of termination for the wrongful dismissal of your client.

In its defence, *Galvanizer inc.* denies owing any amount whatsoever, on the ground that the dismissal is justified given Jean-Marc's behaviour. Subsidiarily, *Galvanizer inc.* alleges that if the court concludes that the dismissal was not justified, the only amount owed by *Galvanizer inc.* is limited to \$500, in accordance with section 11 of the contract of employment.

QUESTION 14 (8 marks)

- State two grounds of law that you will assert, as the lawyer for Jean-Marc Dion, against *Galvanizer inc.*'s subsidiary allegation.
- Justify your answer by referring to one or more specific and relevant provisions of any legislation.

ONLY THE FIRST TWO GROUNDS OF LAW WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.

SUPPLEMENTARY FACTS

During the trial before the Superior Court, the lawyer for *Galvanizer inc.* wants to introduce into evidence the cannabis seized from Jean-Marc's cupboard. As the lawyer for Jean-Marc, you claim that this evidence is inadmissible. You base your objection on the fact that the cannabis was seized in violation of your client's right to respect for his private life or privacy. You allege that this item of evidence must be dismissed pursuant to section 49 of the *Charter of Human Rights and Freedoms*.

QUESTION 15 (4 marks)

As the lawyer for Jean-Marc Dion, are you well founded in claiming that section 49 of the *Charter of Human Rights and Freedoms* authorizes the judge to exclude the item of evidence? Explain your answer.

JANUARY 2001

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28	29	30	31			

FEBRUARY 2001

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MARCH 2001

SU	M	T	W	T	F	SA
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APRIL 2001

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29	30					

MAY 2001

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JUNE 2001

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- 1, January 2001 : New Year's Day
- 13, April 2001 : Good Friday
- 15, April 2001 : Easter
- 16, April 2001 : Easter Monday
- 21, May 2001 : Victoria Day or *Fête de Dollard*
- 24, June 2001 : *Fête nationale*

FILE 3 (20 MARKS)

André Tousignant is the mayor of the City of Plaisance. He consults you regarding various files :

SITUATION 1

Ginette Lemay owns parcels of land having a total area of 10 hectares. These parcels of land are included in zone RA-232 of the zoning plan which forms an integral part of the City's zoning by-law. Single-family structures are permitted in this zone. Zone RA-232 has a total area of 180 hectares. For the time being, the City is not in favour of developing this part of its territory. The council adopted Regulation 98-200 of which section 8 reads as follows :

Section 8

In zones RA-232, RA-233, RA-234 and RB-106, no building permits shall be granted unless the following conditions have been met:

[...]

4. The land on which the proposed structure is to be erected is adjacent to a public street.

Ginette Lemay's parcels of land are not adjacent to a public street. To date, the City has refused to open new public streets in zone RA-232. Consequently, all of Ginette Lemay's applications for building permits to build single-family dwellings have been refused by the officer responsible for the issuance of permits.

The City has received a demand letter from Ginette Lemay's lawyers. They have threatened to sue the City. They claim that the municipal authorities did not have the power to enact section 8 (4) of Regulation 98-200 and that this provision is oppressive and is an abuse of power.

QUESTION 16 (8 marks)

- a) **As regards the claim of Ginette Lemay's lawyers to the effect that the City did not have the power to adopt section 8 (4) of Regulation 98-200, is this claim well founded?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**
- b) **As regards the claim of Ginette Lemay's lawyers to the effect that section 8 (4) of Regulation 98-200 is oppressive and is an abuse of power, is this claim well founded?**
- **Justify your answer by referring to the relevant jurisprudence.**

SITUATION 2

The municipal council of the City of Plaisance adopted a resolution approving the plans forming part of the construction project of *Centre commercial Bilboquet*, in accordance with the procedure set forth in the City's Regulation 95-207 which governs site planning and architectural integration programs (S.P.A.I.P.).

However, the advisory planning committee had recommended against the project and had forwarded a negative recommendation to the council.

Nevertheless, the officer responsible for the issuance of permits refuses to issue the building permit because the number of parking spaces provided for in the project, namely, 425 spaces, is insufficient to satisfy the applicable provisions of the zoning by-law regarding the minimum number of parking spaces required. The standard is such that the project should provide for 475 spaces.

QUESTION 17 (4 marks)

- **Is the refusal by the officer responsible for the issuance of permits to issue the building permit required by the promoter of *Centre commercial Bilboquet* well founded?**
- **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**

SITUATION 3

Jack Cohen files an application for administrative review with the City's assessor regarding the restaurant owned by the mayor, André Tousignant. Jack Cohen was the campaign manager for the mayor's opponent during the most recent elections. He is also the mayor's business competitor given that, like the mayor, he owns a restaurant in the City. Jack Cohen participated in the most recent election campaign because he felt that the taxes he was paying as a taxpayer in the City of Plaisance were too high.

The City of Plaisance prepares its own real estate assessment roll. The median proportion of the assessment roll is 125% and its comparative factor is 0.80. The services provided by the City are fully financed with a general real estate tax at a very low rate.

The mayor, André Tousignant, does not have his tax statement on him. However, he remembers that the value of the immovable which houses his restaurant, as such value is recorded on the assessment roll, is \$825,000.

André Tousignant finds it unacceptable for Jack Cohen to make an application for review regarding his restaurant. Jack Cohen is claiming that the mayor's restaurant is undervalued. In fact, André Tousignant is of the opinion that the real value of his restaurant is no more than \$660,000. He would have liked to file a complaint himself in order to have his assessment reduced, but he has to protect his public image.

QUESTION 18 (8 marks)

- a) **Can Jack Cohen file an application for administrative review with respect to an immovable which he does not own?**
 - **Justify your answer by referring to one or more specific and relevant provisions of any legislation.**
- b) **Assuming that the real value of André Tousignant's restaurant is \$660,000, is the \$825,000 entry on the roll accurate?**
 - **Justify your answer by doing the calculation.**

CORRIGÉ
DROIT PUBLIC ET ADMINISTRATIF - EXAMEN DE REPRISE
 30 mai 2001

DOSSIER 1 (30 POINTS)

QUESTION 1 (5 points)

- La prétention de M^e Alfred Bernard concernant la légalité de la décision est-elle bien fondée? Dites pourquoi.
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi sur la justice administrative*.

Non, *C.P.E. du Bon Conseil* n'est pas un organisme gouvernemental, art. 3 *L.j.a.*

1. 5

QUESTION 2 (5 points)

L'inspecteur a-t-il raison de prétendre que la *Charte canadienne des droits et libertés* s'applique en l'espèce? Dites pourquoi.

Non, *Service de garde les Filles d'Ève* n'est pas un acteur gouvernemental. (art. 32 *Charte canadienne des droits et libertés*).

2. 5

QUESTION 3 (7 points)

- a) Énoncez un motif de droit qu'Antonine Mailloux peut invoquer pour contester la légalité de la décision par laquelle le ministre révoque sa reconnaissance.
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

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

- b) Dans l'hypothèse où Antonine Mailloux demanderait à la Cour supérieure d'exercer son pouvoir de contrôle judiciaire à l'encontre de la décision du ministre de révoquer sa reconnaissance, quelle norme de contrôle s'appliquerait à l'égard du motif que vous avez invoqué? Dites pourquoi.

MOTIF	ARTICLE	NORME	POURQUOI
Seul <i>C.P.E. du Bon Conseil</i> a compétence pour révoquer la reconnaissance d'Antonine Mailloux.	Art. 9 de la <i>Loi sur les centres de la petite enfance et autres services de garde à l'enfance</i> .	Erreur simple	Absence de compétence
3. 3	4. 1	5. 1	6. 2
OU	OU		
Le ministre n'a pas compétence pour révoquer la reconnaissance d'Antonine Mailloux.	Art. 9 ou 19 (<i>a contrario</i>) de la <i>Loi sur les centres de la petite enfance et autres services de garde à l'enfance</i> .		

QUESTION 4 (5 points)

- À quel endroit Roger Lompré doit-il faire signifier sa requête?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

La requête doit être signifiée au bureau du directeur général du contentieux à Montréal ou à Québec 7.
du procureur général du Québec, art. 94.4 C.p.c.

QUESTION 5 (8 points)

- Énoncez deux motifs de droit que la partie intimée peut faire valoir pour contester la recevabilité de la requête en révision judiciaire.
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

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

1. Le ministre n'est pas un tribunal au sens de l'art. 846 C.p.c.
OU
La décision rendue par le ministre n'est pas une décision quasi-judiciaire, art. 846 C.p.c. 8.
OU
La décision rendue par le ministre est une décision administrative, art. 846 C.p.c.
2. Roger Lompré n'était pas une partie au sens de l'art. 846 C.p.c. 9.
OU
Roger Lompré n'a pas l'intérêt juridique requis pour intenter ce recours (*C.P.E. du Bon Conseil* étant une personne morale), art. 55 C.p.c. **ou** 846 C.p.c.

DOSSIER 2 (50 POINTS)

QUESTION 6 (4 points)

- Outre les droits à la liberté, à la dignité et à l'honneur, énoncez un droit ou liberté visé par un article de la *Charte des droits et libertés de la personne* qui pourrait être invoqué pour contester la validité de la clause 4 du contrat de travail.
- Appuyez votre réponse en faisant référence à la disposition précise et pertinente de la *Charte des droits et libertés de la personne*.

SEUL LE PREMIER DROIT OU LIBERTÉ INSCRIT AU CAHIER DE RÉPONSES SERA CORRIGÉ.

Le droit au respect de sa vie privée, art. 5 *CDLP*.

OU

Le droit à des conditions de travail justes et raisonnables, art. 46 *CDLP*.

10.

QUESTION 7 (5 points)

- Jean-Marc Dion peut-il déposer une plainte à la Commission des droits de la personne et des droits de la jeunesse pour contester la fouille effectuée par le gardien du chantier?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Charte des droits et libertés de la personne*.

Non, art. 71 ou art. 74 *CDLP*.

11.

QUESTION 8 (5 points)

La clause 5 du contrat de travail contrevient-elle à la *Loi sur les normes du travail*? Dites pourquoi.

Non, parce que la *Loi sur les normes du travail* ne fixe pas de durée maximale pour la semaine de travail.

12.

QUESTION 9 (5 points)

- Dans l'hypothèse où Jean-Marc Dion intenterait une action pour réclamer son salaire impayé, quel serait le délai de prescription?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

Trois ans, article 2925 C.c.Q.

13.

QUESTION 10 (5 points)

La prétention de *Galvanizor inc.* quant à l'irrecevabilité de la plainte suivant l'article 16 du Code du travail est-elle bien fondée? Dites pourquoi.

Non, la plainte peut être signée par un mandataire pour et au nom du salarié.

14.

QUESTION 11 (4 points)

- La demande de *Galvanizor inc.* afin de consulter les cartes d'adhésion est-elle bien fondée?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code du travail.

Non, art. 32 al. 3 C.t OU art. 36 C.t.

15.

QUESTION 12 (5 points)

- Au début de l'audience devant le Commissaire du travail, quel motif de droit fera valoir M^e Lucie Deschênes, procureure de l'*U.E.G.*, pour empêcher *Galvanizor inc.* de s'opposer au caractère approprié de l'unité de négociation demandée?
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code du travail.

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

L'opposition a été formulée hors délai, art. 28 c) C.t.
(15 jours de la réception de la copie de la requête en accréditation)

16.

QUESTION 13 (5 points)

- Dans l'hypothèse où les prétentions de l'employeur quant à l'unité de négociation seraient rejetées, le Commissaire du travail peut-il accréditer sur le champ l'*U.E.G.*? Dites pourquoi.
- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du Code du travail.

Non, parce que selon le calcul des effectifs, l'*U.E.G.* ne groupe pas la majorité absolue des salariés du groupe visé, art. 21 C.t.

OU

Non, le Commissaire du travail doit ordonner la tenue d'un scrutin secret puisque l'*U.E.G.* groupe entre 35% et 50% des salariés dans l'unité de négociation (9 salariés sur 19), art. 37 C.t.

17.

QUESTION 14 (8 points)

- Énoncez deux motifs de droit que vous ferez valoir à titre de procureur de Jean-Marc Dion à l'encontre de la prétention subsidiaire de *Galvanizor inc.*
- Appuyez votre réponse en faisant référence à la ou aux dispositions législatives précises et pertinentes de tout texte de loi.

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

1. (Malgré la clause 11 du contrat de travail,) un salarié ne peut renoncer au droit d'obtenir une indemnité en réparation du préjudice subi lorsque le délai congé est insuffisant, art. 2092 C.c.Q. 1.
2. (Malgré la clause 11 du contrat de travail,) un salarié ne peut renoncer au droit d'obtenir une indemnité en réparation du préjudice subi parce que la résiliation est faite de façon abusive, art. 2092 C.c.Q. 2.
3. (Malgré la clause 11 du contrat de travail,) Jean-Marc a droit à une indemnité compensatrice minimale équivalente à deux semaines de salaire art. 82 **OU** 83 *L.n.t.*⁽¹⁾ 3. ⁽¹⁾
parce que les dispositions de la *Loi sur les normes du travail* sont d'ordre public, ⁽²⁾
art 93 *L.n.t.*⁽²⁾.

18.

QUESTION 15 (4 points)

À titre de procureur de Jean-Marc Dion, êtes-vous bien fondé de prétendre que l'article 49 de la *Charte des droits et libertés de la personne* autorise le juge à exclure l'élément de preuve? Dites pourquoi.

Non, l'article 49 de la *Charte des droits et libertés de la personne* n'autorise pas l'exclusion de la preuve à titre de réparation.

19.

DOSSIER 3 (20 POINTS)

QUESTION 16 (8 points)

a) La prétention des procureurs de Ginette Lemay selon laquelle la ville n'avait pas le pouvoir d'adopter l'article 8 (4) du règlement 98-200 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. 116 (5) *Loi sur l'aménagement et l'urbanisme*.

20.

b) La prétention des procureurs de Ginette Lemay selon laquelle l'article 8 (4) du règlement 98-200 est oppressif et constitue un abus de pouvoir est-elle bien fondée?

- Appuyez votre réponse en faisant référence à la jurisprudence pertinente.

Non, *Wendover & Simpson c. Filion*, (1992) R.D.J. 531, 538 (C.A.)

21.

QUESTION 17 (4 points)

• Le refus du fonctionnaire responsable de la délivrance des permis de délivrer le permis de construction requis par les promoteurs de *Centre commercial Bilboquet* est-il bien fondé?

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

Oui, art. 120 1° *Loi sur l'aménagement et l'urbanisme*.

22.

QUESTION 18 (8 points)

a) Jack Cohen peut-il faire une demande de révision administrative au sujet d'un immeuble qui ne lui appartient pas?

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

Oui, art. 124 de la *Loi sur la fiscalité municipale*.

23.

b) En tenant pour acquis que la valeur réelle du restaurant d'André Tousignant est de 660 000 \$, l'inscription de 825 000 \$ au rôle est-elle exacte?

- Appuyez votre réponse en faisant le calcul.

Oui, $825\ 000 \$ \times 0,80 = 660\ 000 \$$.

24.