



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

DROIT DES AFFAIRES

February 27, 2002

- 1) The examination in the DROIT DES AFFAIRES section is intended to determine the extent to which you have met the ultimate goals set forth in the document entitled « Préambule Droit des Affaires ».
- 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 des affaires
 - L'éthique, la déontologie et la pratique professionnelle
- 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.

FILE 1 (26 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.

Paul Chably, the president of *Régionair Abitibi inc.*, a company constituted under Part IA of the *Companies Act*, consults you, tells you the following facts and asks you certain questions regarding the business of the company.

- The articles of the company state that it is a closed company for purposes of the *Securities Act* and they fix a minimum of one director and a maximum of five directors. The description of the share capital contained therein is reproduced hereinbelow at pages **4 and 5**.
- The *pro forma* balance sheet of the company prepared as at today's date discloses the following :

RÉGIONAIR ABITIBI INC.			
PRO FORMA BALANCE SHEET			
As at February 27, 2002			
(Year End on December 31, 2002)			
ASSETS		LIABILITIES	
Current assets			
Cash	\$200,000		\$2,300,000
Receivables	\$500,000		
Inventory	\$900,000		
Fixed assets		SHAREHOLDERS' EQUITY	
	\$1,200,000	Issued and paid up share capital	
		150,000 class « A » shares	\$150,000
		570,000 class « B » shares	<u>\$570,000</u>
			\$720,000
		(Deficit)	\$220,000
Total assets	<u>\$2,800,000</u>	Total liabilities and shareholders' equity	<u>\$2,800,000</u>

- The realizable value of the company's assets is equal to their book value.
- To date, there are \$50,000 of accrued and unpaid dividends on the class « B » shares.
- The board of directors is comprised of three directors, namely François Ruel, Jasmine Poulin and Paul Chably, each of whom holds 50,000 class « A » shares.
- Rémi Fort holds all of the class « B » shares, which are fully paid. On January 27, 2002, he notified the company in writing that, in accordance with the articles and the price determined therein, he was exercising his right to require the redemption of half of the class « B » shares held by him, namely 285,000 class « B » shares.

QUESTION 1 (6 marks)

Assuming that *Régionair Abitibi inc.* were able to pay its liabilities as they become due, could it, as at today's date, pay the redemption price for the 285,000 class « B » shares held by Rémi Fort? Show all your calculations.

Justify your answer by referring to one or more specific and relevant provisions of the *Companies Act*.

SUPPLEMENTARY FACTS

At a meeting of the board of directors held on February 25, 2002, Paul Chably informed the directors of *Régionair Abitibi inc.* that a new investor, *Investifond inc.*, would be willing to subscribe for 50,000 shares of the share capital of the company for a consideration of \$500,000, which shares would have attached thereto the following rights, privileges, conditions and restrictions, among others :

- the right to vote at all meetings of shareholders;
- the right to a fixed, cumulative, preferred dividend of 8 %, said dividend to be paid in preference to dividends on all other classes of shares;
- the shares would be redeemable at the holder's request as of the fifth year following the issuance thereof.

Investifond inc. also wants one of its representatives, Sylvie Laliberté, to sit on the board of directors of the company as a fourth member as long as *Investifond inc.* holds shares in the share capital of *Régionair Abitibi inc.*

Paul Chably submits a draft agreement between *Régionair Abitibi inc.* and *Investifond inc.* The directors of *Régionair Abitibi inc.* approve the agreement and give you the mandate to prepare all the necessary corporate documents to give effect to *Investifond inc.*'s requests.

You notice that the provisions of the constituting act, other than those which have been provided to you, and the by-laws of the company do not contain any provisions likely to influence the performance of your mandate. There is no shareholders' agreement between the shareholders of *Régionair Abitibi inc.*

QUESTION 2 (20 marks)

State five resolutions of the board of directors or of the shareholders of *Régionair Abitibi inc.* required to give effect to *Investifond inc.*'s requests.

For each, indicate the purpose of the resolution and who must adopt it.

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

SCHEDULE

SHARE CAPITAL OF THE COMPANY

The authorized share capital of the company shall be comprised of two classes of shares. The rights, privileges, conditions and restrictions attaching to the class « A » shares and the class « B » shares shall be as follows :

A) CLASS « A » SHARES

A.1 GENERAL :

The Company shall be authorized to issue an unlimited number of class « A » shares, without par value, having the following rights, privileges, conditions and restrictions attached thereto :

A.2 VOTING RIGHTS :

Holders of class « A » shares shall be entitled to receive notices of meetings, attend and vote at all meetings of shareholders, subject, however, to the provisions of the *Companies Act* authorizing holders of certain classes of shares to vote separately in certain cases. Each share shall confer one (1) vote.

A.3 DIVIDENDS AND PARTICIPATION :

Subject to the rights and privileges attached to the other classes of shares, holders of class « A » shares shall have the right :

- a) to share in the property, profits and surplus assets of the company and, to this end, to receive all dividends declared;
- b) to share the remaining assets upon the dissolution, winding-up or other total or partial distribution of the company's property.

B) CLASS « B » SHARES

B.1 GENERAL :

The Company shall be authorized to issue an unlimited number of class « B » shares, without par value, having the following rights, privileges, conditions and restrictions attached thereto :

B.2 VOTING RIGHTS :

Subject to the provisions of the *Companies Act*, holders of class « B » shares shall not be entitled to vote at meetings of shareholders of the company, receive notices thereof or attend same.

B.3 DIVIDENDS :

Holders of class « B » shares shall be entitled to receive, in preference to holders of class « A » shares and from the profits or funds available for dividends, an annual, preferential and cumulative dividend established at a maximum rate of eight percent (8 %) per annum calculated on the basis of the redemption price of the class « B » shares as described in section B.6. The dividend shall be payable at such time and in accordance with such terms and conditions as the directors may determine in their discretion. The dividend shall accumulate as of the date of issuance of the class « B » shares.

B.4 ADDITIONAL PARTICIPATION :

Holders of class « B » shares shall not have any further right to share in the property, profits or surplus assets of the company.

B.5 REPAYMENT :

Upon the dissolution, winding-up or other total or partial distribution of the company's property, holders of class « B » shares shall be entitled to receive, in preference to holders of class « A » shares, an amount equal to the redemption price of the class « B » shares, as described in section B.6, as well as all the accrued and unpaid dividends on the class « B » shares.

B.6 REDEMPTION AT THE REQUEST OF THE HOLDER :

Subject to the *Companies Act*, a holder of class « B » shares shall, at all times and upon written notice, be entitled to require the company to redeem all or part of his class « B » shares, at a price (the redemption price) equal to the amount paid into the issued and paid-up share capital account for the said shares, plus any accrued and unpaid dividends on the said shares.

Within thirty (30) days after receipt of the redemption request, the company shall pay to the former holder of the shares all or part of the aforementioned price which it is legally entitled to pay. The company shall pay the balance, if any, of this price as soon as it is legally entitled to do so.

The shares so redeemed shall be cancelled automatically and the company shall reduce its issued and paid-up share capital account, in accordance with the *Companies Act*.

B.7 PURCHASE BY MUTUAL AGREEMENT :

Subject to the *Companies Act*, the company may, without notice, when it deems it appropriate and without regard to the other classes of shares, purchase by mutual agreement all or part of the issued and outstanding class « B » shares. The purchase shall be made at the best possible price.

The shares so purchased shall be cancelled automatically and the company shall reduce its issued and paid-up share capital account, in accordance with the *Companies Act*.

B.8 RIGHT OF VETO :

No class « B » shares shall be converted, no new class of shares having a greater or equal rank shall be created and the rights, privileges, conditions and restrictions attaching to the class « B » shares shall not be modified without the prior approval of at least three quarters (3/4) of the class « B » shares, as well as the separate approval of each class of shares whose rights might be adversely affected by the conversion, creation or modification, which shares shall be represented by holders thereof in attendance at a special meeting or special general meeting called for such purpose, and unless all other formalities required by the *Companies Act* have been fulfilled.

FILE 2 (19 MARKS)

Your client, Jacques Nault, consults you, tells you the following facts and asks you certain questions regarding the business of *Imprimerie Bilboquet ltée*.

- He is a shareholder of *Imprimerie Bilboquet ltée*, a corporation constituted under the *Canada Business Corporations Act*; it is a closed company for purposes of the *Securities Act*.
- The share capital of the corporation is comprised of an unlimited number of class « A » common shares and 1,000 class « B » preferred shares.
- The following rights, privileges, conditions and restrictions are attached to the class « B » preferred shares :
 - upon the dissolution of the corporation, the right to receive, in preference to the class « A » common shares, the amount paid into the stated capital account for the said shares, together with accrued and unpaid dividends;
 - the right to receive an annual, fixed, cumulative, preferred dividend equal to 7 % per annum of the amount paid into the stated capital account for the said class « B » preferred shares, said dividend to be paid in preference to dividends on the class « A » common shares; the dividend begins to accrue as of the date of issuance of the shares;
 - these shares are non-voting and are redeemable at the request of the holder thereof as of January 1, 2005, at a price equal to the amount paid into the stated capital account for the said shares, together with accrued and unpaid dividends;
 - these shares do not otherwise share in the profits or surplus assets of the corporation.
- John Bilboquet, Manon Tousignant, Ninon Riendeau and Jacques Nault are the directors of the corporation.
- 400 class « A » common shares have been issued; they are held in equal parts by each director.
- Each of the 40 employees of the corporation holds 25 class « B » preferred shares which were issued to them in the year 2000. The amount paid into the stated capital account for each class « B » preferred share is \$1,000.
- On January 15, 2002, Jacques Nault received the following notice of meeting :

Montreal, January 8, 2002

To the directors of *Imprimerie Bilboquet ltée*

Take notice that a meeting of the board of directors of the corporation will be held on January 17, 2002 at 9:00 a.m. at the head office of the corporation.

Ninon Riendeau

Ninon Riendeau, Secretary

- At the meeting of the board of directors held on January 17, 2002, at which all of the directors except Jacques Nault were present, the following resolutions were adopted :
 - amendment of article 25 of the by-laws of the corporation to decrease the time limit for calling special meetings of the corporation from 21 days to 5 days;
 - calling of a special meeting of the shareholders so that the corporation will henceforth be able to issue an unlimited number of class « B » preferred shares. The secretary, Ninon Riendeau, was instructed to call the meeting for February 27, 2002 at 7:00 p.m.;
 - borrowing, by means of a line of credit of \$500,000 from *Banque du Peuple*.
- Relying on the amendment to the by-laws adopted by the board of directors on January 17, 2002, Ninon Riendeau forwarded the notice of meeting on February 21, 2002 for the meeting to be held on February 27, 2002.
- There is no provision of the articles, the by-laws or a unanimous shareholders' agreement which deals with the corporation's borrowing powers, the content of notices of meetings of the board of directors, or the procedure required in order for the corporation to henceforth be able to issue an unlimited number of class « B » preferred shares.

QUESTION 3 (6 marks)

Does the notice of meeting of the board of directors held on January 17, 2002 comply with the requirements of the *Canada Business Corporations Act*? If yes, explain your answer. If not, indicate all the irregularities.

Justify your answer by referring to one or more specific and relevant provisions of the *Canada Business Corporations Act*.

QUESTION 4 (5 marks)

Following the change made to the number of class « B » preferred shares that the corporation may issue, would holders of this class of shares be able to force the corporation to repay to them, as at today's date, the fair value of their shares, without resorting to the courts?

Justify your answer by referring to one or more specific and relevant provisions of the *Canada Business Corporations Act*.

For the next two questions, you may assume that the meeting of the board of directors held on January 17, 2002 was validly called and held.

QUESTION 5 (4 marks)

Was Ninon Riendeau entitled to rely on the amendment to the by-laws adopted on January 17, 2002 by the board of directors in order to send, on February 21, 2002, the notice of special meeting of the shareholders to be held on February 27, 2002?

Justify your answer by referring to one or more specific and relevant provisions of the *Canada Business Corporations Act*.

QUESTION 6 (4 marks)

As regards the resolution adopted by the directors on January 17, 2002 to borrow \$500,000 from *Banque du Peuple* by means of a line of credit, in order to take effect must this resolution be approved by the shareholders at the special meeting to be held on February 27, 2002?

Justify your answer by referring to one or more specific and relevant provisions of the *Canada Business Corporations Act*.

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.

Victor Besson, the president of *Portes et Fenêtres Renaissance ltée*, consults you today regarding financial analysis matters.

He tells you that he has looked at statistics regarding the performance indicators for Canadian industries operating in the door and window manufacturing sector. By examining these statistics, he has noted that the best managed businesses have an accounts receivable collection period of 35 days. He also noted that the most profitable businesses have a ratio of return on net worth (« coefficient de rendement sur valeur nette ») of 30.5 %.

Victor Besson provides you with a copy of the balance sheet of *Portes et Fenêtres Renaissance ltée* as at December 31, 2001 and a copy of its income statement for the financial year ended on the same date. He also draws your attention to note 4 (reproduced on the following page) to the financial statements of the company for the financial year in question.

PORTES ET FENÊTRES RENAISSANCE LTÉE			
BALANCE SHEET			
DECEMBER 31, 2001			
ASSETS		LIABILITIES	
	\$		\$
Current assets		Current liabilities	
Cash	1,500,000	Bank loan	300,000
Receivables (note 4)	3,500,000	Payables	3,100,000
Inventory	3,750,000	Income tax payable	100,000
Prepaid expenses	<u>150,000</u>	Current portion of long-term debt	<u>500,000</u>
	8,900,000		4,000,000
Investments in an affiliated corporation	500,000	Long-term bank indebtedness	2,000,000
		Loan from shareholder	1,000,000
Fixed assets	5,500,000	Deferred taxes	<u>250,000</u>
		Total liabilities	<u>7,250,000</u>
Other assets	<u>100,000</u>	SHAREHOLDERS' EQUITY	
		Share capital	5,000,000
		Retained earnings	<u>2,750,000</u>
			<u>7,750,000</u>
Total assets	<u>15,000,000</u>	Total liabilities and shareholders' equity	<u>15,000,000</u>

PORTES ET FENÊTRES RENAISSANCE LTÉE
INCOME STATEMENT
DECEMBER 31, 2001

	\$
Sales	\$30,000,000
Cost of goods sold	
Finished products at the beginning	1,500,000
Manufacturing expenses	<u>21,000,000</u>
	22,500,000
Finished products at the end	<u>1,750,000</u>
	<u>20,750,000</u>
Gross profit	9,250,000
Operating expenses	
Selling expenses	3,400,000
Administrative expenses	3,500,000
Carrying charges	<u>250,000</u>
	<u>7,150,000</u>
Operating profit	2,100,000
Other income	<u>50,000</u>
Profit before taxes	2,150,000
Income tax	
Current	525,000
Deferred	<u>50,000</u>
	<u>575,000</u>
Net income	<u>1,575,000</u>

PORTES ET FENÊTRES RENAISSANCE LTÉE
NOTES TO THE FINANCIAL STATEMENTS
DECEMBER 31, 2001

[...]

	\$
4. Receivables	
Accounts receivable	3,287,675
Income tax refund claimed	50,000
Advances to representatives	160,000
Advances to directors	<u>2,325</u>
	<u>3,500,000</u>

Victor Besson asks your opinion on the following matters and asks you to answer based upon the financial data which he provided to you.

QUESTION 7 (5 marks)

Determine the accounts receivable collection period of *Portes et Fenêtres Renaissance ltée* during its financial year ended December 31, 2001. Show all your calculations.

QUESTION 8 (5 marks)

Determine what the net profit after taxes of *Portes et Fenêtres Renaissance ltée* should have been for its financial year ended December 31, 2001 in order for the corporation to obtain a ratio of return on net worth (« coefficient de rendement sur valeur nette ») of 30.5 % for the financial year in question. Show all your calculations.

SUPPLEMENTARY FACTS

Victor Besson also asks your opinion on tax matters. He tells you that *Portes et Fenêtres Renaissance ltée* was constituted in 1985 under the *Companies Act*. The head office and principal place of business of the company are located in Chambly, Quebec, where its door and window manufacturing plant is located. The company has a large distribution network in Quebec and in Ontario, but does not make sales outside Canada.

Since its constitution, *Portes et Fenêtres Renaissance ltée* has always been controlled by Victor Besson and his wife Alphonsine. Indeed, Victor and Alphonsine Besson hold all of the voting shares of *Portes et Fenêtres Renaissance ltée*, while their son Renaud, who is 15 years old, holds 1,000 non-voting class « B » shares of the share capital of the company. Renaud Besson subscribed for the 1,000 class « B » shares in 2000 and paid for them at the time of subscription from his own savings.

Victor Besson and his wife settled in Canada in 1972. Since then, they have always been Canadian residents within the meaning of the *Income Tax Act*.

Victor Besson explains to you that *Portes et Fenêtres Renaissance ltée* is about to declare a taxable dividend on the class « B » shares of its share capital. He asks you the following question regarding the dividend that his son Renaud will receive on his 1,000 class « B » shares.

QUESTION 9 (5 marks)

Will the dividend received by Renaud Besson on his 1,000 class « B » shares be taxable under the *Income Tax Act* for the 2002 taxation year? If yes, state which tax will apply. If not, explain your answer.

Justify your answer by referring to one or more specific and relevant provisions of the *Income Tax Act*.

SUPPLEMENTARY FACTS

Victor Besson also explains to you that Alphonsine, Renaud and he are contemplating settling themselves in France, where there are interesting business opportunities.

The Besson family would cease residing in Canada in January of 2003. Victor and Alphonsine Besson would retain control of *Portes et Fenêtres Renaissance ltée*, but most of the meetings of the board of directors of the company would be held in France.

Victor Besson asks your opinion on the following question and asks you to answer assuming that the tax legislation will remain the same as it is now.

QUESTION 10 (5 marks)

Assuming that the Besson family were to carry out its intention, what would be the status of *Portes et Fenêtres Renaissance ltée* under the *Income Tax Act* at the end of its taxation year ending on December 31, 2003?

Select the correct answer from among the answers written hereinbelow and write it in the answer booklet.

- a) **It would be a non-resident corporation.**
- b) **It would be a Canadian-controlled private corporation.**
- c) **It would be a private corporation.**
- d) **It would be a public corporation.**

FILE 4 (20 MARKS)

The company *E.D.B. inc.* operates a fruit and vegetable distribution business. The business is controlled by brothers Jérôme and François Bouchard who each hold 50 % of the shares of the company.

On May 4, 2000, *E.D.B. inc.* borrows \$42,000 from *Société Financière du Nord inc.* (hereinafter « *S.F.N.* »). The loan is repayable on May 4, 2001. As security, the lender obtains a hypothec on an immovable owned by Jérôme Bouchard.

On June 8, 2001, *E.D.B. inc.*, which is short of cash, fraudulently transfers to Jeanne Bouchard, Jérôme and François Bouchard's sister, a warehouse having a value of \$80,000 for the amount of \$30,000.

On September 12, 2001, *E.D.B. inc.* repays Marcel Latendresse the amount of \$28,000 which he had loaned to *E.D.B. inc.* at the time the company started up. This payment is made to Marcel Latendresse in order to give him a preference over the other creditors.

On February 4, 2002, *S.F.N.*, whose loan has never been reimbursed, files a petition for a receiving order against *E.D.B. inc.* The petition is served by bailiff on the same day and is accompanied by a notice of presentation for February 13, 2002.

In the petition, *S.F.N.* alleges that the following acts of the debtor constitute acts of bankruptcy :

1. the transfer of the warehouse on June 8, 2001;
2. the payment made on September 12, 2001 in favour of Marcel Latendresse, because it is a fraudulent preference under the *Bankruptcy and Insolvency Act*;
3. the general suspension of payments since December 7, 2001.

Moreover, *S.F.N.* fears that the debtor will completely squander its assets before the receiving order is made.

QUESTION 11 (5 marks)

Assuming that *Société Financière du Nord inc.* were able to prove that its fears are well founded, what written proceeding could you file to protect the bankruptcy estate?

Justify your answer by referring to one or more specific and relevant provisions of the *Bankruptcy and Insolvency Act* or the Rules adopted thereunder.

QUESTION 12 (5 marks)

Is the time period for presentation of *Société Financière du Nord inc.*'s petition for a receiving order sufficient?

Justify your answer by referring to one or more specific and relevant provisions of the *Bankruptcy and Insolvency Act* or the *Rules* adopted thereunder.

QUESTION 13 (10 marks)

Can the following acts be invoked in support of the petition for a receiving order :

- a) The transfer of the warehouse on June 8, 2001?

Justify your answer by referring to one or more specific and relevant provisions the *Bankruptcy and Insolvency Act*.

- b) The payment made on September 12, 2001 on the ground that it constitutes a fraudulent preference under the *Bankruptcy and Insolvency Act*?

Justify your answer by referring to one or more specific and relevant provisions of the *Bankruptcy and Insolvency Act*.

FILE 5 (15 MARKS)

SITUATION 1

M^c René Gagnon completed his articling in January of 2001. Since then, he has been a member in good standing of the Barreau du Québec and has just opened his own law firm.

To do so, he entered into a partnership with his childhood friend, Martin Paradis, a chartered accountant. Their partnership is registered with the Inspector General of Financial Institutions under the name of *Gagnon Paradis s.e.n.c.* The name *Gagnon Paradis s.e.n.c.* appears, among other places, on their business cards and their letterhead.

Business for Martin Paradis is very good. As for M^c René Gagnon, he is having trouble finding clients. He agrees with Martin Paradis to pay him 15 % of the fees that he collects from all clients referred to him by Martin Paradis.

QUESTION 14 (12 marks)

State three breaches of ethics committed by M^c René Gagnon.

For each breach, justify your answer by referring to one or more specific and relevant provisions of the *Professional Code*, or of *An Act respecting the Barreau du Québec* or of the regulations adopted under the *Professional Code* or under *An Act respecting the Barreau du Québec*.

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

SITUATION 2

In connection with the practise of her profession as an advocate, M^c Claire Néron maintains a register of prescription periods. She records therein all the expiry dates of the prescription periods provided for in the *Civil Code of Québec*. However, she considers that the time limits stipulated in the *Code of Civil Procedure* do not belong in such a register; therefore, she records them only in her clients' files.

QUESTION 15 (3 marks)

By acting in this manner, is M^c Claire Néron in breach of a rule governing the practise of her profession?

Justify your answer by referring to one or more specific and relevant provisions of the *Professional Code*, or of *An Act respecting the Barreau du Québec* or of the regulations adopted under the *Professional Code* or under *An Act respecting the Barreau du Québec*.

CORRIGÉ
DROIT DES AFFAIRES - EXAMEN RÉGULIER
 27 février 2002

DOSSIER 1 (26 POINTS)

QUESTION 1 (6 points)

Dans l'hypothèse où elle serait en mesure d'assumer son passif à échéance, *Régionair Abitibi inc.* pourrait-elle aujourd'hui même payer le prix de rachat des 285 000 actions de catégorie « B » détenues par Rémi Fort? Faites état de tous vos calculs.

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi sur les compagnies*.

Non, art. 123.54 *L.c.Q.*

1.

Actif – prix de rachat Passif + sommes payables concurremment ou par préférence en cas de rachat ou de liquidation.

2 800 000 – 310 000	(2)
2 490 000 \$	

2 300 000 + 310 000	(3)
2 610 000 \$	

2.

3.

QUESTION 2 (20 points)

Énoncez cinq résolutions du conseil d'administration ou des actionnaires de *Régionair Abitibi inc.* requises pour donner suite aux demandes d'*Investifond inc.*

Pour chacune, indiquez l'objet de la résolution et qui doit l'adopter.

SEULES LES CINQ PREMIÈRES RÉOLUTIONS INSCRITES AU CAHIER DE RÉPONSES SERONT CORRIGÉES.

5 / 11
(4 points / bulle)

1. Résolution du conseil d'administration pour adopter le règlement modifiant le capital-actions (art. 123.101 *L.c.Q.*). 1.
2. Résolution des actionnaires (de catégorie « A ») pour ratifier le règlement (art. 123.103 *L.c.Q.*). 2.
3. Résolution des actionnaires de catégorie « B » pour ratifier le règlement **ou** pour approuver la modification au capital-actions (droit de veto, art. 48 (7) *L.c.Q.*). 3.
4. Résolution du conseil d'administration pour convoquer une assemblée extraordinaire des actionnaires de catégorie « A » et une assemblée extraordinaire des actionnaires de catégorie « B » (art. 99 (3) et art. 123.03 *L.c.Q.*). 4.
5. Résolution du conseil d'administration pour approuver et appliquer l'entente intervenue avec *Investifond inc.* (art. 123.72 *L.c.Q.*). 5.
6. Résolution des actionnaires pour élire Sylvie Laliberté comme administratrice (art. 88 *L.c.Q.*). 6.
7. Résolution du conseil d'administration pour procéder à l'émission de nouvelles actions en faveur d'*Investifond inc.* (art. 47 et 91 (2) a) *L.c.Q.*). 7.
8. Résolution du conseil d'administration pour autoriser le dépôt d'une déclaration modificative auprès de l'inspecteur général des institutions financières (art. 123.72 *L.c.Q.* et art. 34 *L.p.l.*). 8.
9. Résolution du conseil d'administration pour verser au compte capital-actions émis et payé, le montant reçu d'*Investifond inc.* (art. 123.48 *L.c.Q.*). 9.
10. Résolution du conseil d'administration ordonnant de livrer le certificat d'actions à *Investifond inc.* (art. 53 (1) *L.c.Q.*). 10.
11. Résolution du conseil d'administration ordonnant de faire les inscriptions pertinentes requises aux registres (des administrateurs, des actionnaires ou des actions) de la compagnie (art. 123.111 et ss *L.c.Q.*). 11.

4.

DOSSIER 2 (19 POINTS)

QUESTION 3 (6 points)

L'avis de convocation de la réunion du conseil d'administration du 17 janvier 2002 est-il conforme aux exigences de la *Loi canadienne sur les sociétés par actions*? Si oui, dites pourquoi. Si non, indiquez toutes les irrégularités.

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi canadienne sur les sociétés par actions*.

Non, art. 114 (5) *L.c.s.a.*

5.

L'avis de convocation aurait dû faire état des questions suivantes :

• l'augmentation envisagée du capital social de la société **ou** du nombre d'actions privilégiées de catégorie « B » que la société peut émettre.
(art. 114 (5), 115 (3) a) *L.c.s.a.*, art. 173 (1) d) ou h) *L.c.s.a.*)

6.

• la modification des règlements administratifs
(art. 114 (5) et 115 (3) j) *L.c.s.a.*)

7.

AUCUNE AUTRE « IRRÉGULARITÉ »

8.

QUESTION 4 (5 points)

À la suite du changement apporté au nombre d'actions privilégiées de catégorie « B » que la société peut émettre, les détenteurs des actions de cette catégorie pourraient-ils, sans recourir aux tribunaux, contraindre la société à leur rembourser aujourd'hui la juste valeur de leurs actions?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi canadienne sur les sociétés par actions*.

Oui, art. 190 (2) *L.c.s.a.*

OU compte tenu de la question, la réponse suivante est aussi acceptée dans la mesure où l'étudiant fait référence à un paragraphe de l'art 190 *L.c.s.a.* qui prévoit un délai :

9.

Non, le remboursement ne peut être fait aujourd'hui.

QUESTION 5 (4 points)

Ninon Riendeau pouvait-elle s'appuyer sur la modification aux règlements administratifs adoptée le 17 janvier 2002 par le conseil d'administration pour expédier le 21 février 2002 l'avis de convocation pour l'assemblée extraordinaire des actionnaires du 27 février 2002?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi canadienne sur les sociétés par actions*.

Oui, art. 103 (3) *L.c.s.a.*

10.

QUESTION 6 (4 points)

La résolution adoptée par les administrateurs le 17 janvier 2002 afin d'emprunter sous forme de marge de crédit un montant de 500 000 \$ auprès de *Banque du Peuple*, doit-elle, pour prendre effet, être approuvée par les actionnaires lors de l'assemblée extraordinaire du 27 février 2002?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi canadienne sur les sociétés par actions*.

Non, art. 189 (1) a) *L.c.s.a.*

11.

DOSSIER 3 (20 POINTS)

QUESTION 7 (5 points)

Déterminez la période de recouvrement des débiteurs de *Portes et Fenêtres Renaissance ltée* au cours de son exercice prenant fin le 31 décembre 2001. Faites état de tous vos calculs.

40 jours.

$$\frac{\text{Débiteurs}}{\text{Chiffre d'affaires}} \times 365 \text{ jours} =$$

12.

$$\frac{3\,287\,675\$}{30\,000\,000} \times 365 \text{ jours} = 40 \text{ jours}$$

QUESTION 8 (5 points)

Déterminez quel aurait dû être le bénéfice net après impôt de *Portes et Fenêtres Renaissance ltée* pour son exercice prenant fin le 31 décembre 2001, afin que cette société obtienne un coefficient de rendement sur valeur nette de 30,5 % pour l'exercice en question. Faites état de tous vos calculs.

Un bénéfice net après impôt de 2 668 750 \$.

$$\frac{\text{Valeur nette [i.e. : capitaux propres + sommes prêtées par un actionnaire]}}{\text{Bénéfice net après impôt}} \times \frac{30,5}{100} =$$

13.

$$\frac{(7\,750\,000 \$ + 1\,000\,000 \$)}{100} \times 30,5 = 2\,668\,750 \$$$

QUESTION 9 (5 points)

Le dividende reçu par Renaud Besson à l'égard de ses 1 000 actions de catégorie « B » sera-t-il sujet à un impôt en vertu de la *Loi de l'impôt sur le revenu* pour l'année d'imposition 2002? Si oui, dites lequel. Si non, dites pourquoi.

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi de l'impôt sur le revenu*.

Oui. Le dividende sera sujet à l'impôt (des enfants mineurs) prévu à l'article 120.4 de la *Loi de l'impôt sur le revenu*. 14.

QUESTION 10 (5 points)

Dans l'hypothèse où la famille Besson mettrait à exécution son projet, quel serait le statut de *Portes et Fenêtres Renaissance ltée* en vertu de la *Loi de l'impôt sur le revenu* à la fin de son année d'imposition se terminant le 31 décembre 2003?

Choisissez la bonne réponse parmi celles inscrites ci-dessous et écrivez-la dans votre cahier de réponses.

- Elle serait une société non-résidente.
- Elle serait une société privée sous contrôle canadien.
- Elle serait une société privée.
- Elle serait une société publique.

Réponse : c) Elle serait une société privée.

15.

DOSSIER 4 (20 POINTS)

QUESTION 11 (5 points)

Dans l'hypothèse où *Société Financière du Nord inc.* serait en mesure de prouver le bien-fondé de ses craintes, quel acte de procédure pourriez-vous présenter pour protéger l'actif de la faillite?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi sur la faillite et l'insolvabilité* ou de ses Règles.

Requête en vue de la nomination d'un séquestre intérimaire, art. 46 (1) *L.f.i.*

16.

QUESTION 12 (5 points)

Le délai de présentation de la requête de *Société Financière du Nord inc.* en vue d'une ordonnance de séquestre est-il suffisant?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi sur la faillite et l'insolvabilité* ou de ses Règles.

Non, Règle 70 (1).

17.

QUESTION 13 (10 points)

Les actes suivants peuvent-ils être invoqués au soutien de la requête en vue de l'ordonnance de séquestre :

a) Le transfert de l'entrepôt le 8 juin 2001?

- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi sur la faillite et l'insolvabilité*.

Non, art. 43 (1) b) *L.f.i.* (le transfert est intervenu plus de 6 mois avant le dépôt de la requête).

18.

b) Le paiement du 12 septembre 2001 au motif qu'il constitue une préférence frauduleuse aux termes de la *Loi sur la faillite et l'insolvabilité*?

- Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi sur la faillite et l'insolvabilité*.

Non, art. 95 (1) *L.f.i.* (il ne s'agit pas d'une préférence frauduleuse car le paiement a été fait plus de 3 mois avant le dépôt de la requête ou de l'ouverture de la faillite).

19.

DOSSIER 5 (15 POINTS)

QUESTION 14 (12 points)

Énoncez trois manquements commis par M^e René Gagnon à ses obligations déontologiques.

Pour chaque manquement, appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes soit du *Code des professions*, soit de la *Loi sur le Barreau*, soit de leurs règlements.

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

1. La raison sociale *Gagnon Paradis s.e.n.c.* ne peut être utilisée parce que Martin Paradis n'est pas membre du Barreau, art. 7.01 *Code de déontologie des avocats*. 20.
2. M^e René Gagnon ne peut exercer sa profession en société avec Martin Paradis qui n'est pas membre du Barreau, art. 4.02.01 u) *Code de déontologie des avocats*. 21.
3. M^e René Gagnon ne peut partager ses honoraires avec Martin Paradis qui n'est pas membre du Barreau, art. 3.05.13 ou art. 3.05.14 ou art. 4.02.01 n) *Code de déontologie des avocats*. 22.

QUESTION 15 (3 points)

En agissant ainsi, M^e Claire Néron contrevient-elle à une règle d'exercice de sa profession?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes soit du *Code des professions*, soit de la *Loi sur le Barreau*, soit de leurs règlements.

- Oui, art. 9 Règlement sur les normes de tenue des dossiers et de domicile professionnel des avocats. 23.