



# FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

## EXAMINATION BOOKLET

### DROIT DES AFFAIRES

#### SUPPLEMENTAL EXAMINATION

June 3, 2002

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- 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 « Preamble 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.

<b>FILE 1 (13 MARKS)</b>
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**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.**

Carole Simon and Pierre Lord, the directors of *Coussin Argenté inc.*, a company constituted in 1998 under Part 1A of the *Companies Act*, consult you today and relate the following facts to you.

*Coussin Argenté inc.* operates a restaurant in Magog. Its authorized share capital is comprised of an unlimited number of class « A », class « B » and class « C » shares, all without par value.

The rights, privileges, conditions and restrictions attaching to the class « A », class « B » and class « C » shares are as follows :

- The class « A » shares confer upon the holders thereof the right to vote at all meetings of shareholders as well as the right to receive all declared dividends and to share the remaining property of the company upon its winding-up.
- The class « B » shares are non-voting shares conferring upon the holders thereof the right to receive an annual, fixed, non-cumulative, preferred dividend of 8 % per annum of the amount paid into the issued and paid-up share capital account for the said class « B » shares, said dividend to be paid in preference to dividends on the class « C » and class « A » shares. Upon the winding-up of the company they also confer the right, in preference to the class « C » and class « A » shares, to receive the amount paid into the issued and paid-up share capital account for the said class « B » shares together with any declared and unpaid dividends on the said shares. Finally, they may be redeemed unilaterally by the company at a price equal to the amount paid into the issued and paid-up share capital account for the said class « B » shares plus any declared and unpaid dividends.
- The class « C » shares are non-voting shares conferring upon the holders thereof the right to receive an annual, fixed, cumulative, preferred dividend of 6 % per annum of the amount paid into the issued and paid-up share capital account for the said class « C » shares, said dividend to be calculated as of the date of issuance of the shares and paid in preference to dividends on the class « A » shares. Upon the winding-up of the company they also confer the right, in preference to the class « A » shares, to receive the amount paid into the issued and paid-up share capital account for the said class « C » shares together with any accrued and unpaid dividends. Finally, they may be redeemed unilaterally by the company or upon request of the holders thereof at a price equal to the amount paid into the issued and paid-up share capital account for the said class « C » shares plus any accrued and unpaid dividends.

As at today's date, the balance sheet of *Coussin Argenté inc.* is as follows :

<b>COUSSIN ARGENTÉ INC.</b>			
<b>BALANCE SHEET</b>			
<b>As at June 3, 2002</b>			
ASSETS		LIABILITIES	
Current assets	\$425,200	Current liabilities	\$345,000
Fixed assets	\$1,255,000	Long-term liabilities	\$615,000
<b>SHAREHOLDERS' EQUITY</b>			
Issued and paid up share capital			
		1,000 class « A » shares	\$200
		1,000 class « B » shares	\$10,000
		2,000 class « C » shares	\$400,000
		Retained earnings	\$310,000
Total assets	<u>\$1,680,200</u>	Total liabilities and shareholders' equity	<u>\$1,680,200</u>

The realizable value of the assets is equal to their book value and the company is able to pay its liabilities as they become due. There are no accrued or unpaid dividends.

Roger Lafrance holds 1,000 class « C » shares. He wishes to dispose of these 1,000 shares for a price of \$200,000; moreover, he does not require the immediate payment of the entire price.

The directors of the company, Carole Simon and Pierre Lord, holders, in equal amounts, of the class « A » shares, are contemplating two scenarios which they have discussed with Roger and with which the other shareholders agree.

1<sup>st</sup> scenario: Carole and Pierre would personally purchase the 1,000 class « C » shares held by Roger for a price of \$200,000 payable by means of one payment of \$50,000 upon the signing of the agreement of sale, with the balance being payable 12 months later.

Roger is willing to accept this offer, but wants to obtain a guarantee of payment for the balance of the selling price. To this end, he wants the company to act as surety for the undertakings of its shareholders and to give one of its assets as security, namely a guaranteed investment certificate of \$150,000.

**QUESTION 1 (5 marks)**

**Under the *Companies Act*, can *Coussin Argenté inc.* grant such a suretyship in favour of Roger Lafrance? Show all your calculations.**

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

<b>SUPPLEMENTARY FACTS</b>
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Carole and Pierre are contemplating a second scenario.

2<sup>nd</sup> scenario: Instead of purchasing the shares themselves, Carole and Pierre propose, instead, to have *Coussin Argenté inc.* buy Roger's class « C » shares for an amount of \$200,000 payable 12 months after the sale.

Roger is willing to have *Coussin Argenté inc.* buy his shares, but he wants, as a condition, that the shares be deposited as security with his lawyer until payment in full of the selling price. If the company were not to pay the agreed upon amount on its due date, Roger would be able to take back his shares.

Under this scenario, the company would legally acquire Roger's 1,000 class « C » shares today.

**QUESTION 2 (4 marks)**

**Assuming that *Coussin Argenté inc.* were not to pay the balance owed upon its due date, in virtue of the *Companies Act* could Roger Lafrance take back his shares?**

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

<b>SUPPLEMENTARY FACTS</b>
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*Coussin Argenté inc.* wishes to acquire certain assets from *Services de Traiteur Le Délice inc.*, a company constituted in 1995 under Part 1A of the *Companies Act*.

Today, you consult the register of sole proprietorships, partnerships and legal persons (CIDREQ) and you notice the following entries relating to *Services de Traiteur Le Délice inc.*

2002-06-03  
R-PU-U03-1

L'INSPECTEUR GÉNÉRAL DES INSTITUTIONS FINANCIÈRES  
SYSTÈME CIDREQ

ÉTAT DES INFORMATIONS SUR UNE PERSONNE MORALE  
INFORMATIONS GÉNÉRALES

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MATRICULE : 1140176908

NOM : SERVICES DE TRAITEUR LE DÉLICE INC.

IMMATRICULATION : 1995-02-28  
FORMATION : 1995-02-28 CONSTITUTION  
LOCALITÉ : QUÉBEC  
DERN DÉCL ANNL : DEMANDE DISS/LIQ EN COURS : NON  
MAJ ÉTAT INFO : 1997-07-17 TRANCHE EMPLOYÉS: ENTRE 1 ET 5  
CESSATION PRÉVUE : CONTINUAT: TRANSFORM:  
STATUT DE L'IMMATRICULÉ : RO RADIÉ D'OFFICE 1997-07-17  
RÉSULTANTE :  
FORME JURDQ : CIE COMPAGNIE  
ADRESSE DOMICILE : 200, BOUL. INDUSTRIEL CODE POSTAL: JOJ 1J0  
MAGOG (QUÉBEC)

RÉG. CONSTITUTIF : 024 LOI SUR LES COMPAGNIES PARTIE 1A  
RÉG. COURANT : 024 LOI SUR LES COMPAGNIES PARTIE 1A

ACTIVITÉS ÉCONOMIQUES

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9212 RESTAURATION

[...]

DOCUMENTS MICROFILMÉS

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DATE MAJ INDEX DOCUMENTS: 1997-07-17

TYPE DOCUMENTS	DATE	CAST	IMAGE
62 RADIATION D'OFFICE	1997-07-17	3255	42 038
81 AVIS DE DÉFAUT (art. 29)	1996-06-08	2973	97 028
40 DÉCLARATION INITIALE	1995-02-28	2539	52 049
32 CERTIFICAT DE CONSTITUTION (PARTIE 1A)	1995-02-28	4010	5 054



**QUESTION 3 (4 marks)**

**Taking this information into account, in virtue of *An Act respecting the legal publicity of sole proprietorships, partnerships and legal persons*, can *Services de Traiteur Le Délice inc.* enter into and sign, as at today's date, an asset sale agreement with *Coussin Argenté inc.*?**

**Justify your answer by referring to one or more specific and relevant provisions of *An Act respecting the legal publicity of sole proprietorships, partnerships and legal persons*.**

<b>FILE 2 (32 MARKS)</b>
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Stéphanie Primeau consults you today with respect to the incorporation under the *Canada Business Corporations Act* of a corporation under the name of *Logiciels Primo Secundo et Compagnie*, which corporation would be a closed company within the meaning of the *Securities Act*. She provides you with Form 1 (reproduced hereinbelow) which she has completed and which you read, as well as Forms 3 and 6 (not reproduced).

	<b>Industry Canada</b> Canada Business Corporations Act	<b>Industrie Canada</b> Loi canadienne sur les sociétés par actions	<b>FORM 1</b> <b>ARTICLES OF INCORPORATION</b> (SECTION 6)	<b>FORMULE 1</b> <b>STATUTS CONSTITUTIFS</b> (ARTICLE 6)
<b>1 -- Name of the Corporation</b> <b>Logiciels Primo Secundo et Compagnie</b>		<b>Dénomination sociale de la société</b>		
<b>2 -- The province or territory in Canada where the registered office is situated</b> <b>Montreal</b>		<b>La province ou le territoire au Canada où est situé le siège social</b>		
<b>3 -- The classes and any maximum number of shares that the corporation is authorized to issue</b>  <b>See Schedule I annexed hereto and forming an integral part of these articles of incorporation.</b>		<b>Catégories et le nombre maximal d'actions que la société est autorisée à émettre</b>		
<b>4 -- Restrictions, if any, on share transfers</b>  <b>See Schedule II annexed hereto and forming an integral part of these articles of incorporation.</b>		<b>Restrictions sur le transfert des actions, s'il y a lieu</b>		
<b>5 -- Number (or minimum and maximum number) of directors</b> <b>Mimumum 1                  Maximum 10</b>		<b>Nombre (ou nombre minimal et maximal) d'administrateurs</b>		
<b>6 -- Restrictions, if any, on the business the corporation may carry on</b> <b>N/A</b>		<b>Limites imposées à l'activité commerciale de la société, s'il y a lieu</b>		
<b>7 -- Other provisions, if any</b>  <b>See Schedule III annexed hereto and forming an integral part of these articles of incorporation.</b>		<b>Autres dispositions, s'il y a lieu</b>		
<b>8 -- Incorporators - Fondateurs</b>				
<b>Name(s) - Nom(s)</b>	<b>Address (including postal code) / Adresse (inclure le code postal)</b>	<b>Signature</b>		
Stéphanie Primeau	124, Lake Shore Drive, Newark, NJ, USA, 07101	<i>Stéphanie Primeau</i>		
<b>FOR DEPARTMENTAL USE ONLY - À L'USAGE DU MINISTÈRE SEULEMENT</b> Corporation No. - N° de la société		<b>Filed - Déposée</b>		
IC 3419 (2001/11)				

**SCHEDULE I to the articles of incorporation**

The share capital of the corporation shall be comprised of an unlimited number of class « A » shares, 1,000 class « B » shares with a par value of \$20 per share and an unlimited number of class « C » shares.

The class « A » shares shall confer upon the holders thereof the right to vote at all meetings of shareholders, to receive a fixed cumulative dividend of 8 % per annum of the amount paid into the stated capital account for the said shares and, upon the dissolution of the corporation, to receive the amount paid into the stated capital account for the said class « A » shares, together with all accrued and unpaid dividends on such shares.

The class « B » shares shall confer upon the holders thereof the right to vote at all meetings of shareholders, to receive a fixed non-cumulative dividend of 10 % per annum of the amount paid into the stated capital account for the said shares and, upon the dissolution of the corporation, to receive the amount paid into the stated capital account for the said class « B » shares, together with all declared and unpaid dividends on such shares.

The class « C » shares shall be non-voting and shall confer upon the holders thereof the right to receive a fixed cumulative dividend of 9 % per annum of the amount paid into the stated capital account for the said shares and, upon the dissolution of the corporation, to receive the amount paid into the stated capital account for the said class « C » shares, together with all accrued and unpaid dividends on such shares.

**SCHEDULE II to the articles of incorporation**

No shares of the corporation shall be transferred without the consent of the directors, which consent shall be evidenced by a resolution of the board of directors.

### **SCHEDULE III to the articles of incorporation**

The number of shareholders shall be limited to 50, not counting those who are or have been employees of the corporation or a subsidiary.

The directors may be removed only by ordinary resolution of the holders of shares of all the classes of shares.

The directors may file articles of amendment in order to create any new class of shares, if they have been authorized by at least 51 % of the votes cast by the shareholders of the class or classes entitled to vote on this matter.

Notwithstanding any unanimous shareholders' agreement to the contrary, only the directors may determine the date of issuance of shares, the persons who may subscribe therefor and the contribution for which they may subscribe. However, upon a new issuance of class « A » shares, the shareholders holding shares of that class shall have a pre-emptive right, pro rata to the number of such shares, to subscribe for the shares of that class, at the price and in accordance with the terms and conditions upon which the shares are being offered to third parties.

The directors may appoint one or more additional directors whose term shall expire at the close of the next annual meeting, provided that the total number of directors thus appointed does not exceed one third of the number of directors elected at the most recent annual meeting.

The notice of meeting for each meeting of shareholders shall be sent between the ninetieth day and the tenth day preceding it.

The corporation's annual meetings may be held outside Canada, at a place fixed by resolution of the board of directors.

### **QUESTION 4 (32 marks)**

**State eight illegalities or irregularities contained in Form 1 and its schedules.**

**For each illegality or irregularity, justify your answer by referring to one or more specific and relevant provisions of any legislation.**

**ONLY THE FIRST EIGHT ILLEGALITIES OR IRREGULARITIES WRITTEN IN THE ANSWER BOOKLET WILL BE CORRECTED.**



<b>FILE 3 (20 MARKS)</b>
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**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.**

Matsu Endo, the sole shareholder of *Placements Endo ltée*, consults you today regarding financial matters. He tells you that *Placements Endo ltée* is a management company which, among other things, holds a 5 % interest in *Ateliers d'usinage du nord ltée*. He indicates that *Ateliers d'usinage du nord ltée* operates a heavy industry equipment parts manufacturing business in Quebec.

Matsu is dissatisfied with the management of *Ateliers d'usinage du nord ltée*, particularly as regards inventory management. He believes that shortcomings in inventory management are adversely affecting the profitability of the corporation to a significant extent.

He provides you with a copy of the balance sheet of *Ateliers d'usinage du nord ltée* as at December 31, 2001, a copy of its income statement for the fiscal year ended December 31, 2001 and a copy of note 12 annexed to the financial statements of the corporation for the fiscal year in question (all of which are reproduced hereinbelow).

Based on this data, he asks you to calculate the corporation's inventory turnover rate (« coefficient de rotation des stocks ») and the profit margin on sales (« coefficient de rendement sur les ventes »). He specifies that the inventory turnover rate should be calculated using the most meaningful method in light of the data provided.

<b>ATELIERS D'USINAGE DU NORD LTÉE</b>			
<b>BALANCE SHEET</b>			
<b>DECEMBER 31, 2001</b>			
<b>ASSETS</b>		<b>LIABILITIES</b>	
Current assets		Current liabilities	
Cash	\$425,000	Bank loan	\$225,000
Current investments	\$250,000	Accounts payable	\$2,350,000
Accounts receivable	\$1,925,000	Income tax currently payable	\$8,500
Inventory	\$1,750,025	Long-term debt coming due during the current fiscal year	<u>\$355,000</u>
Prepaid expenses	<u>\$10,250</u>		
	\$4,360,275	Long-term liabilities	\$2,050,000
Fixed assets	<u>\$2,515,000</u>	Future taxes	\$205,275
		<b>SHAREHOLDERS' EQUITY</b>	
		Share capital	\$1,500,000
		Retained earnings	<u>\$181,500</u>
			<u>\$1,681,500</u>
<b>Total assets</b>	<b><u>\$6,875,275</u></b>	<b>Total liabilities and shareholders' equity</b>	<b><u>\$6,875,275</u></b>

**ATELIERS D'USINAGE DU NORD LTÉE**  
**INCOME STATEMENT**  
**FISCAL YEAR ENDED DECEMBER 31, 2001**

Sales	\$11,452,080
Cost of goods sold (see note 12)	<u>\$8,487,622</u>
Gross earnings	\$2,964,458
Operating expenses	
Selling expenses	\$598,003
Administrative expenses	\$1,037,572
Financial expenses	<u>\$1,185,733</u>
	\$2,821,308
Earnings before income tax	<u>\$143,150</u>
Income tax	\$38,500
Payable	<u>\$49,680</u>
Future	<u>\$88,180</u>
Net income	<u>\$54,970</u>

**ATELIERS D'USINAGE DU NORD LTÉE**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2001**

[...]

**12. Cost of goods sold**

Finished goods, beginning of period	\$725,300
Manufacturing cost	<u>\$8,512,622</u>
	\$9,237,922
Finished goods, end of period	<u>\$750,300</u>
Cost of goods sold	<u><u>\$8,487,622</u></u>

**QUESTION 5 (5 marks)**

Using the method that is the most meaningful in light of the data provided, determine the inventory turnover rate (« coefficient de rotation des stocks ») of *Ateliers d'usinage du nord ltée* for the fiscal year ended December 31, 2001. Show all your calculations.

**QUESTION 6 (5 marks)**

Determine the profit margin on sales (« coefficient de rendement sur les ventes ») of *Ateliers d'usinage du nord ltée* for the fiscal year ended December 31, 2001. Show all your calculations.

**SUPPLEMENTARY FACTS**

Matsu also consults you regarding tax matters and relates the following facts to you.

He has always been and still is a resident of Japan and a non-resident of Canada within the meaning of the *Income Tax Act*.

The company *Placements Endo ltée* was constituted in Quebec in 1980. Since then, Matsu Endo has always been the sole shareholder of the company. The taxation year of *Placements Endo ltée* begins on January 1<sup>st</sup> and ends on December 31<sup>st</sup>.

In 1990, *Placements Endo ltée* acquired, as an investment, an income-producing immovable located in Montreal. In April of 2002, *Placements Endo ltée* disposed of the immovable and thereby realized a capital gain of \$500,000, resulting in a taxable capital gain of \$250,000.

Matsu consults you regarding the effect of this \$250,000 taxable capital gain on the calculation of the refundable dividend tax on hand of *Placements Endo ltée*.

#### QUESTION 7 (5 marks)

**Must the \$250,000 taxable capital gain realized by *Placements Endo ltée* be taken into account in calculating the refundable dividend tax on hand of the company at the end of its 2002 taxation year? Explain your answer.**

<b>SUPPLEMENTARY FACTS</b>
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Matsu tells you that, today, *Placements Endo ltée* received an amount of \$5,000 as a capital dividend from a private corporation.

#### QUESTION 8 (5 marks)

**Does the \$5,000 capital dividend received by *Placements Endo ltée* form part of its capital dividend account as at June 3, 2002?**

**Select the correct answer from among the following answers and write it in the answer booklet.**

- a) Yes, because under Part XIII of the *Income Tax Act*, capital dividends received by a non-resident private corporation form part of its capital dividend account.
- b) Yes, because under Part I of the *Income Tax Act*, capital dividends received by a private corporation form part of its capital dividend account.
- c) No, because under Part I of the *Income Tax Act*, capital dividends received by a private corporation do not form part of its capital dividend account.
- d) No, because the capital dividend account of a private corporation must be determined at the end of its taxation year which, in this case, is December 31, 2002.
- e) No, because as a private corporation controlled by a non-resident, *Placements Endo ltée* does not have a capital dividend account.

<b>FILE 4 (20 MARKS)</b>
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Gilles Gaulin, president, sole shareholder and director of *Industries G.G. inc.*, a manufacturer of agricultural equipment components, consults you today. He relates the following facts to you.

*Mécanique M.M. inc.* is a company specializing in the design and manufacture of equipment used to package Christmas trees. Michel Marceau is the president and sole shareholder and director of the company.

On December 12, 2000, Michel notices that neither his affairs nor the business of his company is doing well. He therefore sells the undivided half of his family residence for \$18,000 to his wife, Louise Legault, who is very well aware of her husband's insolvency. At that time, the residence is worth \$150,000 and is encumbered by a hypothec of \$80,000 in favour of *Banque Québécoise*.

On November 20, 2001, Michel enters into a contract in the name of *Mécanique M.M. inc.* for the sale of a large hydraulic component used to manufacture equipment for the packaging of Christmas trees. This sale is entered into for an amount of \$25,000 which is paid for in full by the purchaser, Henri Marceau, Michel's brother. The real value of the component at the time of the transaction is \$45,000.

On February 1, 2002, *Industries G.G. inc.* delivers to *Mécanique M.M. inc.* parts having a value of \$15,000 which are to be used for the manufacture of the equipment produced by the latter.

On February 15, 2002, *Mécanique M.M. inc.*, which has been insolvent for at least two years, files a notice of intention in accordance with section 50.4 of the *Bankruptcy and Insolvency Act*. Paul Pilon is appointed as trustee.

After having obtained all the time extension orders required, the court authorizes *Mécanique M.M. inc.* to file a proposal with its creditors by May 31, 2002.

On May 24, 2002, *Mécanique M.M. inc.* realizes that it will not be able to file a proposal which is viable for its creditors; consequently, that same day it makes a voluntary assignment of its property in the hands of the trustee, Paul Pilon. Furthermore, that same day, Michel declares personal bankruptcy with the same trustee.

As at May 24, 2002, half of the parts delivered by *Industries G.G. inc.* on February 1, 2002 have been incorporated into the manufacture of various equipment.

On May 27, 2002, Gilles Gaulin sends to the trustee, on behalf of *Industries G.G. inc.*, a demand under the *Bankruptcy and Insolvency Act* to repossess all of the parts delivered on February 1, 2002. *Industries G.G. inc.* has not received any payment for the said parts. The trustee refuses the demand for the following two reasons :

- The demand is too late.
- *Industries G.G. inc.* is only entitled to a portion of the parts delivered.

**QUESTION 9 (6 marks)**

Are the two grounds raised by the trustee well founded?

For each ground raised by the trustee, justify your answer by referring to one or more specific and relevant provisions of the *Bankruptcy and Insolvency Act*.

**QUESTION 10 (5 marks)**

Today, can the trustee exercise a recourse against Louise Legault? If yes, state which recourse. If not, explain your answer.

**QUESTION 11 (5 marks)**

Can the trustee exercise a recourse under the provisions of the *Bankruptcy and Insolvency Act* against Henri Marceau with respect to the sale of the hydraulic component? If yes, state which recourse. If not, explain your answer.

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

**QUESTION 12 (4 marks)**

Assuming that the trustee were to refuse to take any proceedings whatsoever against Louise Legault or Henri Marceau, could *Industries G.G. inc.* take them itself?

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

<b>FILE 5 (15 MARKS)</b>
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<b>SITUATION 1</b>
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On April 16, 2002, Rose Lareau entrusts several files to M<sup>e</sup> André Bouvier. One of these files seeks to obtain the repayment of a loan of \$10,000 made by her to her niece Zoé Gendron.

That same day, Rose and M<sup>e</sup> Bouvier sign a fee agreement providing for remuneration at an hourly rate. At the same time, M<sup>e</sup> Bouvier obtains a \$300 advance on his fees from Rose which he deposits that same day in his general bank account.

After the sending of a demand letter on April 22, 2002 and following drawn out negotiations, Zoé repays the entire debt with a \$10,000 cheque payable to the order of M<sup>e</sup> Bouvier.

On May 15, 2002, M<sup>e</sup> Bouvier receives the cheque and, in accordance with the agreement, he prepares his statement of fees for \$800. He keeps the statement of fees in his file with a view to presenting it to Rose at their next meeting. That same day, M<sup>e</sup> Bouvier deposits the amount of \$10,000 in his trust account and immediately withdraws \$500 therefrom to pay the balance of the fees in the statement dated May 15, 2002.

On May 22, 2002, he goes to Rose's home to deliver his \$800 statement of fees which is labelled « PAID » and to review the other files.

M<sup>e</sup> Bouvier then proposes to Rose that he borrow, for a period of two years, the amount of \$9,500 which he still holds in his trust account and that he pay her interest at a rate of 8 % per year. Rose accepts this proposal. M<sup>e</sup> Bouvier immediately signs and provides Rose with a note in which he undertakes to repay this amount within a period of two years.

**QUESTION 13 (12 marks)**

**Assuming that the amount of the fees is reasonable, state three breaches of ethics committed by M<sup>e</sup> André Bouvier.**

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

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

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**SITUATION 2**

M<sup>e</sup> John Marcotte receives a letter from the syndic of the Barreau du Québec informing him that he is carrying out an investigation following a complaint filed against him by one of his clients. The syndic of the Barreau du Québec wants to consult the file and asks M<sup>e</sup> Marcotte to provide him with certain documents.

**QUESTION 14 (3 marks)**

**Can M<sup>e</sup> John Marcotte rely on section 9 of the *Charter of Human Rights and Freedoms* in order not to comply with the requests of the syndic of the Barreau du Québec?**

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

**CORRIGÉ**  
**DROIT DES AFFAIRES - EXAMEN DE REPRISE**  
3 juin 2002

**DOSSIER 1 (13 POINTS)**

**QUESTION 1 (5 points)**

*Coussin Argenté inc.* peut-elle, en vertu de la Loi sur les compagnies, accorder un tel cautionnement au bénéfice de Roger Lafrance? 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*.

Oui, art. 123.66 *L.c.Q.*

1.

Actif – garantie n'est pas inférieur au total du passif + capital-actions émis et payé

$1\ 680\ 200 - 150\ 000 > 960\ 000 + 410\ 200$

$1\ 530\ 200 > 1\ 370\ 200$

2.

**QUESTION 2 (4 points)**

Dans l'hypothèse où *Coussin Argenté inc.* ne paierait pas à échéance le solde dû, Roger Lafrance pourrait-il, en vertu de la Loi sur les compagnies, reprendre ses actions?

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

Non, art. 123.42 *L.c.Q.*

3.

**QUESTION 3 (4 points)**

Compte tenu de ces informations, *Services de Traiteur Le Délice inc.* peut-elle aujourd'hui, en vertu de la *Loi sur la publicité légale des entreprises individuelles, des sociétés et des personnes morales*, conclure et signer un contrat de vente d'éléments d'actif avec *Coussin Argenté inc.*?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi sur la publicité légale des entreprises individuelles, des sociétés et des personnes morales*.

Non, art. 50 al. 2 *L.p.l.* (la radiation entraîne la dissolution d'une personne morale constituée au Québec)

4.



DOSSIER 2 (32 POINTS)

QUESTION 4 (32 points)

Énoncez huit illégalités ou irrégularités contenues dans la formule 1 et ses annexes.

Pour chacune des illégalités ou irrégularités, appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de tout texte de loi.

SEULES LES HUIT PREMIÈRES ILLÉGALITÉS OU IRRÉGULARITÉS INSCRITES AU CAHIER DE RÉPONSES SERONT CORRIGÉES.

8 / 11

4 points/bulle)

ILLÉGALITÉS OU IRRÉGULARITÉS	DISPOSITIONS LÉGISLATIVES
1. La dénomination sociale ne contient pas d'élément légal.	art. 10 (1) <i>L.c.s.a.</i>
2. La rubrique 2 indique la ville de Montréal, alors que la loi exige que soit indiqué une province ou un territoire (soit la province de Québec dans le cas présent).	art. 19 (1) <i>L.c.s.a.</i> <b>OU</b> art. 6 (1) b) <i>L.c.s.a.</i>
3. Les actions de catégorie « B » ne peuvent comporter une valeur nominale.	art. 24 (1) <i>L.c.s.a.</i>
4. Aucune des catégories d'actions n'a le droit de recevoir le résidu des dividendes.	art. 24 (4) b) <i>L.c.s.a.</i> <b>OU</b> art. 24 (3) b) <i>L.c.s.a.</i>
5. Aucune des catégories d'actions n'a le droit de recevoir le reliquat des biens lors de la liquidation.	art. 24 (4) b) <i>L.c.s.a.</i> <b>OU</b> art. 24 (3) c) <i>L.c.s.a.</i>
6. Il manque la clause interdisant l'appel public à l'épargne pour que la société soit une société fermée au sens de la Loi sur les valeurs mobilières.	art. 5 <i>L.V.M.</i>
7. Les actions de catégorie « C » ne confèrent pas à leurs détenteurs le droit de voter sur une résolution de révocation des administrateurs.	art. 109 (1) ou (2) <i>L.c.s.a.</i>
8. Une résolution spéciale est nécessaire pour autoriser le dépôt de clauses modificatrices. <b>OU</b> La loi ne permet pas de réduire la majorité requise pour adopter une résolution spéciale.	art. 173 (1) e) <i>L.c.s.a.</i> <b>OU</b> art. 176 (6) <i>L.c.s.a.</i> <b>OU</b> art. 6 (3) <i>L.c.s.a.</i>
9. Le délai de convocation d'une assemblée des actionnaires peut être réduit, mais non prolongé.	art. 135 (1,1) <i>L.c.s.a.</i> <b>OU</b> art. 44 <i>R.s.a.</i> <b>OU</b> art. 135 (1)
10. Les assemblées annuelles ne peuvent être tenues à l'extérieur du Canada que si les statuts prévoient le lieu <b>OU</b> si tous les actionnaires y consentent.	art. 132 (2) <i>L.c.s.a.</i>
11. Les statuts soustraient les administrateurs aux limites imposées par une convention unanime des actionnaires.	art. 122 (2) <i>L.c.s.a.</i> <b>OU</b> art. 321 <i>C.c.Q.</i> <b>OU</b> art. 25 (1) <i>L.c.s.a.</i>

1.

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11.

## DOSSIER 3 (20 POINTS)

## QUESTION 5 (5 points)

Déterminez, selon la méthode la plus significative eu égard aux données fournies, le coefficient de rotation des stocks de *Ateliers d'usinage du nord ltée* pour l'exercice financier terminé le 31 décembre 2001. Faites état de tous vos calculs.

Le coefficient de rotation des stocks, calculé en fonction du coût des produits vendus et des stocks, est de 4,85 ou 4,8 ou 4,9

6. 

$$\frac{\text{Coût des produits vendus}}{\text{Stocks}} = \frac{8\,487\,622 \$}{1\,750\,025 \$} = 4,85$$

## QUESTION 6 (5 points)

Déterminez le coefficient de rendement sur les ventes de *Ateliers d'usinage du nord ltée* pour l'exercice financier terminé le 31 décembre 2001. Faites état de tous vos calculs.

Le coefficient de rendement sur les ventes est de 0,48

7. 

$$\frac{\text{Bénéfice net après impôt}}{\text{Chiffre d'affaires}} \times 100 = \frac{54\,970 \$}{11\,452\,080 \$} \times 100 = 0,48$$

## QUESTION 7 (5 points)

Le gain en capital imposable de 250 000 \$ réalisé par *Placements Endo ltée* doit-il être pris en compte dans le calcul de l'impôt en main remboursable au titre de dividendes de cette compagnie à la fin de son année d'imposition 2002? Dites pourquoi.

Non, puisque *Placements Endo ltée* n'était pas une société privée sous contrôle canadien tout long de son année d'imposition 2002. (alinéa 129 (3) a) *Loi de l'impôt sur le revenu*

8. 

## QUESTION 8 (5 points)

Le dividende en capital de 5 000 \$ reçu par *Placements Endo ltée* fait-il partie du compte de dividendes en capital de cette société au 3 juin 2002?

Choisissez la bonne réponse parmi les suivantes et inscrivez-la dans votre cahier de réponses.

- Oui, parce qu'en vertu de la partie XIII de la *Loi de l'impôt sur le revenu*, les dividendes en capital reçus par une société privée non résidente font partie de son compte de dividendes en capital.
- Oui, parce qu'en vertu de la partie I de la *Loi de l'impôt sur le revenu*, les dividendes en capital reçus par une société privée font partie de son compte de dividendes en capital.
- Non, parce qu'en vertu de la partie I de la *Loi de l'impôt sur le revenu*, les dividendes en capital reçus par une société privée ne font pas partie de son compte de dividendes en capital.
- Non, parce que le compte de dividendes en capital d'une société privée doit être déterminé à la fin de son année d'imposition, en l'occurrence le 31 décembre 2002.
- Non, parce qu'à titre de société privée contrôlée par une personne non résidente, *Placements Endo ltée* n'a pas de compte de dividendes en capital.

Réponse : b) Oui, parce qu'en vertu de la partie I de la *Loi de l'impôt sur le revenu*, les dividendes en capital reçus par une société privée font partie de son compte de dividendes en capital.

9.

DOSSIER 4 (20 POINTS)

QUESTION 9 (6 points)

Les deux motifs invoqués par le syndic sont-ils bien fondés?

Pour chaque motif invoqué par le syndic, appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes de la *Loi sur la faillite et l'insolvabilité*.

**1<sup>er</sup> motif : La demande est tardive.**

Non, art. 81.1 (4) *L.f.i.* (Cette demande est formulée à l'intérieur du délai prévu de 30 jours car le temps écoulé entre l'avis d'intention et la faillite n'est pas considéré.) 10.

**2<sup>e</sup> motif : Industries G.G. inc. n'a droit qu'à une partie des pièces livrées.**

Oui, art. 81.1 (1) c) *L.f.i.* (Elle peut reprendre uniquement les pièces qui sont dans le même état qu'à leur livraison.) 11.

QUESTION 10 (5 points)

Le syndic peut-il aujourd'hui exercer un recours à l'encontre de Louise Legault? Si oui, dites lequel. Si non, dites pourquoi.

Oui, recours en inopposabilité (art. 72 *L.f.i.* et 1631 *C.c.Q.*). 12.

QUESTION 11 (5 points)

Le syndic peut-il exercer un recours en vertu des dispositions de la *Loi sur la faillite et l'insolvabilité* à l'encontre de Henri Marceau, relativement à la vente de la pièce hydraulique? 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 sur la faillite et l'insolvabilité*.

Oui, recours en révision d'une transaction révisable, art. 100 *L.f.i.* 13.

QUESTION 12 (4 points)

Dans l'hypothèse où le syndic refuserait d'exercer quelque procédure que ce soit à l'encontre de Louise Legault ou de Henri Marceau, *Industries G.G. inc.* peut-elle les exercer elle-même?

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

Oui, art. 38 *L.f.i.* (requête pour obtenir la permission d'exercer les recours en son propre nom et à ses propres frais et risques). 14.

## DOSSIER 5 (15 POINTS)

## QUESTION 13 (12 points)

En tenant pour acquis que le montant des honoraires est raisonnable, énoncez trois manquements commis par M<sup>e</sup> André Bouvier à ses obligations déontologiques.

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

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

MANQUEMENTS	DISPOSITIONS LÉGISLATIVES	
1. M <sup>e</sup> André Bouvier a déposé l'avance d'honoraires dans son compte d'administration générale plutôt que dans son compte en fidéicommis	art. 3.01 <i>Règlement sur la comptabilité et les comptes en fidéicommis des avocats.</i>  <b>OU compte tenu de la documentation sont aussi acceptés :</b>  art. 1.01 d) <b>ou</b> 3.03 a) <i>Règlement sur la comptabilité et les comptes en fidéicommis des avocats.</i>	15. <input type="text" value="4"/>
2. M <sup>e</sup> André Bouvier a retiré la somme de 500 \$ de son compte en fidéicommis, sans avoir au préalable transmis à sa cliente sa note d'honoraires ou sans avoir obtenu son consentement au retrait	art. 3.06 c) <i>Règlement sur la comptabilité et les comptes en fidéicommis des avocats.</i>	16. <input type="text" value="4"/>
3. M <sup>e</sup> André Bouvier a emprunté de sa cliente la somme d'argent qu'il a perçue pour elle	art. 3.05.12 <i>Code de déontologie des avocats.</i>	17. <input type="text" value="4"/>

## QUESTION 14 (3 points)

M<sup>e</sup> John Marcotte peut-il invoquer l'article 9 de la *Charte des droits et libertés de la personne* pour ne pas donner suite aux demandes du syndic du Barreau du Québec?

Appuyez votre réponse en faisant référence à la ou aux dispositions précises et pertinentes du *Code des professions*.

Non, art. 192 al. 2 *Code des professions*.

18.