



FORMATION PROFESSIONNELLE DU BARREAU DU QUÉBEC

EXAMINATION BOOKLET

DROIT PUBLIC ET ADMINISTRATIF

January 30, 2002

- 1) The examination in the DROIT PUBLIC ET ADMINISTRATIF section is intended to determine the extent to which you have met the ultimate goals set forth in the document entitled «Préambule de Droit public et administratif».
- 2) You have a maximum of four hours to complete the examination. You are entirely responsible for managing your time.
- 3) The examination contains questions relating to the following section:
 - Droit public et administratif
- 4) The questions total 100 marks. You must obtain a mark of 60% or more in order to pass this examination.
- 5) You may use any written documentation which you deem to be useful.
- 6) For photocopying purposes, kindly use a **pen with black ink** to write your answers in your answer booklet.
- 7) **You must write legibly, otherwise your answers will not be graded.**
- 8) Please ensure that your examination booklet contains **14** pages (including this page) and that your answer booklet contains **6** pages.

N.B.: You may assume that the *Civil Code of Québec* and Titles II and III of *An Act respecting the implementation of the reform of the Civil Code*, S.Q. 1992, c. 57 apply. Do not take the transitional provisions into account, except those relating to the publication of rights.

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| FILE 1 (31 MARKS) |
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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.

On October 17, 1996, *Environex inc.* obtains the following certificate of authorization :

[...]

Pursuant to the application for a certificate of authorization dated September 25, 1996, I authorize *Environex inc.*, in accordance with section 22 of the *Environment Quality Act* (R.S.Q., c. Q-2), to operate a system for the treatment, reclamation and composting of the municipal sludge and septic tanks on part of lot number 616 of the Township of Nedelec, near the municipality of Ville-Marie, province of Quebec.

The following documents shall form an integral part of this certificate of authorization :

- the application for a certificate of authorization (12 pages and 6 schedules);
- a resolution of the board of directors of *Environex inc.*;
- a municipal certificate of conformity;
- the plans and specifications for the sludge treatment, reclamation and composting system (6 plans).

Roger Paquin

 ROGER PAQUIN
 Regional Director of the ministère de
 l'Environnement for Abitibi-Témiscamingue

[The relevant provisions of the *Environment Quality Act* are reproduced in a schedule hereinbelow on pages 7 and 8.]

On May 8, 1997, Guy Leblanc, an inspector from the ministère de l'Environnement, notes that *Environex inc.* is not abiding by the provisions of its certificate of authorization and brings this fact to the attention of the president of *Environex inc.*, Gaston Mandeville.

On September 18, 1997, Guy Leblanc notes that the breaches previously observed have not been remedied. As for Gaston Mandeville, he claims that all the necessary corrections have been made.

Subsequent dealings between the ministère and *Environex inc.* become very strained. The ministère carries out frequent inspections and finds many breaches of the provisions of its certificate of authorization.

During the year 2000, many citizens of Ville-Marie and its surroundings complain to the municipality about the high prices charged by *Environex inc.* for the pumping and treatment of sludge from the septic tanks. On several occasions, the mayor of Ville-Marie, Richard Plourde, writes to the regional director of the ministère de l'Environnement to inform him of these complaints and to ask him to intervene.

These measures do not yield any results. Therefore, the municipality of Ville-Marie decides to establish and operate its own similar system. Consequently, at the beginning of the year 2001, it begins to take the necessary steps to obtain a certificate of authorization.

On April 19, 2001, *Environex inc.* sends the following application to the ministère de l'Environnement :

[...]

We hereby request that our certificate of authorization be amended in order to take into account certain new elements for the treatment, reclamation and composting of municipal sludge and septic tanks. This amendment will allow us to reduce our operating costs. Indeed, we have recently acquired a parcel of land, located in Ontario, which is adjacent to lot 616. We would like to install the following elements thereon : a new steel reservoir as well as additional composting and storage areas. The required plans and specifications are enclosed herewith.

[...]

On May 18, 2001, after having satisfied all of the requirements set forth at law, the Minister of the Environment, Jean Bellemare, sends *Environex inc.* a decision in which he refuses the application to amend its certificate of authorization.

On May 22, 2001, Roger Paquin telephones Gaston Mandeville. He informs him that the Minister intends to revoke *Environex inc.*'s certificate of authorization. This decision is based upon the fact that the provisions of the certificate of authorization have not been complied with. He then indicates to Gaston Mandeville which of the provisions have not been complied with, citing the facts in support thereof. He adds that if Gaston Mandeville wishes to provide additional observations or documents, he must send them to the ministère no later than June 6, 2001.

On June 19, 2001, Gaston Mandeville receives the following letter by registered mail :

Quebec City, June 15, 2001

Environex inc.
c/o Mr. Gaston Mandeville
2 Principale Street
Ville-Marie, Quebec
H2X 4B9

REVOCATION

WHEREAS you are the holder of a certificate of authorization issued under section 22 of the *Environment Quality Act* on October 17, 1996;

WHEREAS you have not complied with the provisions of your certificate of authorization;

Consequently, pursuant to the powers conferred upon me by the *Environment Quality Act*, I hereby revoke your certificate of authorization issued on October 17, 1996.

You may contest this decision within 30 days following receipt thereof.

The Minister of the Environment

Jean Bellemare

Jean Bellemare

QUESTION 1 (9 marks)

State three specific grounds of fact or of law that you can raise in order to contest the decision rendered by the Minister of the Environment on June 15, 2001.

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

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

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| SUPPLEMENTARY FACTS |
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In compliance with all the formalities prescribed by law, the lawyer for *Environex inc.*, M^e Josée Tremblay, separately contests before the Administrative Tribunal of Québec each of the two decisions rendered by the Minister of the Environment, namely, the decision to refuse the application for an amendment to the certificate of authorization and the decision to revoke the certificate of authorization.

QUESTION 2 (4 marks)

Must *Environex inc.* exercise a specific recourse in order to be authorized to operate its business while the proceedings are ongoing?

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

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| SUPPLEMENTARY FACTS |
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By order of the president of the Administrative Tribunal of Québec, the two contestations of *Environex inc.* are joined. During the hearing, M^e Tremblay calls Gaston Mandeville as a witness. As for M^e Sylvie Loranger, the lawyer for the Minister of the Environment, she calls Guy Leblanc as a witness as well as Georges Guimond, an employee from the municipality of Ville-Marie.

On February 7, 2002, the Administrative Tribunal of Québec renders the following decision :

ADMINISTRATIVE TRIBUNAL OF QUÉBEC
TERRITORY AND ENVIRONMENT DIVISION

DATE: February 7, 2002

FILE: STE-Q-053213-0209

MEMBERS OF THE TRIBUNAL

LOUIS CORBIÈRES, lawyer

YVONNE ROUSSEAU, biologist

ENVIRONEX INC.

Applicant

v.

MINISTER OF THE ENVIRONMENT

Respondent

DECISION

PURPOSE OF THE PROCEEDINGS

- [1] The applicant is contesting two decisions rendered by the Minister of the Environment with respect to the system for the treatment, reclamation and composting of the municipal sludge and septic tanks which it operates near the municipality of Ville-Marie.
- [2] The first decision refused the application to amend the certificate of authorization issued on October 17, 1996. The second decision revoked the certificate of authorization.

REFUSAL OF THE APPLICATION TO AMEND

- [3] The Minister refused the application to amend on the ground that the *Environment Quality Act* does not apply in Ontario.
- [4] It is true that the land on which the applicant wishes to establish its new facilities is located in Ontario.
- [5] However, the applicant is a legal person constituted pursuant to the laws of Quebec and the proposed facilities are but a component of the system located in Quebec.
- [6] In this context, the Tribunal concludes that the application of the *Environment Quality Act* and the jurisdiction of the Minister of the Environment of Quebec may extend beyond the territorial boundaries of Quebec, pursuant to the division of powers established in the *Constitution Act, 1867*.
- [7] Consequently, the Tribunal will examine whether the applicant's application to amend the certificate of authorization is well founded.
- [...]
- [22] After having analyzed the evidence submitted by the parties, the Tribunal concludes that the applicant's application to amend is well founded.

REVOCATION OF THE CERTIFICATE OF AUTHORIZATION

[23] M^e Sylvie Loranger, the lawyer for the Minister of the Environment, called Guy Leblanc as a witness to provide evidence of the applicant's failure to comply with the provisions of its certificate of authorization.

[24] Under cross-examination, M^e Josée Tremblay obtained an admission from the witness Guy Leblanc stating that his relationship with Gaston Mandeville was more than a little strained.

[25] In this context, the Tribunal concludes that Guy Leblanc is not impartial and independent and that his testimony must be rejected under section 23 of the *Charter of Human Rights and Freedoms* (R.S.Q., c. C-12).

[...]

[32] As for M^e Josée Tremblay, she called Gaston Mandeville as a witness. She asked the Tribunal to recognize him as an expert.

[33] After a discussion with all of the lawyers, the Tribunal ruled immediately, deciding that Gaston Mandeville could be heard as an expert, because he has particular experience qualifying him as such.

[...]

[48] The evidence as a whole, namely, the testimony heard and the documents filed, clearly shows that the applicant failed to comply with several provisions of its certificate of authorization. Therefore, the Minister of the Environment had valid grounds for revoking the applicant's certificate of authorization.

[49] However, Georges Guimond, one of the witnesses heard at the request of M^e Sylvie Loranger, is an employee of the municipality of Ville Marie who has an interest in having the certificate of authorization revoked. Although the credibility of this witness was not impugned, the Tribunal concludes that, under the circumstances, the decision of the Minister of the Environment must be annulled.

[...]

QUESTION 3 (18 marks)

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

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

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

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

SCHEDULE : EXCERPTS OF THE ENVIRONMENT QUALITY ACT

[...]

DIVISION IV
PROTECTION OF THE ENVIRONMENT

Emission of a contaminant.

20. No one may emit, deposit, issue or discharge or allow the emission, deposit, issuance or discharge into the environment of a contaminant in a greater quantity or concentration than that provided for by regulation of the Government.

Emission of a contaminant.

The same prohibition applies to the emission, deposit, issuance or discharge of any contaminant the presence of which in the environment is prohibited by regulation of the Government or is likely to affect the life, health, safety, welfare or comfort of human beings, or to cause damage to or otherwise impair the quality of the soil, vegetation, wildlife or property.

[...]

Certificate.

22. No one may erect or alter a structure, undertake to operate an industry, carry on an activity or use an industrial process or increase the production of any goods or services if it seems likely that this will result in an emission, deposit, issuance or discharge of contaminants into the environment or a change in the quality of the environment, unless he first obtains from the Minister a certificate of authorization.

Certificate of authorization.

However, no one may erect or alter any structure, carry out any works or projects, undertake to operate any industry, carry on any activity or use any industrial process or increase the production of any goods or services in a constant or intermittent watercourse, a lake, pond, marsh, swamp or bog, unless he first obtains a certificate of authorization from the Minister.

Application.

The application for authorization must include the plans and specifications of the structure or project to use the industrial process, operate the industry or increase production and must contain a description of the apparatus or activity contemplated, indicate its precise location and include a detailed evaluation in accordance with the regulations of the Government of the quantity or concentration of contaminants expected to be emitted, deposited, issued or discharged into the environment through the proposed activity.

[...]

Exception.

26. The Minister may, however, without prior notice but for a period of not over 30 days, order whoever is responsible for a source of contamination to cease or abate to the extent that he determines, the emission, deposit, issuance or discharge of a contaminant when in his opinion an immediate danger results to the life or health of persons or a danger of serious or irreparable damage to property.

Contents of order.

Such order must contain a summary of the reasons of the Minister. It shall take effect on the date of its notification upon the one responsible for the source of contamination.

[...]

DIVISION XI
PROCEEDING BEFORE THE ADMINISTRATIVE TRIBUNAL OF QUÉBEC

Contestation.

96. Any order issued by the Minister, except those contemplated in sections 29 and 32.5, in the second paragraph of section 34 and in sections 35, 49.1, 57, 59, 61, 114, 114.1 and 120 may be contested by the municipality or person concerned before the Administrative Tribunal of Québec.

Refusal of Minister.

The same applies in all cases where the Minister refuses to grant or revokes an authorization certificate, a certificate, an authorization, an approval other than the approval referred to in the third paragraph of section 31.44, a permission or a permit, refuses to renew a permit, notifies a notice under section 31.46, fixes the term of the renewal of a permit under section 55 at less than five years, requires a change in an application made to him, fixes or apportions costs and expenses other than those contemplated in section 32.5 or 35, determines compensation under section 61, notifies a denial of conformity to the proponent of a project, refuses to issue or amends, suspends or revokes a depollution attestation or refuses to amend or to revoke a depollution attestation upon application from the holder thereof.

Contestation.

An operator of an industrial establishment may, where the Minister approves rates with amendments pursuant to section 32.9, contest such decision before the Tribunal.

Notification.

97. The Minister shall, when he renders a decision referred to in section 96, notify it by registered or certified mail and inform the person or municipality of his or its right to contest the decision before the Tribunal.

Time limit.

98. The proceeding must be brought within 30 days of notification of the contested decision.

[...]

Execution suspended.

99. The proceeding shall suspend the execution of the decision of the Minister except in the cases provided for in section 26 [...]. In such cases, execution of the decision shall be maintained unless the Tribunal orders otherwise for serious reasons.

[...]

DIVISION XIV GENERAL PROVISIONS

[...]

Amendment or cancellation of certificate.

122.1. The Government or the Minister may amend or cancel any authorization certificate issued by it or him or issued in its or his name in the cases where

- (a) the authorization certificate has been issued on the basis of erroneous or fraudulent information;
- (b) the holder of the authorization certificate does not comply with the provisions contained in it or uses it for purposes other than those provided for under this Act;
- (c) the holder of the authorization certificate does not comply with this Act or a regulation thereunder; or
- (d) the holder of the authorization certificate does not avail himself of it within a period of one year from its issue.

Applicability.

Subparagraph *d* of the first paragraph does not apply in the case where the Government makes a regulation under paragraph *k* of section 31.

[...]

Observations.

122.4. Before making a decision under section 122.1, the Government shall allow the holder of an authorization certificate issued by the Government or on its behalf at least 10 days to present observations in writing.

Notification.

Before making a decision under section 122.1 or 122.3, the Minister shall notify the holder of the authorization certificate, certificate, authorization, approval, permission or permit in writing as prescribed by section 5 of the Act respecting administrative justice (chapter J-3) and allow him at least 10 days to present observations.

Decision.

The Government or the Minister may, where urgent action is required or there is a danger of irreparable damage being caused, make a decision under section 122.1 or 122.3 without being bound by such prior obligations.

Review.

In such a case, the holder may, within the time specified, present observations for review of the decision.

[...]

Conditions.

123.1. The holder of an authorization issued pursuant to this Act is required to comply with the conditions thereof while the project is being carried out or during the construction, utilization or operation of the works.

Applicability.

This section applies to all the authorizations issued under this Act since 21 December 1972. It also applies, with the necessary modifications, to the works commenced, used or operated under an attestation of environmental conformity.

[...]

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| FILE 2 (49 MARKS) |
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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 12.

Muralex inc. operates a paint and solvent manufacturing plant in Laval. Production is handled by 120 employees, of which 110 work in the paint department and 10 work in the solvent department. The *Syndicat des employés de l'industrie chimique* (hereinafter referred to as the « *Union* ») has been certified for several years to represent « all production employees, with the exception of the office employees and the foremen » of *Muralex inc.* at its Laval establishment. The collective agreement came into effect on April 1, 1998 and will expire on March 31, 2002. This agreement provides, among other things, that production employees assigned to the paint department and to the solvent department will receive the same hourly wage rate. Furthermore, it forbids the employer from granting an employee conditions of employment which are different from those set forth in the agreement. The collective agreement was duly filed in the office of the Labour Commissioner General.

On November 12, 2001, *Muralex inc.* opens a new establishment in Montreal where it will henceforth operate the solvent department. The 10 employees in the solvent department, who have traditionally resisted the *Union* and who had previously been assigned to the Laval establishment, are transferred there. The said 10 employees who have been assigned to the new Montreal establishment perform the same work as they did previously and are remunerated by *Muralex inc.* at a higher hourly rate than that provided for in the collective agreement. The employees in the Laval paint department are asking that Paul Belleau, the president of the *Union*, immediately begin negotiations with the employer in order to obtain, retroactively to November 12, 2001, an increased hourly rate equal to that paid to the employees now assigned to the Montreal establishment.

On November 21, 2001, the *Union* has the following notice served on the employer by bailiff :

[...]

Pursuant to the recent transfer of the solvent department to Montreal, I would like to meet with you at 9:30 a.m. on December 4, 2001, at the Union's office, in order to discuss the consequences of the transfer and enter into a new collective agreement.

Syndicat des employés de l'industrie chimique

Per: Paul Belleau, President

At the meeting on December 4, 2001, Jean Cayer, the president of *Muralex inc.*, categorically refuses to recognize the *Union*'s certification in the new Montreal establishment and declares that the collective agreement does not apply thereto. He clearly and firmly refuses to negotiate a new collective agreement with the *Union* or any increase in the hourly rate, retroactive to November 12, 2001, for the employees at the Laval establishment.

On December 10, 2001, the *Union* files a request with the office of the Labour Commissioner General in accordance with section 39 of the *Labour Code* in order to have the transfer recognized and to add the Montreal establishment to its certification. That same day, the *Union* files a grievance within the 30-day time limit prescribed in section 11.02 of the collective agreement, which grievance demands that the employees at the Montreal establishment be remunerated in accordance with the terms of the collective agreement entered into between the *Union* and *Muralex inc.*

On December 20, 2001, Jean Cayer meets with the 10 employees at his Montreal establishment and explains to them that the procedures initiated by the *Union* will result in a reduction of their hourly rate. He proposes to the employees that they form the *Association des salariés de Muralex* (hereinafter referred to as the «*Association*») and he invites them to fill out a membership card for membership in the *Association*. The employees are not required to pay anything in order to become members and Jean Cayer assures the employees that the employer will assume all the costs for obtaining the certification of the *Association*.

On December 21, 2001, the *Association* files a petition for certification with the office of the Labour Commissioner General in order to obtain certification to represent all the production employees of *Muralex inc.* at the Montreal establishment. In addition to the resolution authorizing the filing, the petition is filed together with the 10 membership cards signed by the employees at the meeting.

On January 7, 2002, a group of employees from the Laval establishment files with the office of the Labour Commissioner General a petition for cancellation of the certification held by the *Union*. This petition is filed together with 68 resignations from the *Union*. The petition and the resignations are served upon the *Union* that same day. According to information obtained by Paul Belleau, this measure is the result of the employees' dissatisfaction due to the *Union's* inability to negotiate an increased hourly rate retroactive to November 12, 2001 for the employees at the Laval establishment.

On January 15, 2002, the Labour Commissioner General orders that the proceedings be joined and fixes the joint hearing of the request and all the petitions on March 18, 2002.

On January 17, 2002, in accordance with the provisions of the *Code of Penal Procedure*, the *Union* files a statement of offence which alleges that *Muralex inc.* failed to negotiate a new collective agreement in good faith at the meeting held on December 4, 2001.

QUESTION 4 (12 marks)

Apart from the ground relating to the appropriateness of the character of the certification unit, state three grounds of fact or of law that the *Syndicat des employés de l'industrie chimique* could assert in order to have the petition for certification of the *Association des salariés de Muralex* dismissed.

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

QUESTION 5 (5 marks)

Is the petition for cancellation of the certification presented by the group of employees from the Laval establishment admissible? Explain your answer.

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

QUESTION 6 (4 marks)

Did the Labour Commissioner General have the power to order the joinder of the proceedings?

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

QUESTION 7 (5 marks)

Is the offence alleged against *Muralex inc.* regarding its failure to negotiate a new collective agreement in good faith well founded? Explain your answer.

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

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| SUPPLEMENTARY FACTS |
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Armand Vézina, a former member of middle management of *Muralex inc.*, consults you today. He tells you that he was employed by *Muralex inc.* for more than 20 years and was dismissed on November 30, 2001 because he had then reached the age of 65. This is the common retirement practice of *Muralex inc.* Furthermore, notwithstanding several requests, Armand has still not received a certificate of employment / work certificate from his employer.

QUESTION 8 (6 marks)

Does Armand Vézina have one or more administrative recourses available to him to contest his dismissal and obtain his reinstatement? If so, state the recourse or recourses. If not, explain your answer.

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

QUESTION 9 (4 marks)

State two provisions of any legislation which support Armand Vézina's request to obtain a certificate of employment / work certificate.

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| SUPPLEMENTARY FACTS |
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During your meeting, Armand Vézina informs you that he is the curator for his wife, Simone Vézina, who has Alzheimer's disease. Until recently, she had been living in a residence for people suffering from this disease. This residence is operated by *Maison de l'éveil inc.*, of which Georges Lalande is the sole shareholder, director and officer.

In the autumn of 2001, Armand Vézina noticed that his wife seemed very disturbed at the sight of Georges Lalande. Furthermore, he noted that certain jewellery belonging to his wife had disappeared.

While Georges Lalande was in Quebec City to attend the Annual Convention of the Alzheimer Society, Armand Vézina had a hidden video camera installed in his wife's room.

The video tape showed that Georges Lalande regularly forced Simone Vézina to have sexual relations with him. Furthermore, it showed him stealing a very valuable ring.

Armand Vézina immediately removed his wife from *Maison de l'éveil inc.*

QUESTION 10 (8 marks)

In his capacity as curator, can Armand Vézina file a complaint with the *Commission des droits de la personne et des droits de la jeunesse* against Georges Lalande? If so, specify all the rights he will be able to invoke in support of the complaint. If not, explain your answer.

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

SUPPLEMENTARY FACTS

In his capacity as curator, Armand Vézina institutes an action against *Maison de l'éveil inc.* in which he claims compensatory and punitive damages.

QUESTION 11 (5 marks)

Is the claim for punitive damages against *Maison de l'éveil inc.* well founded? Explain your answer.

NOVEMBER 2001

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DECEMBER 2001

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MARCH 2002

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| FILE 3 (20 MARKS) |
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| Situation 1 |
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Situation 1 described in File 3 is an evolving situation : all the supplementary facts are to be added to the main portion of the fact pattern to form part thereof.

France Ouimet owns a parcel of land in the city of Evelyne-sur-Mer, province of Quebec. From 1962 until April of 2001, a commercial building and a warehouse stood on the parcel of land.

Snow accumulation over the winter of 2001 damaged the roof of the warehouse. This building was completely demolished on April 1, 2001.

On January 8, 2002, France Ouimet receives her tax bill and notes that the value of her immovable is the same as in 2001, namely \$850,000, notwithstanding the demolition of the warehouse. The notice of assessment includes the following particulars, among others : « Triennial roll: 2001-2002-2003 » as well as « Date of deposit of the roll: September 15, 2000 ».

On January 15, 2002, she calls her municipal councillor to ask him to have the assessment roll reflect the decreased value of her immovable resulting from the demolition of the warehouse. An expert appraisal establishes that the value of the immovable should be reduced to \$700,000 given that the demolished warehouse had a value of \$150,000. The councillor tells her that he cannot do anything for her.

QUESTION 12 (4 marks)

Should the real estate assessment roll have been altered because of the demolition of the warehouse?

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

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| SUPPLEMENTARY FACTS |
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On January 16, 2002, France Ouimet files an application for review of the real estate assessment roll with the City for the purpose of having the value of her immovable decreased.

On January 24, 2002, the City's assessor sends France Ouimet a letter informing her that her application for review has been refused on the ground that it was filed too late, because it should have been filed no later than May 1, 2001.

QUESTION 13 (4 marks)

Was France Ouimet's application for review, which application was filed on January 16, 2002, filed beyond the time limit?

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

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| SUPPLEMENTARY FACTS |
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France Ouimet institutes proceedings before the Administrative Tribunal of Québec to contest the assessor's decision.

QUESTION 14 (4 marks)

Assuming that France Ouimet were successful in her proceedings before the Administrative Tribunal of Québec, on what date would the alteration of the real estate assessment roll take effect?

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

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| Situation 2 |
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Luigi Santini owns a summer home located in the municipality of Baie-des-Feux, province of Quebec. This municipality is not subject to the application of the *Act respecting the preservation of agricultural land and agricultural activities*. During a meeting with the mayor of the municipality, Luigi learns that the municipal council is preparing to amend the zoning by-law in order to allow farmers to install trailers and mobile homes in agricultural zone AA but only for themselves and for their employees. This is not a concordance by-law. Luigi is outraged by the proposed amendment, particularly because zone VILL-1 in which his property is located is contiguous to agricultural zone AA. The relevant provision of the draft by-law reads as follows :

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| <i>Section 4</i> |
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| <i>Section 232 of the zoning by-law is amended by adding the following to the list of permitted uses in zone AA :</i> |
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| <i>Trailers and mobile homes only for farmers and their employees.</i> |
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Luigi informs you that a consultation meeting regarding the draft by-law already took place.

QUESTION 15 (4 marks)

Must the municipality of Baie-des-Feux have the draft by-law approved by the qualified voters?

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

QUESTION 16 (4 marks)

Assuming that the by-law were to come into force, could its legality be contested? Explain your answer.

CORRIGÉ
DROIT PUBLIC ET ADMINISTRATIF - EXAMEN RÉGULIER
 30 janvier 2002

DOSSIER 1 (31 POINTS)

QUESTION 1 (9 points)

Énoncez trois motifs précis de faits ou de droit que vous pouvez invoquer pour contester la décision du ministre de l'Environnement rendue le 15 juin 2001.

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

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

3 / 4
3 points / bulle

1. Le ministre n'a pas notifié (par écrit) à *Environex inc.* le préavis (prescrit par la *Loi sur la justice administrative*,) art. 122.4 al. 2 *L.q.e.* 1.
2. La décision du ministre de révoquer le certificat d'autorisation de *Environex inc.* n'est pas motivée, art. 8 *L.j.a.* 2.
3. Le ministre n'a pas informé *Environex inc.* qu'il peut contester, art. 97 *L.q.e.* 3.
OU
 Le ministre n'a pas informé *Environex inc.* qu'il est possible de contester la décision (devant le Tribunal administratif du Québec), art. 8 *L.j.a.* 3.
4. La décision ne précise pas les renseignements pour communiquer avec le ministre, art. 4 par. 3° *L.j.a.* 4.

1. 9

QUESTION 2 (4 points)

Environex inc. doit-elle exercer un recours particulier pour être autorisée à exploiter son entreprise pendant l'instance?

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

Non, art. 99 *L.q.e.*

2. 4

QUESTION 3 (18 points)

a) **Énoncez trois motifs de faits ou de droit que le Procureur général du Québec pourrait invoquer pour contester la légalité de la décision rendue par le Tribunal administratif du Québec.**

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

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

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

| MOTIFS | 3 / 4 3 points / bulle | NORMES | 3 / 4 1 point / bulle | POURQUOI | 3 / 4 2 points / bulle |
|--|---------------------------|--|--------------------------|---|---------------------------|
| 3. 9 | | 4. 3 | | 5. 6 | |
| 1. Le TAQ a erré en concluant que la <i>Loi sur la qualité de l'environnement</i> et la compétence du ministre de l'Environnement du Québec peuvent s'étendre au-delà du territoire du Québec. | 1. <input type="radio"/> | 5. Erreur simple | 5. <input type="radio"/> | 9. Erreur dans l'interprétation d'un texte de loi à portée générale (<i>Loi constitutionnelle de 1867</i>) | 9. <input type="radio"/> |
| 2. Le TAQ a erré en concluant que l'article 23 de la <i>Charte des droits et libertés de la personne</i> s'appliquait à un témoin. | 2. <input type="radio"/> | 6. Erreur simple | 6. <input type="radio"/> | 10. Erreur dans l'application d'un texte de loi à portée générale (<i>Charte des droits et libertés de la personne</i>) | 10. <input type="radio"/> |
| 3. Le TAQ a erré en concluant que la révocation du certificat devait être annulée malgré sa conclusion concernant le bien-fondé de la décision du ministre OU Le TAQ a erré en écartant sa conclusion concernant le bien fondé de la décision du ministre sur la base d'un motif non pertinent (intérêt de Georges Guimond ou de Ville-Marie) | 3. <input type="radio"/> | 7. Erreur manifestement déraisonnable | 7. <input type="radio"/> | 11. Erreur dans l'exercice de la compétence du Tribunal | 11. <input type="radio"/> |
| 4. Le TAQ ne pouvait se prononcer sur une demande de modification du certificat d'autorisation | 4. <input type="radio"/> | 8. Erreur simple | 8. <input type="radio"/> | 12. Absence de compétence | 12. <input type="radio"/> |

L'étudiant qui n'a pas le bon motif ne peut obtenir les cases qui correspondent à la norme et le pourquoi.

L'étudiant qui n'a pas la bonne norme de contrôle ne peut obtenir la case qui correspond au pourquoi.

DOSSIER 2 (49 POINTS)

QUESTION 4 (12 points)

Outre le motif lié au caractère approprié de l'unité d'accréditation, énoncez trois motifs de faits ou de droit que le *Syndicat des employés de l'industrie chimique* pourrait faire valoir afin d'obtenir le rejet de la requête en accréditation de l'*Association des salariés de Muralex*.

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

- | | |
|---|--------------------------|
| | 3 / 6 |
| | 4 points / bulle |
| 1. Le Commissaire du travail ne peut accorder l'accréditation puisque l' <i>Association des salariés de Muralex</i> est dominée par l'employeur (art. 12 et 31 al. 2 <i>C.t.</i>). | 1. <input type="radio"/> |
| 2. L'employeur propose aux salariés de former l' <i>Association des salariés de Muralex</i> . | 2. <input type="radio"/> |
| 3. L'employeur a invité les salariés à signer les cartes d'adhésion de l' <i>Association des salariés de Muralex</i> . | 3. <input type="radio"/> |
| 4. L' <i>Association des salariés de Muralex</i> ne jouit pas du caractère représentatif puisque les salariés ne peuvent être reconnus membres du fait qu'ils n'ont pas payé la cotisation syndicale (art. 21 et 36.1 par. c) <i>C.t.</i>) | 4. <input type="radio"/> |
| 5. L'employeur a payé les cotisations syndicales. | 5. <input type="radio"/> |
| 6. Le dépôt de la requête en accréditation n'a pas été fait dans le délai prescrit par le <i>Code du travail</i> (art. 22 e) <i>C.t.</i>) | 6. <input type="radio"/> |
| 7. Le Commissaire du travail ne peut accorder l'accréditation puisque l' <i>Association des salariés de Muralex</i> est financée par l'employeur (art. 12 et 31 al. 2 <i>C.t.</i>). | 7. <input type="radio"/> |

6. 12

L'étudiant qui a une réponse imprécise à la case 7 obtient les points s'il a fait référence à l'art. 22 e) *C.t.* à la bulle 6 de la question 4.

QUESTION 5 (5 points)

La requête en révocation d'accréditation présentée par le groupe de salariés de l'établissement de Laval est-elle recevable? Dites pourquoi.

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

Non, car la requête n'a pas été présentée entre le 180^e et le 150^e jour précédant la date d'expiration de la convention collective (7), art. 41 al. 1 b) *C.t.*(8) (et 22 e) *C.t.*)

7. 3

8. 2

QUESTION 6 (4 points)

Le Commissaire général du travail disposait-il du pouvoir d'ordonner la réunion des procédures?

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

Oui, art. 50.1 al. 1 *C.t.*

9. 4

QUESTION 7 (5 points)

L'infraction reprochée à *Muralex inc.* quant au défaut de négociier de bonne foi une nouvelle convention collective est-elle bien fondée? Dites pourquoi.

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

Non, l'employeur n'était pas tenu de négocier puisque le *Syndicat des employés de l'industrie chimique* a transmis son avis plus de 90 jours avant la date d'expiration de la convention collective(10) art. 52 al. 2 *C.t.* OU art. 53 al. 1 *C.t.*(11)

10. 3

11. 2

QUESTION 8 (6 points)

Armand Vézina dispose-t-il d'un ou de plusieurs recours administratifs pour contester son congédiement et obtenir sa réintégration? Si oui, énoncez le ou les recours. Si non, dites pourquoi.

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

1. Plainte à l'encontre d'une pratique interdite (soit la mise à la retraite), art. 123.1 *L.n.t.* 12.
2. Plainte à la Commission des droits de la personne et des droits de la jeunesse, art. 74 *CDLP.* 13.

QUESTION 9 (4 points)

Énoncez deux dispositions de tout texte de loi qui permettent d'appuyer la demande d'Armand Vézina afin d'obtenir un certificat de travail.

Art. 2096 *C.c.Q.* 14.

Art. 84 *L.n.t.* 15.

Est aussi accepté : • L'article 39 (3) *L.n.t.* en réponse alternative à l'art. 2096 *C.c.Q.* ou à l'art. 84 *L.n.t.*

QUESTION 10 (8 points)

Armand Vézina peut-il, en sa qualité de curateur, porter une plainte à la Commission des droits de la personne et des droits de la jeunesse contre Georges Lalande? Si oui, précisez tous les droits qu'il pourra invoquer au soutien de cette plainte. Si non, dites pourquoi.

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

Oui, 74 al. 1 *CDLP* (et art. 71 al. 2 par. 1° *CDLP*). 16.

(Droit à la protection contre) le harcèlement sexuel, art. 10.1 *CDLP* OU harcèlement fondé sur le handicap, art. 10.1 *CDLP* OU harcèlement fondé sur l'âge, art. 10.1 *CDLP*. 17.

(Droit à la protection contre) l'exploitation des personnes âgées ou handicapées, art. 48 al. 1 *CDLP*. 18.

AUCUN DROIT ERRONÉ 19.

QUESTION 11 (5 points)

La réclamation relative aux dommages punitifs contre *Maison de l'éveil inc.* est-elle bien fondée? Dites pourquoi.

Oui, puisqu'il s'agit d'une atteinte illicite ET intentionnelle (à un droit garanti par la *CDLP*). 20.

L'atteinte est commise par le seul dirigeant de *Maison de l'éveil inc.* 21.

DOSSIER 3 (20 POINTS)

QUESTION 12 (4 points)

Le rôle d'évaluation foncière devait-il être modifié en raison de la démolition de l'entrepôt?

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

Oui, art. 174 par. 6°, *L.f.m.*

22.

QUESTION 13 (4 points)

La demande de révision de France Ouimet déposée le 16 janvier 2002 était-elle hors délai?

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

Non, art. 131.2 *L.f.m.*

23.

QUESTION 14 (4 points)

Dans l'hypothèse où France Ouimet aurait gain de cause devant le Tribunal administratif du Québec, à quelle date prendrait effet la modification du rôle d'évaluation foncière?

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

1^{er} avril 2001, art. 177 par. 5° a) *L.f.m.*

OU

À la date précisée par le TAQ dans sa décision, art. 147.1 *L.f.m.* OU 182 al. 3 *L.f.m.*

24.

QUESTION 15 (4 points)

La municipalité de Baie-des-Feux doit-elle faire approuver ce projet de règlement par les personnes habiles à voter?

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

Oui, art. 123 al. 3 *L.a.u.*

25.

QUESTION 16 (4 points)

Dans l'hypothèse où le règlement entrerait en vigueur, sa légalité pourrait-elle être contestée? Dites pourquoi.

Oui, car le pouvoir de réglementer les usages ne comporte pas celui de réglementer les usagers (*Construction M.J.M. inc. c. Senneville (Village)*, [1990] R.L. 438 (C.A.)).

OU

Oui, car le règlement est déraisonnable (*Bell c. La Reine*, (1979) 2 R.C.S. 212)

OU

Oui, car le règlement est discriminatoire (*Gauthier c. Canton de Brompton* JE 79-768 (C.S.))

26.